

DOCKETED	
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December 05, 2024

Via Email

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**Application for Confidential Designation: Soda Mountain Solar
Docket No. 24-OPT-03**

Dear Michael Cocchimiglio:

The California Energy Commission (CEC) received Soda Mountain Solar LLC's (applicant) Application for Confidentiality (TN 259878), dated November 4, 2024, regarding the following documents:

- Appendix P, Socioeconomic Impacts ON San Bernardino County of the Proposed Soda Mountain Project

A properly filed application for confidentiality shall be granted under 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 Commission to keep the record confidential."

The applicant requests confidentiality for all project specific financial information and economic values identified within pages 1-70 of Appendix P. Specifically, the requested confidential information includes worker compensation estimates, annual economic impact estimates, local, county, and state tax revenue estimates, and construction and operations cost information. The applicant requests confidentiality for this information indefinitely and asserts the data contains trade secrets, the disclosure of which would cause a loss of a competitive advantage.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705(k), 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.

(Civ. Code, § 3426.1(d); See also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

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 application addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) by stating:

1. *The specific nature of the advantage* – The information contains commercially sensitive data and trade secrets. Favorable agreements with counterparties, such as competing developers, financing agreements, and capital purchasing agreements are achieved through the negotiation process during which information is disclosed to other parties only as needed.
2. *How the advantage would be lost* – Disclosure of any of the cost information identified above, or derivatives of this cost information, would enable counterparties to reverse-engineer expected returns, capital cost components, or other key details of the project that would lessen Applicant's negotiating power.
3. *The value of the information to the applicant* – Nondisclosure of the information would preserve Applicant's ability to negotiate commercially favorable agreements with a number of counterparties and to operate the project in the most commercially competitive manner as possible. Applicant has carefully assembled its estimates for taxes, capital and operational cost figures, and leveraged myriad internal resources, including commercial partnerships, existing agreements, proprietary in-house knowledge, and prior project experience.
4. *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information referenced above cannot be legitimately acquired or duplicated by others. The information is not publicly available and has not been disclosed to anyone other than employees, attorneys or consultants working with Applicant and Applicant discloses this information to such parties only after executing a non-disclosure agreement.

Executive Director's Determination

Here, the applicant has made a reasonable showing that the information referenced above in Appendix P satisfies the requirements of a trade secret, in accordance with California Code of Regulations, title 20, section 2505(a)(1)(D). Therefore, the CEC designates worker compensation estimates, annual economic impact estimates, local, county, and state tax revenue estimates, and construction and operations cost information in Appendix P as confidential indefinitely.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a stylized flourish at the end.

Drew Bohan
Executive Director