



California
ENERGY COMMISSION



CALIFORNIA
**NATURAL
RESOURCES
AGENCY**

April 16, 2026

Imperial County Planning & Development Services Department
801 Main Street
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RE: LVSP 2025; California Energy Commission Comments on Lithium Valley Specific Plan Draft PEIR

Dear Members of the Imperial County Board of Supervisors:

Thank you for the referral of the Program Environmental Impact Report for the Lithium Valley Specific Plan and related approvals. The California Energy Commission (CEC) is the primary energy policy and planning agency for the State of California, with a mission to achieve a 100% clean energy future for all Californians. The CEC is the lead state agency for California's Lithium Valley Vision, an initiative to develop a world-class lithium ecosystem anchored in the recovery of lithium from the Salton Sea region's geothermal brines. The CEC supports the County of Imperial's (County) leadership and efforts to realize this vision, including expanding geothermal energy production to meet growing statewide clean energy demand, advancing responsible lithium extraction and processing, and ensuring that the economic benefits of this emerging industry are shared equitably with local residents and communities.

The CEC supports the County's Lithium Valley Specific Plan and related approvals to amend the general plan and zoning ordinance and map (collectively, the "LVSP"), which aim to serve as the primary guide for future development in the region, introducing changes to existing land use and zoning regulations for the purpose of facilitating the transition to renewable energy and low-impact mineral recovery industries, while supporting sustainable development and healthy communities. In support of the County's efforts, the CEC offers the following comments on the LVSP and the Draft Program Environmental Impact Report for the LVSP (Draft PEIR).

A. Exclusive CEC Permitting Jurisdiction for Geothermal Projects Over 50 MW

Under the Warren-Alquist Act (Pub. Resources Code, § 25500 et seq.), the CEC has exclusive authority to certify thermal power plants, including geothermal facilities, that generate 50 megawatts (MW) or more. Pursuant to this authority, the CEC received applications for the following geothermal projects located within the geographic area of the LVSP: Morton Bay Geothermal Project (CEC Docket No. 23-AFC-01), Elmore North Geothermal Project (CEC Docket No. 23-AFC-02), and Black Rock Geothermal Project

(CEC Docket No. 23-AFC-03).¹ CEC’s certification authority preempts all other state, regional, and local permitting requirements, including those of the County. However, the LVSP and Draft PEIR do not currently acknowledge this jurisdictional framework and instead appear to assume that the County would have the authority to permit all geothermal projects within the plan area, regardless of size. Under Public Resources Code section 25541, a project developer may request an exemption from the CEC’s exclusive authority for any thermal power plant that does not exceed 100 MW in generating capacity. If the CEC grants a small power plant exemption (SPPE), the project developer is responsible for securing local, state, and federal permits to construct and operate the power plant.

In addition to the CEC’s exclusive jurisdiction for thermal power plants 50 MW and above, the CEC exercises jurisdiction for the permitting of certain clean and renewable energy facilities through the Opt-In program, including geothermal powerplants of any MW size and facilities that manufacture or assemble clean energy or storage technologies or related components (Pub. Resources Code, § 25545 et seq.). The Opt-In program serves as an optional pathway for developers. The LVSP includes projects that may be eligible for the CEC to exercise Opt-In jurisdiction.

To avoid potential conflicts or confusion in the permitting process, we recommend the County revise the LVSP and Project Description of the Draft PEIR to clearly state that the CEC retains exclusive permitting authority over all geothermal power plants with a generating capacity of 50 MW or greater (unless exempted through an SPPE) and add that the CEC has the potential to exercise Opt-In jurisdiction for covered projects. As stated in *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192, “[a]n accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” The LVSP and the Project Description of the Draft PEIR should be revised for accuracy and thus legal sufficiency.

B. Delegation of Authority to Local Jurisdictions

While the CEC holds exclusive authority for larger geothermal projects (projects generating 50 MW or more), the Warren-Alquist Act grants discretion to the CEC to delegate that authority to local jurisdictions under certain circumstances (Pub. Resources Code, § 25540.5). This delegation is not automatic and must be formally granted by the CEC following the petition process set forth in sections 1860 through 1870 of title 20 of the California Code of Regulations. To the extent the LVSP and Draft PEIR envision that the County would permit projects at or above the 50 MW threshold, the LVSP and Draft PEIR should be revised to clarify that such authority would require a formal delegation from the CEC.

C. Intended Use of the PEIR

¹ The proceedings for those applications have been suspended since March 20, 2025. See, e.g. CEC Docket No. 23-AFC-01, at TN 262256.

The California Environmental Quality Act (CEQA) (Pub. Resources Code, section 21000 et seq.) and CEQA Guidelines (California Code of Regulations, title 14, section 15000 et seq.) (Guidelines) are intended to inform government decisionmakers and the public about the potential environmental effects of proposed activities and to prevent significant, avoidable environmental damage. Here, the County has opted to prepare a Draft PEIR to evaluate the potential environmental impacts of the LVSP, as authorized by section 15168 of the Guidelines.

Section 15124(d) of the CEQA Guidelines requires environmental impact reports (EIR) to include a statement describing the intended use of the EIR, including a list of permits and other approvals required to implement the project. To provide an accurate list, Section 3.4 of the Draft PEIR should be revised to clarify that all geothermal energy projects that generate 50 MW or more must seek approval from the CEC in accordance with the Warren-Alquist Act before any geothermal energy projects contemplated by the LVSP could be built and operated. In addition, as described above, developers may submit applications for proposed projects under the CEC's Opt-In jurisdiction. CEC approval for either type of project is currently not mentioned in Section 3.4.

D. Comments on Specific Chapters of the Draft PEIR

4.1 Aesthetics

Figure Recommendations

Figure 4.1-1 — Delete.

We recommend deletion of Figure 4.1-1. The area described in the LVSP is not located on federal land managed by the Bureau of Land Management. The figure therefore does not inform the CEQA aesthetics analysis.

Figure 4.1-2, and 4.1-9 — Delete.

We recommend deletion of Figures 4.1-2 and 4.1-9. Both figures are poor quality photographs. One image is taken towards the sun and the other attempts to show a mountain backdrop but does not do so effectively. Neither figure contributes meaningful information to the CEQA analysis.

Photographs intended to document the existing physical environment conditions for the aesthetics analysis should be captured using a 35-millimeter (mm) single-lens reflex camera with a 50-mm lens or a digital equivalent. A 50-mm focal length produces an image that approximates a "normal" human field of view and is appropriate for general-purpose documentation.

Figure 4.1-3 and 4.1-4 — Delete.

We recommend deletion of Figures 4.1-3 and 4.1-4. The same concerns noted above apply; the figure does not inform the CEQA aesthetics analysis.

Figure 4.1-6 — Relocate.

We recommend relocating Figure 4.1-6 to the Traffic and Transportation section.

Figure 4.1-7 — Retain with revisions.

We recommend retaining Figure 4.1-7 and supplementing it with additional drone-based aerial views that clearly depict the LVSP area and the existing physical environmental condition for the CEQA aesthetics analysis.

4.3 Air Quality

Hydrogen Sulfide Emission Impacts from Geothermal Energy Facilities

Hydrogen sulfide (H₂S) is a colorless gas that is extremely flammable and highly toxic. The California Air Resource Board (CARB) established an H₂S ambient air quality standard (AAQS) in 1969. CARB established these standards for the purpose of odor control, but concentrations greater than the AAQS and that exceed National Institute for Occupational Safety and Health (NIOSH) and Occupational Safety and Health Administration (OSHA) standards may lead to adverse health effects, including eye irritation, breathing difficulties, and headaches.

Geothermal energy facilities emit H₂S due to its presence in geothermal fluids, which contain the steam that is used to power the facilities' steam turbine generators. When geothermal steam is exposed to ambient air, as when it is diverted from the steam turbine generators for testing or when routed to cooling towers used to condense the steam, H₂S is emitted.

H₂S emissions from geothermal energy facilities were not quantified by the Draft PEIR, as it states that “[h]ydrogen sulfide ... [is] not routinely associated with land use development projects subject to CEQA review” (page 14 of Appendix C of the Draft PEIR [AQ-GHG-HRA Technical Report]). However, given that the plan proposes the construction of 19 new geothermal energy facilities throughout a span of 18 years (page 57 of Appendix C of the PEIR [AQ-GHG-HRA Technical Report]), the cumulative impact of the H₂S emissions from these geothermal energy facilities may significantly impact the region's air quality and we recommend further analyzing in the PEIR.

Thermal Runaway Impacts from BESS Facilities

Lithium-ion batteries can experience thermal runaway due to faults, mechanical damage, or manufacturing defects, potentially leading to fires or other hazards. To mitigate this risk, battery energy storage system (BESS) enclosures are engineered to prevent fire propagation from one enclosure to adjacent units. As part of the BESS fire certification process, the BESS enclosures undergo destructive testing, including fire performance evaluations. These fire performance evaluations typically include gas composition analysis of the effluents produced by the fire; these may include various toxic air contaminants (TACs) and criteria pollutants.

The Draft PEIR proposes the development of approximately 40 acres (1.7 million square feet) of land to house BESS facilities. However, the Draft PEIR does not include discussion of the potential air quality and public health impacts from the thermal runaway of these facilities. We recommend revising the PEIR to include an analysis that

quantifies the health impacts from a worst-case thermal runaway event occurring at the proposed BESS facilities. This analysis may include the modeling of generic types of BESS battery technologies, the use of TAC emission factors from scientific literature, or a representative BESS test, and an estimate of the amount of battery enclosures expected from a site area proposed by the Draft PEIR.

Location of Nearest Sensitive Receptors

The nearest sensitive receptors (i.e. existing single-family residences, located both within and adjacent to the project's boundaries) are not shown on the map of Figure 4.3-1. The distances from the project to the sensitive receptors (such as residences and schools) are also not provided. We recommend revising the figure to identify both the nearest sensitive receptors as well as distances from the project to sensitive receptors.

Valley Fever Incident Rate

We recommend revising the PEIR to update the incident rate of Valley Fever to 11 cases per 100,000 people in 2024.²

4.4 Biological Resources

Feasibility of Mitigation

In general, CEQA requires that, once an agency has determined that a project may have a potentially significant environmental impact, it must mitigate the identified impact (Pub. Resources Code, § 21002.1, subd. (a)). The mitigation measures must do one of the following:

1. Avoid the impact by not taking a certain action or parts of an action.
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation.
3. Rectify the impact by repairing, rehabilitating, or restoring the impacted environment.
4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action.
5. Compensate for the impact by replacing or providing substitute resources or environments.

(Guidelines, § 15370.)

The formulation of mitigation measures should not be deferred until some future time; instead, a mitigation measure may specify performance standards that would mitigate the significant effect of the project and may be accomplished in more than one specified way (Guidelines, § 15126.4, subd. (a)(1)(B)).

In several mitigation measures (e.g. BIO-1 on page 1-21), the phrase “to the maximum extent feasible” or similar language is used to qualify the requirements of a mitigation

² California Department of Public Health (CDPH), Valley Fever in California Year-end Data Dashboard <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/ValleyFeverDashboard.aspx#instructions>

measure. This language appears to defer the creation of specific mitigation to some later date. “[T]he determination of whether a project will have significant environmental impacts, and the formulation of measures to mitigate those impacts, must occur *before* the project is approved” (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 621.). A programmatic EIR is designed for tiering, moving from general, broad concerns to site-specific impacts that will, in the future, be analyzed with a project-level EIR or negative declaration (*Environmental Protection Information Center v. California Department of Forestry & Fire Protection*, 44 Cal. 4th 459, 502, citing Remy et al., Guide to CEQA (11th ed. 2006) p. 601.). Thus, a wholesale delay of the consideration of impacts and a formulation of standards to address the impacts is not permitted, particularly where, as here, the PEIR is based on a set of projects to be allowed within certain geographic areas under the LVSP. Instead, the standard requires that the County determine some level of mitigation or performance standard that will address common impacts that are not related to site-specific or development-specific impacts. By doing so, the County will have met its requirement under CEQA without concern that the mere specification of a mitigation measure will result in the inability to alter or even delete mitigation measures as development occurs (*See, Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351.). The CEC thus recommends that the PEIR more particularly describe currently known impacts from the range of projects contemplated by the LVSP and set forth mitigation measures or performance standards to address those known and reasonably foreseeable impacts. This determination allows site-specific projects to understand what mitigation will ultimately be required without providing an incentive to future project proponents who would have an interest in describing mitigation measures as ‘not feasible’ to reduce the costs of mitigation.

Lead Agency Commitment to Mitigation Measures

Section 2.3 of the Draft PEIR states that “the decision to adopt these mitigation measures rests with the Board of Supervisors, Consequently, if such measures are not adopted, such impacts would remain significant and unavoidable”. It is unclear whether the County, as Lead Agency, is committing to the mitigation measures included in the Draft PEIR, especially for the projects that are slated for by-right ministerial approvals.

We recommend removing this and any similar language. We also recommend clearly stating in the PEIR that mitigation measures for subsequent projects shall be implemented as described under the Avoidance, Minimization, and Mitigation Framework (i.e. Table 4.4-2).

California Endangered Species Act Permitting

Mitigation Measure BIO-13 requires the project proponent to obtain state Incidental Take Permits (ITP) for take of species listed under the California Endangered Species Act (CESA) if take cannot be avoided through the implementation of avoidance and minimization measures (Draft PEIR page 1-45). We support the objective of this measure. However, some subsequent project types contemplated by this Draft PEIR, such as geothermal projects or BESS facilities, could fall under either the CEC’s exclusive authority or Opt-In jurisdiction. Take of CESA-listed species by these projects

may fall under CEC's in-lieu permitting authority. We therefore recommend that the County edit mitigation measure BIO-13 and other portions of the PEIR (e.g. the desert tortoise section of mitigation measure BIO-7) discussing CESA ITPs to discuss CEC's in-lieu permitting authority. For example, instead of stating that "the project owner shall obtain an ITP," mitigation measure BIO-13 should state that "the project owner shall obtain an ITP or equivalent CESA take coverage."

4.5 and 4.18. Cultural Resources and Tribal Cultural Resources and California Native American Tribes

Tribal Consultation

Per Table 4.18-3- Tribal Communication Summary, the Draft PEIR asserts that consultation is complete for the provided list of California Native American tribes. However, it is unclear whether consultation ended in accordance with Public Resources Code, section 21080.3.2 in all instances documented. According to the Draft PEIR's Tribal Communication Summary, Manzanita Band of Kumeyaay Nation sent a letter expressing concerns with no noted response from the County. It is also noted that the Chairwoman's name has two spelling errors, which may have resulted in failed communications. Further, the Mesa Grande Band of Diegueno Mission Indians' communication log notes a contact update, but no further communications are noted for more than a year. Records indicate communication with the Sycuan Band of Kumeyaay Nation about Obsidian Butte, but it is not clear if there was agreement to conclude consultation as no subsequent communications are noted. Additionally, the County's letter sent to Kwaaymii Laguna Band ending consultation was sent the same month that the Draft PEIR was published, leaving little time for the tribe to respond.

While we applaud inclusion of the County's Project Objectives (1.2.3), including creating local economic benefits, as well as allowing for conservation to minimize impacts to California Native American tribes, these cannot be fully realized without thorough government-to-government tribal consultation. The Native American Heritage Commission (NAHC) maintains a list of California Native American tribes and provides contact information for those California Native American tribes that should be invited to consult. MM-CUL-1 in the Draft PEIR defines consulting tribes as "Native American tribes that have required consultation and/or notification of future project-level activities" and further proposes a "Streamlined Cultural Resources Check." The County's definition of tribal consultation creates a precedent for inadequate tribal consultation as the Lithium Valley Strategic Plan is realized. The County's definition of tribal consultation also discourages tribal inclusion in project specific consultations, making true economic benefits and conservation in alignment with tribes difficult. We recommend that the PEIR be revised to include tribal consultation that at a minimum complies with the requirements of state law.

Southeast Lake Cahuilla Active Volcanic Cultural District

The Draft PEIR asserts that the Southeast Lake Cahuilla Active Volcanic Cultural District (SELCAVCD) is neither a historical resource nor a significant tribal cultural resource for the purposes of CEQA (PEIR pages 4.5-21 and 4.18-19). However, this

conclusion is not supported by substantial evidence. The Draft PEIR also did not include discussion of four documents that predate its publication and identify the SELCAVCD as a tribal cultural resource (Department of Parks and Recreation [DPR] 523 Forms for the SELCAVCD, dated January 19, 2024; Preliminary Staff Assessment [PSA]: Black Rock Geothermal Project (CEC Docket No. 23-AFC-03, TN 257697) , Section 5.4, July 2024; PSA: Elmore North Geothermal Project (CEC Docket No. 23-AFC-02, TN 256843), Section 5.4, June 2024; PSA: Morton Bay Geothermal Project (CEC Docket No. 23-AFC-01, TN 257740), Section 5.4, June 2024).

The Draft PEIR focuses on apparent contradictions in the DPR 523 forms' sources, sidestepping tribal expertise and the issue of tribal significance altogether (Draft PEIR pages 4.5-19 and 4.5-20). However, no fewer than four California Native American tribes assert the significance of the SELCAVCD to their cultures. Several experts in their fields documented information provided by tribes and cultural anthropologists (two additional sources of expertise), concluding that the SELCAVCD meets CEQA's definition of a tribal cultural resource.

The Draft PEIR also contains numerous errors of fact concerning the SELCAVCD and its historical integrity. On page 4.1.8-19, the County recognizes the SELCAVCD as a Tribal Cultural Resource, which is not geographically defined, indicating that the SELCAVCD's boundary was delineated based upon factors unrelated to the district and further cites unreferenced guidance from NPS claiming that natural features are to be used in delineating the Tribal Cultural Resource. The County indicates that the boundaries of the SELCAVCD are informed by, among other things, property ownership, and quotes NPS Bulletin 38 regarding the difficulties and perils of defining the boundaries of Traditional Cultural Properties (a wholly distinct type of cultural resource separate from Tribal Cultural Resource districts).

Further, the Draft PEIR finds that the SELCAVCD is not eligible for and does not meet the definition of a historical resource under the California Historic Register criteria (page 4.18-19). In the Morton Bay PSA (CEC Docket No. 23-AFC-01, TN 257740), CEC staff described the SELCAVCD and evaluated it as a tribal cultural resource under CEQA, and proposed a finding that the SELCAVCD is eligible for the California Register of Historical Resources (CRHR) under multiple criteria, including under Criterion 1, Criterion 2, and Criterion 4. The CEC asks the County to revise the eligibility of the SELCAVCD for inclusion in the California Register of Historical Resources under Criterion 1, Criterion 2, and Criterion 4, as documented with substantial evidence in the Black Rock, Elmore North, and Morton Bay PSAs.

4.8 Greenhouse Gas Emissions

We recommend revising the PEIR Mitigation Measure MM-GHG-2 to add the words, "The project will use refrigerants that comply with the Prohibitions on Use of Certain Hydrofluorocarbons in Stationary Refrigeration, Stationary Airconditioning and Other End-Uses (California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter

10 Climate Change, Article 4, Subarticle 5, Sections 95371, et seq.) in all onsite cooling, refrigeration, or air conditioning units.”

Mitigation Measure MM-AQ-1 includes the use of compressed natural gas or renewable diesel in construction equipment as available. During project operations, emergency generators and fire pumps are mentioned as operational stationary equipment. Please revise the PEIR to include a mitigation measure requiring the use of compressed natural gas or renewable diesel fuel in these engines as available.

Additionally, there is no discussion in the description of MM-AQ-1 whether the circuit breakers, gas-insulated switchgear or other electric power equipment would contain sulfur hexafluoride (SF₆). California Code of Regulations, title 17, sections 95350 through 95359.1, prohibits acquiring SF₆ gas-insulated equipment (GIE) for use in California unless certain provisions apply. We recommend revising the PEIR to identify whether or not the projects would use SF₆ in the circuit breakers and/or gas-insulated switchgear. If the projects are proposing to use SF₆, we recommend describing how the projects would comply with the phase-out provisions and quantify the associated CO_{2e} emissions.

Finally, we recommend revising PEIR Table 4.8-9 for measure T-2.4. “MM-AQ-7” should be “MM-AQ-6” under the Project Potential to Conflict column.

4.10 Hydrology and Water Quality

Identification of Aquifer Recharge

Section 4.10.1, Regional Setting, Paragraph 3, of the Draft PEIR states that “*The shallow aquifers beneath the Imperial Valley are affected by the inflow of Colorado River waters*” and that “*The Colorado River is probably the most important source of recharge into shallow groundwater aquifers...*”. It appears that the passage refers to water imported from the Colorado River. However, because the Imperial Valley is 25 to 35 miles away from the Colorado River, we recommend revising the PEIR to replace “*Colorado River waters*” and “*Colorado River*” with the term “*water imported from the Colorado River*” to avoid confusion.

Use of Septic Systems

Section 4.10.4, Impact Analysis, Item (a), Post-Construction, Paragraph 8, of the Draft PEIR states that “*During the early phases of the LVSP, the Specific Plan Section 6.2.2. wastewater would be treated by septic systems*”. Based on a CEC hydrology analysis conducted for the proposed geothermal projects noted above, subsurface conditions in some areas within the LVSP boundary include fine grained sediments with poor percolation and shallow groundwater that are not conducive for standard leach-line septic systems. These conditions could require a more advanced design, such as incorporating an evapotranspiration bed. We recommend revising the PEIR to include the possible need for advanced septic system design for some sectors within the LVSP area.

Reference of UIC Federal and State Regulations for Geothermal Injection Wells

Section 4.10.4, Impact Analysis, Item (a), Post-Construction, Paragraph 10, of the Draft PEIR states “*Development associated with the LVSP would include new geothermal energy plants and lithium extraction facilities that would include processing and reinjection of extracted brine back into the geothermal reservoir. Geothermal plants are regulated by CalGEM in accordance with CCR Title 14.*” CalGEM regulates the operation, maintenance, and permanent closure of production and injection wells used for the discovery and extraction of geothermal resources and not geothermal plants. This section of the Draft PEIR does not mention that geothermal injection wells would be installed and monitored as a Class V injection well per federal (Code of Federal Regulation, Title 40, Parts 144 through 148) and state (California Code of Regulations, Title 14, §1960) regulation under the Underground Injection Control (UIC) program. We recommend revising the PEIR to include references to federal and state UIC regulation in both Sections 4.10.2 and 4.10.4 of the PEIR.

4.17 Transportation

Thermal Plumes from Cooling Infrastructure Used by Data Centers, Geothermal Facilities, and other Proposed Facilities

Infrastructure used to cool equipment used by the proposed facility types (namely cooling equipment used by geothermal facilities, data centers, and other facilities that require large amounts of water for cooling) may result in the production of thermal plumes that may impact aircraft. Aircraft flying through thermal plumes may experience significant air disturbances, such as turbulence and vertical shear. The Federal Aviation Administration (FAA) manual advises that, when able, a pilot should fly upwind of smokestacks and cooling towers to avoid encountering thermal plumes.

Given that the plan area is within the area of influence of the Calipatria Municipal Airport, we recommend revising the PEIR to evaluate potential impacts from the thermal plumes expected from the proposed facilities (including geothermal facilities and data centers) on aircraft.

6. Alternatives

For each of the alternatives in section “6.4 Project Alternatives Under Consideration,” most environmental topics include statements suggesting that impacts relating to increased lithium extraction with hard rock mining, brine facilities, and dedicated direct lithium extraction facilities at other domestic and foreign locations would result in greater impacts on resources compared to the proposed project. These statements are speculative, and the conclusions are unsubstantiated. We recommend removing such statements from the Alternatives section. In Table 6-1, symbols showing decreased or increased regional and global impacts are speculative and should also be removed.

In the Draft PEIR, the “No Project – No Build” alternative (Alternative 1) is described to mean that “no new development would be introduced within the Plan Area, and the existing conditions would persist....” Statements are included throughout that this

alternative would “involve the continued use and expansion of lithium extraction facilities elsewhere,” and it is suggested that impacts at other locations would be greater. These are misguided assumptions. If the proposed LVSP were not approved, new development projects could be proposed in the area and would be subject to environmental review under CEQA. Also, CEQA guidance for a No Project alternative directs EIR preparers to evaluate what would reasonably be expected to occur on the subject property rather than at some other location. We recommend revising the PEIR to omit the “No Project – No Build” alternative from the section. The “No Project – Existing General Plan Buildout” alternative (Alternative 2) is the correct No Project scenario because it assumes that new development could occur in the Plan Area subject to environmental review and applicable regulatory requirements, including assessments of General Plan consistency.

The “Reduced Development Density” alternative (Alternative 3) includes a paragraph summarizing some of the differences in land use designations for the alternative compared to the proposed project. We recommend revising the PEIR to provide additional information to clarify the differences, including a table with side-by-side comparisons of acres and square footage for each land use.

The description of the “Increased Development Alternative” (Alternative 4) states that it would “maximize the estimated potential of 600,000 tons of lithium a year.” However, CEQA requires an EIR to describe alternatives that would avoid or substantially lessen any of the significant effects of the project. Because this alternative would increase environmental impacts across the board, we recommend revising the PEIR to remove it from the Alternatives section.

During revisions to the PEIR, please ensure that changes to the environmental analysis for topics covered in the PEIR are also carried through to the comparative analyses in the Alternatives section.

E. The Draft PEIR Should Be Recirculated

In general, once a draft environmental impact report has been circulated, CEQA does not require any additional public review of the document before the lead agency may certify the EIR except in circumstances requiring recirculation (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 849-850 (internal cit. om.)). One such circumstance requiring recirculation is when “significant new information” is added to an EIR after the draft EIR has been circulated for public review (Pub. Resources Code, § 21092.1; Guidelines, § 15088.5, subd. (a).). New information is “significant” if “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement” (Guidelines, § 15088.5, subd. (a).). The test for whether recirculation is required is whether the “public was deprived of a meaningful opportunity to comment upon the project’s substantial adverse effect....” (*King &*

Gardiner Farms, LLC v. County of Kern, supra, 45 Cal.App.5th at 850, citing Guidelines, § 15088.5, subd. (a).).

As shown above, the CEC has identified several areas where the analysis of the Draft PEIR fails to adequately analyze the potential impacts of the LVSP and improperly defers mitigation of those impacts that were identified in the Draft PEIR. We thus believe that the PEIR must be recirculated in order to provide the public and the decision-making body with a meaningful opportunity to comment on and evaluate the LVSP's identified substantial impacts and the methods by which the County intends to mitigate those impacts.

The CEC appreciates the County's efforts to plan for the future of Lithium Valley. If you have any questions or wish to discuss these comments further, please contact Jessica Eckdish by email at Jessica.eckdish@energy.ca.gov.

Sincerely,

Regina Galer
Director
Siting, Transmission, and Environmental Protection Division
California Energy Commission