

DOCKETED

Docket Number:	23-OPT-01
Project Title:	Fountain Wind Project
TN #:	252430
Document Title:	Cover Letter re Confidential Designation September 2023
Description:	N/A
Filer:	Caitlin Barns
Organization:	Stantec Consulting Services, Inc.
Submitter Role:	Applicant Consultant
Submission Date:	9/28/2023 9:22:34 AM
Docketed Date:	9/28/2023



APPLICATION FOR CONFIDENTIAL DESIGNATION
(Title 20 Cal. Code. Regs., § 2505 et seq.)

CEC-13 (Revised 11/2021)

CALIFORNIA ENERGY COMMISSION

All confidential filings: Individual documents may not exceed 30 MB¹ or be password protected.² The application must be a separate document from the confidential materials. The application itself is not confidential and is a public record. The application will be reviewed and acted upon by the Executive Director in consultation with the Chief Counsel of the Energy Commission. (§ 2505, subd. (a))

If you have questions, contact the Docket Unit at (916) 654-5076 or email: docket@energy.ca.gov.

Existing proceedings: Applications for confidentiality and the confidential documents must be uploaded directly to the Docket Unit through the e-filing system. Paper copies or CDs do not need to be submitted. Links to the e-filing system are provided on most proceeding webpages labeled “**Submit e-filing.**” Alternatively, go to: https://efiling.energy.ca.gov/Login.aspx?perms_1&returnurl=http%3A//efiling.energy.ca.gov/EFiling/EfileSelect/Proceeding.aspx. Registration is necessary the first time documents are uploaded. Once registration is complete, to submit a confidential filing click on **Quick Actions** from the **DASHBOARD** and select **Submit Confidential e-filing** from the dropdown list. The application must be uploaded first followed by one or more confidential files.

Filings not associated with any proceeding: Applications for confidentiality and the confidential materials must be submitted directly to the **Docket Unit** in paper form or on a CD, but not by email. Two copies must be submitted, on separate media if electronic, each marked with a descriptive title and “Confidential.” (§ 1208.1)

TO: Energy Commission Docket Unit

Applicant: Fountain Wind, LLC

Address: 1001 McKinney, Suite 700, Houston, TX 77002

Phone and E-mail: 281.520.6995 // henry.woltag@connectgenllc.com

Proceeding or Project Name: Fountain Wind Project

Docket Number: 23-OPT-01

- 1(a). Title, date, and description (including number of pages) of the information or data for which you request confidential designation. **Information or data seeking a designation of confidentiality must be included with this application.**

Please see the attached letter from Fountain Wind, LLC, which provides responses to Items 1-5.

- 1(b). Specify the part(s) of the information or data for which you request confidential designation.

¹ Contact the Docket Unit if you cannot reduce the size of your file.

² If you wish to protect the files while in transit, you may combine them in a password-protected .zip file..



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CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

2. State and justify the length of time the Energy Commission should keep the information or data confidential.

3(a). State the provision(s) of the Public Records Act (Gov. Code, § 6250 et seq.) or other law that allows the Energy Commission to keep the information or data confidential, and explain why the provision(s) apply to that material.

3(b). Discuss the public interest in nondisclosure of the material submitted for a confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

4. State whether the information or data can be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why.

5. State how the material is kept confidential by the applicant and whether it has even been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred.

I certify under penalty of perjury under the laws of the State of California that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the applicant.

Dated: 9/26/2023

DocuSigned by: _____

Signed: *Sara Parsons*

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APPLICATION FOR CONFIDENTIAL DESIGNATION
(Title 20 Cal. Code. Regs., § 2505 et seq.)

CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

Name (print or type): Sara Parsons

Title: (print or type) Vice President, Development/Commercial Services

Representing: Fountain Wind, LLC

Include additional signature blocks if there are multiple partners in the project with shared responsibilities for making the request.



September 26, 2023

Drew Bohan
 Executive Director
 California Energy Commission
 715 P Street
 Sacramento, CA 95814

RE: Fountain Wind Project (Docket No. 23-OPT-01), Application for Confidential Designation

Dear Mr. Bohan,

Pursuant to Title 20, section 2505(a), of the California Code of Regulations, Fountain Wind, LLC (the “Applicant”) hereby submits this *Application for Confidential Designation* for the documents listed below, which are submitted in support of the Application for Certification for the Fountain Wind Project and in response to the Community Benefits Data Request (TN 252320, Docketed September 20, 2023).

Please contact us at 281-520-6995 or hwoltag@connectgenllc.com if you have any questions or require additional information regarding this application.

* * *

1. *Specifically indicate those parts of the record which should be kept confidential.*
 - a. *Title, date, and number of pages of the information or data for which you request confidential designation.*

The Applicant seeks confidential designation for the following documents:

Attachment/Title	Date	File Type	Description	No. of Pages
A. CONFIDENTIAL Draft Fund Agreement 20230925	9/26/2023	.pdf	Confidential Draft Community Benefits Agreement	8
B. CONFIDENTIAL Response to Community Benefits Data Request	9/26/2023	.pdf	Unredacted Response to Community Benefits Data Request	9

- b. *Parts of the information or data for which you request confidential designation.*

Attachments A and B should be kept confidential in their entirety.

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

Attachments A and B should be kept confidential indefinitely.

3. *Cite and discuss:*
 - a. *the provisions of the Public Records Act or other law that allow the Commission to keep the information or data confidential, and explain why the provision applies to the material.*

- b. the public interest in nondisclosure of the material submitted for confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.*

The Public Records Act exempts “corporate 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’t Code § 7927.605(a).) The Public Records Act also exempts “any preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by a public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.” (Gov’t Code § 7927.500.) Finally, the Public Records Act exempts “any record by demonstrating ... 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’t Code § 7922.000.)

Attachments A and B contain proprietary information related to the Applicant’s ongoing negotiations with a community-based organization for purposes of providing community benefits in accordance with Public Resources Code section 25545.10. The discussion of the amounts and terms and conditions of the benefit package constitute commercially sensitive and valuable information that should be shielded from disclosure until those amounts are finalized. Disclosure of Attachments A and B would interfere with ongoing negotiations and inhibit an open discussion between the Applicant and the organization of legal and policy matters related to community benefits. Indeed, the Applicant is under no affirmative duty to provide the draft agreement but is doing so here to assist the CEC in its review of the Applicant’s opt-in application. Notably, the Public Records Act specifically exempts from disclosure preliminary drafts of *agency* materials, which themselves have fewer protections from disclosure than private materials prepared outside the decision-making process. This private draft agreement, and the confidential data request response which references terms and conditions of the draft agreement, should be afforded equal if not greater protections than drafts prepared by an agency itself.

Further, there is no harm to the public interest in maintaining the confidentiality of the draft agreement while it is draft form. The Applicant has provided concurrently with this confidentiality request a redacted public response to the CEC’s data request regarding community benefits. The data request response provides a general discussion of the proposed terms and conditions of the draft community benefits agreement but does so without disclosing confidential and ongoing negotiations. Further, the Applicant understands that the final agreement will be available for public review. Thus, the public has multiple opportunities to meaningfully comment on the project’s community benefits, both in response to the public data request and once the agreement is finalized. However, until the Applicant and the organization have completed negotiations, the draft terms should remain confidential. (*Cf. Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, 1077 [public negotiation process exempt from disclosure].)

- 4. State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

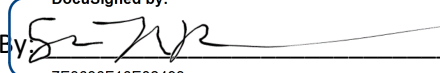
The Applicant considered whether it would be possible to aggregate or mask portions of Attachments A and B. Although Attachments A and B should be kept confidential in their entirety, the Applicant has provided for docketing a redacted response to the CEC’s data request regarding community benefits. The redacted response provides a general discussion of the proposed terms and conditions of the draft community benefits agreement but does so without disclosing confidential information.

5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

Attachment A is accessible only to employees or consultants providing essential services to the Project and to employees of the organization. Attachment B is accessible only to employees or consultants providing essential services to the Project.

I certify under penalty of perjury that the information contained in this Application for Confidential Designation is true, correct, and complete to the best of my knowledge and belief. I am authorized to make this Application and Certification on behalf of the Applicant.

Dated: September 26, 2023

DocuSigned by:
By 
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On behalf of Fountain Wind, LLC
Its: Authorized Representative