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VIA DOCKET UNIT E-FILING SYSTEM

California Energy Commission
715 P Street
Sacramento, CA 95814

Re: Seahawk BESS PROJECT (Docket No. 26-OPT-02): Application to Commission for Confidential Designation

Dear Commissioners:

Pursuant to California Code of Regulations ("CCR") Title 20, Section 2505(a)(3)(B), we hereby submit on behalf of Sequoia Energy Storage I, LLC (the "Applicant") this request for the Commission to determine the confidentiality of records for which the Executive Director has denied confidential designation, specifically Appendix 3.5D (Phase II Environmental Site Assessment [ESA]) and Appendix 3.5E (Contaminated Soil Mitigation Study) to its application for Opt-In Certification for the Seahawk Battery Energy Storage System, docketed May 27, 2026 (Docket No. 26-OPT-02). This request is timely submitted within 14 days of receipt of the Executive Director's determination.

Applicant: Sequoia Energy Storage 1, LLC

Address: 90 Minto Road, Watsonville CA

Please refer to our Application for Confidential Designation for Opt-In Application submitted May 21, 2026 for information submitted pursuant to 20 CCR Section 2505(a)(1). Pursuant to 20 CCR Section 2508, the Commission shall hold a hearing to determine the confidentiality of records in response to a timely request pursuant to subdivision (a)(3)(B) of Section 2505; a Commission decision on the confidentiality of records shall be based on whether the entity seeking to maintain the confidentiality of the record has met its burden of proof in demonstrating that confidentiality is warranted under the California Public Records Act, and that, considering all the facts and circumstances, the record should be kept confidential.

Disclosure of the information contained in these reports, including specific localized and uncontextualized chemical concentration data, Applicant's trade secrets and commercially sensitive information, and subsurface geological and geophysical data would cause substantial competitive and economic harm and compromise the safety and physical security of the proposed energy infrastructure. The Applicant asserts that the non-disclosure of these records is warranted under the California Public Records Act (Government Code section 7920.000 *et seq.*) and that, considering all the facts and circumstances, the records should be kept confidential on the following grounds:

1. <u>The Public Interest Served by Not Disclosing these Records Clearly Outweighs the Public Interest Served by Disclosure (Gov. Code § 7922.000)</u>

Pursuant to the Public Records Act, a record may be withheld from disclosure if the agency can demonstrate "that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 7922.000 [formerly Gov. Code, § 6255, subd. (a)].)

The Director determined that the Applicant's assertions that "disclosure of these records could affect valuation, liability allocation, structural engineering, commercial transactions, and infrastructure security . . . are generalized and speculative" and concluded that the Applicant "has not identified facts showing that disclosure of the appendices would cause specific harm that clearly outweighs the public interest in access to the information."

It should be noted that the property, which is privately owned, has historically been used for agricultural cultivation and the majority of the property is anticipated to be dedicated to ongoing agricultural use after certification of the proposed project. Therefore, the disclosure of records detailing localized, uncontextualized chemical concentration data and other subsurface conditions will cause specific harm to private parties by creating artificial real estate market distortions, devaluing the private asset and disrupting commercial transactions. Further, public disclosure would allow market competitors to exploit this detailed physical site data for their own real estate acquisitions or competitive strategies without incurring the associated development costs, causing severe commercial disadvantage to the Applicant. These harms are significant and specific to the effect of the release of the records on private financial interests.

In addition to these specific harms, the public interest in encouraging open regulatory compliance and thorough environmental testing far outweighs the public interest in immediate, uncontextualized disclosure of private laboratory data. Due to the potential for the specific harms discussed above, the unrestricted publicization of raw testing results would have the effect of discouraging open regulatory compliance and thorough testing, contrary to the public interest. For these reasons, the Commission should find that the public interest served by nondisclosure clearly outweighs the public interest served by disclosure and, therefore, confidentiality is warranted under the California Public Records Act, and that, considering all the facts and circumstances, the records should be kept confidential.

2. <u>The Public Records Act Does Not Require Disclosure of Geological and Geophysical Data Relating to Utility Systems Development or Information Relating to Siting a Facility within the State that are Obtained in Confidence (Gov. Code §§ 7927.300, 7927.605(a))</u>

The Public Records Act specifically exempts a public agency from disclosing <u>both:</u>

- "[G]eological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person" (Gov. Code § 7927.300); and

- "[C]orporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California" (Gov. Code § 7927.605(a)).

Here, the confidential appendices both relate to the Applicant's application for certification of an energy storage facility to be sited on the subject property and include geological and geophysical data relating to the project site as well as proprietary information consisting of raw laboratory chemical assay tables, specific contaminant plume dimensions, and subsurface geological profiling contained in the confidential Appendices, compiled entirely at substantial private expense by the Applicant's retained environmental engineering consultants. The information could not be legitimately acquired or duplicated by others. This information has been kept confidential by Sequoia Energy Storage 1, LLC and has not been disclosed to a person other than an employee, attorney, or consultant working on behalf of Sequoia Energy Storage 1, LLC under confidentiality agreements or duties of confidentiality.

For these reasons, the Public Records Act expressly authorizes withholding of these reports. Therefore, confidentiality is warranted under the California Public Records Act and, considering all the facts and circumstances, the records should be kept confidential

3. <u>The Public Records Act Does Not Require Disclosure of Confidential Proprietary Information including Trade Secrets (Gov. Code §§ 7927.605(a), 7927.705, Evidence Code § 1060, and Civil Code § 3426.1(d))</u>

The California Public Records Act also authorizes non-disclosure of confidential proprietary information and trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.605(a), 7927.705(k); *ref.* 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.) Civil Code section 3426.1(d) defines "trade secret" as:

> [I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, the application shall state: (1) the specific nature of the advantage, (2) how the advantage would be lost, (3) the value of the information to the applicant, and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The Director determined that the Applicant "has not made a reasonable claim that Appendix 3.5D the Phase 2 Environmental Site Assessment or Appendix 3.5E the Contaminated Soil Mitigation

Study, qualify for confidential designation as a trade secret" because the Applicant did not (1) "reasonably demonstrate that the information derives independent economic value from not being generally known to the public or other persons who could obtain economic value from its disclosure or use" and (2) "identify the specific nature of any competitive advantage created by maintaining the information as confidential, how that advantage would be lost through disclosure, the value of the information to the applicant, or the ease or difficulty with which the information could be legitimately acquired or duplicated by others".

With respect to the former, the specific information contained in the confidential Appendices represents proprietary site characterization insights that derives independent economic value from not being known to the public or other parties who could exploit this detailed physical site data for their own real estate acquisitions or competitive strategies without incurring the associated development costs. Such detailed technical data qualifies as a trade secret under State law. (See, e.g., *Masonite Corp. v. County of Mendocino Air Quality Management Dist*. (1996) 42 Cal. App. 4th 436, 446.)

With regard to the latter factor, this specialized technical intelligence was compiled entirely at substantial private expense by the Applicant's retained environmental engineering consultants and could not be legitimately acquired or duplicated. Public disclosure would allow market competitors to exploit this detailed physical site data for their own real estate acquisitions or competitive strategies without incurring the associated development costs, causing severe commercial disadvantage to the Applicant.

The information could not be legitimately acquired or duplicated by others. This information has been kept confidential by Sequoia Energy Storage 1, LLC and has not been disclosed to a person other than an employee, attorney, or consultant working on behalf of Sequoia Energy Storage 1, LLC under confidentiality agreements or duties of confidentiality.

For these reasons, the Public Records Act expressly authorizes withholding of these reports as "trade secrets". Confidentiality is therefore warranted under the California Public Records Act, and, considering all the facts and circumstances, the records should be kept confidential

4. <u>The Public Records Act Does Not Require Disclosure of Information Assessing Vulnerability Affecting Infrastructure Facilities (Gov. Code § 7929.200)</u>

Finally, the Public Records Act generally exempts from disclosure a document assessing vulnerabilities affecting infrastructure facilities. (Gov. Code § 7929.200.)

The Director determined that the Applicant has not identified "facts showing that disclosure of the appendices would reveal security sensitive information in a manner that would create a particularized risk to the site."

As noted above, these records relate to the Applicant's application for certification of proposed energy infrastructure. The subject records identify specific subsurface information including utilities, boring coordinates, and localized hazard concentrations. Disclosing exact geographic locations of subsurface vulnerabilities compromises the safety and physical security of the proposed energy infrastructure by providing detailed site-specific information relating to subsurface vulnerabilities which could potentially be exploited to damage the facilities or otherwise cause public harm. The information contained in these reports is not otherwise public and could not be legitimately acquired or duplicated by others. This information has been kept confidential by Sequoia Energy Storage 1, LLC and has not been disclosed to a person other than an employee, attorney, or consultant working on behalf of Sequoia Energy Storage 1, LLC under confidentiality agreements or duties of confidentiality.

Therefore, the Public Records Act authorizes withholding of these records from public disclosure. Confidentiality is therefore warranted under the California Public Records Act, and, considering all the facts and circumstances, the records should be kept confidential.

We appreciate the Commission's attention to these critical public interest issues. Please advise us when this matter is docketed for public hearing so that we may participate as authorized by 20 CCR Section 2508.

Sincerely,

Brooke Miller
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4911-4443-7436.4

cc: Drew Bohan, Executive Director