

DOCKETED

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Via Email

Evelyn Langsdale
Rincon Consultants
9450 SW Gemini Drive, PMB #68743
Beaverton, Oregon 97008-7105
elansdale@rinconconsultants.com

Application for Confidential Designation for Response to Data Request REV 1 DR TSD-1

Docket No. 23-OPT-02

Dear Evelyn Langsdale:

The California Energy Commission (CEC) has received an application for confidentiality from IP Darden I, LLC c/o Intersect Power, LLC (applicant) (TN 258575), filed August 19, 2024, covering the following data:

- Darden Clean Energy Project Cultural Resources Inventory for the PG&E Downstream Network Upgrades, submitted in response to the CEC's Data Request REV 1 DR TSD 1, which includes:
 - Appendix A, Figures for Cultural Resources Inventory, August 2024;
 - Appendix B, California Historical Resources Information System Records Search Results, August 2024; and
 - Appendix C, Native American Heritage Commission Sacred Lands Search Results and Native American Outreach, August 2024.

The application states that these documents are required to be submitted under confidential cover, referencing applicable requirements. (Cal. Code Regs., tit. 20, Appendix B(g)(2)(C).) The application also states that the public interest served by not disclosing this information clearly outweighs the public interest served by disclosure. (Gov. Code, § 7922.000.) According to the applicant, nondisclosure of this information will protect these resources from looting or other damage and will be consistent with the federal Archaeological Resources Protection Act, which 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.) The application states that the Response to Data Request REV 1 DR TSD-1 should be kept confidential indefinitely to protect cultural resources.

Confidentiality Claims

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 California Public Records Act provides for the nondisclosure of archaeological site information and records of Native American places, features, and objects and reports 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 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.)

The California Government Code section 7922.000 provides that an agency may withhold information from disclosure where the public interest served by nondisclosure clearly outweighs the public interest of disclosure.

Discussion

The Response to Data Request REV 1 DR TSD-1 contains information related to the location of cultural resources, archaeological resources, and Native American sites. Records of Native American and archaeological site information are protected from disclosure pursuant to Government Code sections 7927.000 and 7927.005. The public interest served by not disclosing this information also clearly outweighs the public interest served by disclosure. (Gov. Code, § 7922.000.) Finally, nondisclosure of this information will protect these resources from looting or other damage and will be consistent with the federal Archaeological Resources Protection Act. (54 U.S.C. § 306131.)

Executive Director’s Determination

The applicant has made a reasonable claim that the documents identified above, which contain information on cultural and archaeological resources, records, reports, and maps, can be maintained as confidential indefinitely. As such, the applicant's request for confidential designation of the documents listed above is granted.

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.

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

Sincerely,

A handwritten signature in black ink, appearing to be 'Drew Bohan', written in a cursive style.

Drew Bohan
Executive Director