

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

November 30, 2009

David Wiseman
Galati Blek, LLP
455 Capitol Mall, Ste 350
Sacramento CA 95814**DOCKET****09-AFC-8**

DATE NOV 30 2009

RECD. DEC 02 2009

RE: **Application for Confidentiality
Contact Information for Habitat Compensation
Genesis Solar Energy Project
Docket No. 09-AFC-8**

Dear Mr. Wiseman:

On October 21, 2009, Genesis Solar, LLC, filed an application for confidentiality to the above-captioned docket, on behalf of Genesis Solar Energy Project ("Applicant"). The application seeks confidentiality for the document titled "Confidential Cover Submittal of the Genesis Solar Energy Project," consisting of two pages.

Applicant claims that the document identifies and details contacts that Applicant has made regarding habitat compensation and management. Furthermore, according to Applicant:

The information is a special compilation developed by (Applicant) and provides (Applicant) with an advantage over potential competitors who have not developed such a compilation of information, those with the ability to assist in habitat compensation, and pricing strategies. Disclosure of potential sources of habitat compensation may hinder current negotiations.

A properly filed Application for Confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "If the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [Energy] Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.) The California courts have traditionally used the following definition of trade secret:

a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation believes that the record should not be disclosed because it

contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, 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.

Applicant has made a reasonable claim that the law allows the Commission to keep the above listed information confidential on the grounds that it is proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage. As such, your request for confidential determination is granted.

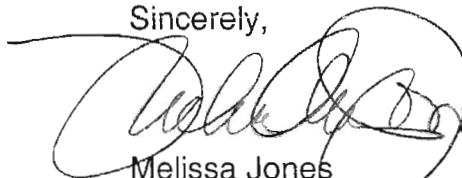
You request that the information remain confidential "until Genesis Solar LLC has concluded negotiations for all required habitat compensation for anticipated disturbance to Special Management Areas and habitat." Since you do not identify a specific time period, the information will remain confidential for a period of one year from the date of this letter. Thus, it is in your best interest to complete negotiations within that period.

Persons may petition to inspect or copy the records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

Please note that subsequently submitted information can be deemed confidential as specified in this letter without the need for a new application if you file a certification under penalty of perjury that the new information is substantially similar to the information granted confidentiality by this determination. California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4).

If you have any questions concerning this matter, please contact Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,



Melissa Jones
Executive Director

cc: Docket Unit
Energy Commission Project Manager