

DOCKETED

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January 8, 2025

CALIFORNIA ENERGY COMMISSION
715 P Street
Sacramento, CA 95814

Re: Legal Effects of CEC Filing Pre-Project Approval Applications to Registers of Historic Places (23-AFC-01, 23-AFC-02, 23-AFC-03)

Dear CEC Commissioners and Staff:

This letter responds to the CEC's December 5, 2024 *Revised Joint Scheduling Order and Request for Information Regarding Cultural and Tribal Cultural Resources*¹ and CEC Staff's December 18, 2024 Response to Committee Orders.² Those documents invited responses to these docket entries by January 8, 2025. These letters and the County's prior correspondence, which is incorporated herein by reference, discuss the Southeast Lake Cahuilla Active Volcanic Cultural District (SELCAVCD) and associated Mitigation Measure CUL/TRI-8.

CEC Staff assert nominating the Cultural District per CUL/TRI-8 is a form of "compensatory mitigation" consistent with CEQA Guidelines § 15370(e), because "nomination would establish substitute resources and environments within the Cultural District for preservation and ongoing management." (CEC Staff December 18, 2024, pp. 10-11.) It is unclear why the CEC believes a historic resource *nomination* constitutes "compensatory mitigation." As discussed in the County's letter, CEQA case law comes to the opposite conclusion. (*Architectural Heritage Ass'n v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1119 [Exhibition of a plaque does not mitigate impacts to a historic resource.]; *Make UC a Good Neighbor v. Regents of University of California* (2023) 88 Cal.App.5th 656, 681 ["Historical places and structures are rarely, if ever, fungible items of equivalent historical significance and value."].) CUL/TRI-8 does not constitute compensatory mitigation, and is therefore improper mitigation.

¹<https://efiling.energy.ca.gov/GetDocument.aspx?tn=260491&DocumentContentId=96786>

² https://links-2.govdelivery.com/CL0/https:%2F%2Fefiling.energy.ca.gov%2FGetDocument.aspx%3FDocumentContentId=97035%26tn=260729%26utm_medium=email%26utm_source=govdelivery/1/01010193dfb19649-d14476bc-4acf-4b99-b6fc-87d93cf08c2c-000000/dSzvks3F1gxlK5KSg-cpmlie1GrBgeGRQF62yIeQSRA=384

CEC's Staff Response also asserts that Mitigation CUL/TRI-8 does not conflict with the County's General Plan or proposed Lithium Valley Specific Plan (LVSP),³ by citing individual policies, and asserting that the nomination will help with the restoration of the Salton Sea and would be consistent with economic revitalization goals. (CEC Staff Response pp. 4-6.) However, consistency with a General Plan or Specific Plan is based upon the plan as a whole, not individual policies. (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1509.) Staff also assert that CUL/TRI-8 is consistent with the LVSP Playas Renewables designation because cultural preservation is a potentially allowed use. (CEC Staff Response, p. 6.) However, the LVSP Playas Renewables designation promotes uses similar to the Green Industrial designation, while restricting these uses to be compatible with environmental factors of the Salton Sea. This designation therefore promotes desalinization facilities, geothermal energy and operations, mineral recovery, solar, and other development. CEC Staff's response, which states that cultural resources preservation is a permissible use, ignores the conflict created if such a designation precludes the primary uses proposed for this site (i.e. renewable energy production, like that currently proposed in the Morton Bay Geothermal Project PSA).

CEC Staff assert that Mitigation Measure CUL/TRI-8 would not impact disadvantaged/environmental justice communities and would not impact benefits to habitat, dust mitigation, or access to clean water. (CEC Staff December 18, 2024, pp. 6-8.) However, CEQA Guidelines Section 15065(a)(2) requires consideration of whether the CEC's actions have the potential "to achieve short-term environmental goals to the disadvantage of long-term environmental goals." CUL/TRI-8 would delay the extraction of lithium, development of geothermal facilities, and energy storage projects, by creating new permitting and entitlement processes, and hindering development. More specifically, sites that are listed in the National Register of Historic Places are subject to the procedural protections of the National Historic Preservation Act ("NHPA"). (54 USC § 300101 et seq.) As discussed in greater detail below, the delays created by the process would conflict with the State's goals of addressing climate change as expeditiously as possible.

The California Legislature has declared that "Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. (H&S Code § 38501.) Time is of the essence in reducing atmospheric concentrations of carbon dioxide (CO₂). (CARB 2022.)⁴ By the 2030s, the world will exceed 1.5°C warming unless there is drastic action. (CARB 2022.) Every incremental increase in warming brings additional negative impacts. Consequently, "It is the policy of the state to...achieve net zero greenhouse gas emissions as soon as possible." (H&S Code § 38562.2(c).) To achieve the State's ambitious goals, an "unprecedented rate of

³ The LVSP's currently proposed land use designations are available as Exhibit 1 to this letter.

⁴ CARB 2022 Scoping Plan: <https://ww2.arb.ca.gov/our-work/programs/ab-32-climate-change-scoping-plan/2022-scoping-plan-documents>

transition will require the identification and removal of market and *implementation barriers* to the production and deployment of clean technology and energy.” (CARB 2022.) Consequently, to achieve the State’s climate goals, it is imperative to extract new sources of lithium as soon as possible. Creating a new permitting and entitlement processes with the adoption of Mitigation Measure CUL/TRI-8 is inconsistent with these directives.

Furthermore, delays from the additional approval process created by Mitigation Measure CUL/TRI-8 will hinder/delay development of projects within the LVSP thereby hindering local employment and tax revenue for disadvantaged communities, and hindering development of programs funded by SB 125’s excise tax, including conservation and restoration efforts. Indeed, the State’s Salton Sea restoration efforts are dependent upon funding from the excise tax created by SB 125, including restoration projects, public amenities, capital improvements, community benefit projects. (Revenue & Taxation Code § 47100(b); Fish & Game Code § 2951.)

The County’s previous correspondence raised concerns with the boundary delineation of the proposed SELCAVCD, i.e. that the boundaries were drawn to include resources that may not be considered tribal cultural resources. (PSA at p. 5.4-25 [Regarding the mudpots, a member of a tribe states that “[n]o one could go close to them, for the ground was sticky and soft and the air was poisoned with gas,” and that “[t]he Indian people do not go very near them. It is very dangerous and there is nothing to go to them for. The Indians called the place Par-powl, which means water bewitched, and they stayed away”.].) CEC Staff’s response does not address this information.

Furthermore, the CEC’s boundary delineation for the SELCAVCD is admittedly not based upon historic or cultural factors, but instead “the delineation of the boundary lines mostly corresponds with the United States Geological Survey quadrangle map section and section subdivision lines... boundaries also consider fluctuations in the water line of the sea.” (PSA p. 5.4-55.) However, to qualify for the Historic Register, applicants are required to provide substantial evidence to support specific boundaries and “its significance under National Register Criteria.” (36 CFR §§ 63.2, 60.4; Pub. Res. Code § 5024.1; 14 Cal. Code Regs. § 4853.) It is inappropriate to delineate the boundaries of this proposed historic district, based upon criteria unrelated to the historic resource listing. Indeed, similar issues arose in *Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277 [Noting the “original dimensions and exact limits of the Shellmound could not be determined because most of it had been removed...one of the questions in this case is whether the shellmound was actually located on the project site...the report concluded the shellmounds were ‘in close proximity to but did not encroach onto the project site.’”].)

The County’s previous correspondence also explained that a “Tribal Cultural Resource” was only recently defined under state law which “[e]stablished *a new category of resources... that considers the tribal cultural values* in addition to the scientific and archaeological values.” (AB 52 §1(b) [2014].) Whereas, for listing in the Federal *Historic*

Register, applicants must provide “substantive information on the property, including a description, specific boundaries, its significance under National Register Criteria, and an explanation of why the property is eligible for listing in the National Register.” (36 CFR §§ 63.2, 60.4; Pub. Res. Code § 5024.1; 14 Cal. Code Regs. § 4853.) Consequently, the Historic Register is not well tailored for addressing Tribal Cultural Resources such as the SELCAVCD.

The County believes a better way forward to legally protect these resources is found in the measure suggested by the Geothermal Project applicants. These measures include, but are not limited to, conservation easements over Obsidian Butte, and realignment of the Morton Bay cooling tower, and adjusting the location of the Black Rock facility.

Very truly yours,



MARGARET M. SOHAGI
THE SOHAGI LAW GROUP, PLC

CC: Governor Gavin Newsom, State of California
Senator Steve Padilla, California Senate, District 18
Assemblymember Jeff Gonzales, California State Assembly, District 36
David Hochschild, Chair, California Energy Commission
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Noemi Otilia Osuna Gallardo, Commissioner, California Energy Commission
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Lauren Sanchez, Senior Climate Advisor of Governor Newsom
Alice Reynolds, President, California Public Utilities Commission
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Senator Adam Schiff, United States Senate
Congressman Raul Ruiz, California's 25th District

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Exhibit 1: Currently Proposed LVSP Land Use Map

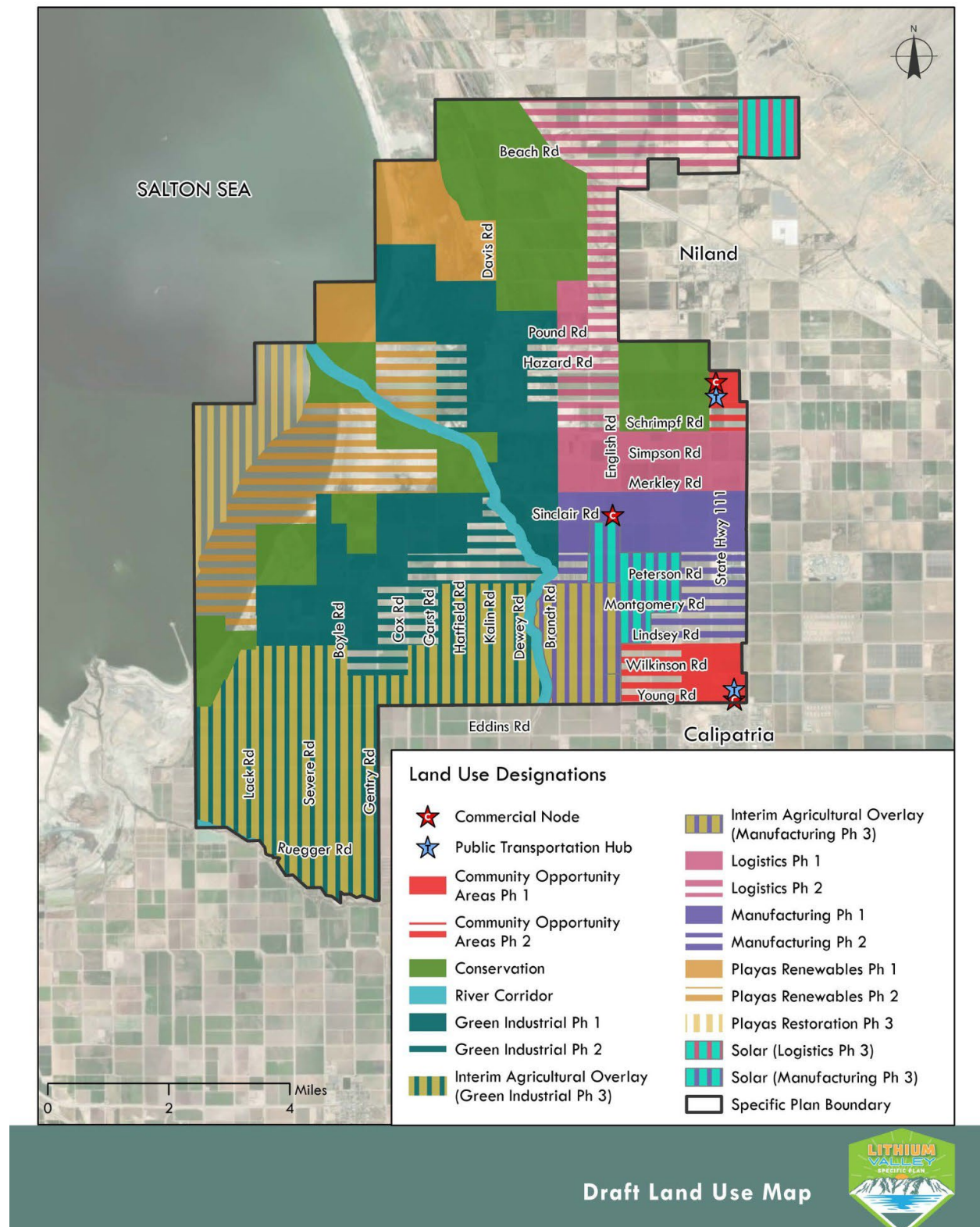


Exhibit 2: Current PSA SELCAVCD Boundary Delineation



Figure 5.4-2
Boundaries of the Southeast Lake Cahuilla Active Volcanic Cultural District