

**DOCKETED**

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| <b>Docket Number:</b>   | 23-OPT-02   |
| <b>Project Title:</b>   | Darden Clean Energy Project   |
| <b>TN #:</b>            | 253546  |
| <b>Document Title:</b>  | CEC's Response Letter to IP Darden I, LLC re Application for Confidential Designation, dated November 7, 2023 |
| <b>Description:</b>     | N/A   |
| <b>Filer:</b>           | Ngoc Tran   |
| <b>Organization:</b>    | California Energy Commission  |
| <b>Submitter Role:</b>  | Commission Staff  |
| <b>Submission Date:</b> | 12/7/2023 3:08:58 PM  |
| <b>Docketed Date:</b>   | 12/7/2023   |



December 7, 2023

**Via Email**

Breana Campbell-King  
IP Darden I, LLC  
c/o Intersect Power, LC  
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**Application for Confidential Designation  
Darden Clean Energy Project  
Docket No. 23-OPT-02**

Dear Breana Campbell-King:

The California Energy Commission (CEC) has received the IP Darden I, LLC (applicant) Application for Confidentiality (TN 253047), dated November 7, 2023, covering the following cultural resources related documents:

- 1) Darden Clean Energy Project Cultural Resources Technical Report dated October 2023
- 2) Appendix I-1 California Historical Resources Information System Records Search Results and Fresno Historical Society Outreach
- 3) Appendix I-2 Native American Heritage Commission Sacred Lands Search Results and Native American Outreach
- 4) Appendix I-3 Research Design
- 5) Appendix I-4 California Department of Parks and Recreation 523 Series Forms
- 6) Appendix I-5 State Historic Preservation Officer (SHPO) Concurrence Letter for Determinations of Eligibility for the California Aqueduct (P-10-006207)

The applicant states that the report and appendices in their entirety should be kept confidential indefinitely to protect potential cultural resources and sites. According to the application, if the descriptions and locations of the sites are released to the public, there is potential for looting and destruction of those sites. The applicant states that it has not disclosed the information in the cultural report to any parties other than the applicant staff who are directly associated with the Darden Clean Energy Project. Furthermore, the application states that the information in the report has been aggregated and summarized in the Cultural Resources section of the opt-in application for the 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 [California Energy] Commission to keep the record confidential.”

The California Public Records Act provides for the nondisclosure of archaeological site information and records of Native American places, features, and objects maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency. (Gov. Code, §§ 7927.000, 7927.005.) The California Public Records Act also recognizes the confidentiality principles of federal law. (Gov. Code § 7927.705.)

The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations on public lands must be protected to preserve them. (54 U.S.C. § 306131.)

### **Executive Director’s Determination**

Protection of cultural resource location information to prevent looting and destruction of the site is in the public interest and expressly covered under the law. The applicant has made a reasonable showing that the information contained in the cultural resources report and its appendices should be maintained as confidential. Furthermore, the information in the report has been aggregated and summarized in the Cultural Resources section of the opt-in application for the project. Resource location data will be kept confidential for an indefinite period.

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 [confidentialapplication@energy.ca.gov](mailto:confidentialapplication@energy.ca.gov).

Sincerely,



Drew Bohan  
Executive Director