

DOCKETED	
Docket Number:	03-AFC-02C
Project Title:	Los Esteros Phase II Compliance
TN #:	271892
Document Title:	Decision on Petition to Inspect Confidential Records TN 271563
Description:	This decision responds to a Petition to Inspect Confidential Records received by the California Energy Commission (CEC) on July 17, 2026 (TN 271563). The petition seeks disclosure of records granted confidentiality by the CEC.
Filer:	Lisabeth N. Lopez
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	8/10/2026 9:55:27 AM
Docketed Date:	8/10/2026



August 7, 2026

Via Email

Ada E. Márquez
Ada.marquez@sjsu.edu

**RE: Decision on Petition to Inspect Confidential Records
Docket No. 03-AFC-02C**

Dear Ada E. Márquez,

The California Energy Commission (CEC) received your Petition to Inspect Confidential Records (TN 271563) on July 17, 2026. The petition seeks disclosure of records granted confidentiality by the CEC in response to a Repeated Application for Confidential Designation (TN 271053) submitted by Los Esteros in June 2026 pursuant to California Code of Regulations, title 20, section 2505(a)(4).

The records in question are a technical memorandum and supporting AERMOD files submitted by Los Esteros in support of its application to construct a battery energy storage system (BESS) at its facility. The memorandum proposes emission factors for select compounds that may be emitted by a fire at the BESS. The petition asserts the records are air pollution emission data and analysis that are statutorily defined as public records under Government Code section 7924.510.

Pursuant to California Code of Regulations, title 20, section 2506(b)(2)(A), the CEC asked Los Esteros to either give permission to release the records or supplement its application for confidential designation. The CEC received a response from Los Esteros on July 27. Los Esteros declined to give permission to release the records and submitted a response prepared by the battery manufacturer, Hithium, asserting that the records constitute trade secrets and should be kept confidential in their entirety.

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 a trade secret, 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 authority to issue a decision on the petition is delegated to the Chief Counsel. Under California Code of Regulations, title 20, section 2506(b)(4), the Chief Counsel shall base their decision on the petition on whether the entity seeking to maintain the confidentiality of the records has met its burden of proof in demonstrating that confidentiality is warranted under the California Public Records Act, and that, considering all facts and circumstances, the records should be kept confidential.

Chief Counsel's Determination

Los Esteros has not met its burden of proof to demonstrate that confidentiality is warranted under the California Public Records Act. Hithium's trade secret arguments are conclusory and lack specificity. The response does not identify what proprietary information, if any, is contained in the technical memorandum or the particular AERMOD files identified in the original confidentiality application. The technical memorandum is largely an analysis of publicly available data sources and studies, and Hithium does not explain why such information should be considered a trade secret. Hithium does not identify any specific proprietary information within the technical memorandum for redaction. Instead, Hithium groups all of the technical memorandum and the AERMOD files together as "the Data" and requests that it be kept confidential in its entirety. Because the response submitted by Los Esteros fails to identify specific proprietary information that would constitute a trade secret, Los Esteros has not met its burden of proof that confidentiality is warranted.

Additionally, neither Los Esteros nor Hithium addresses petitioner's argument that Government Code section 7924.510 designates air pollution emission data and analysis as a public record. Both the AERMOD files and technical memorandum appear to qualify as air pollution emission data and analysis under section 7294.510. Los Esteros has not met its burden to prove otherwise.

Accordingly, the CEC will grant the petition and release the records in question. This decision will take effect on August 21, 2026, at which time the records will be published to the docket. Please be advised that prior to publication of the records, Los Esteros may invoke its right to request the Commission to reconsider this decision. (Cal. Code Regs., tit. 20, § 2506(b)(6)).

Sincerely,

Matthew Pinkerton

Matt Pinkerton
Acting Assistant Chief Counsel

cc: Sanjay Ranchod, Chief Counsel