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STATE OF CALIFORNIA
Energy Resources
Conservation and
Development Commission

In the Matter of:

Application for Certification for the
Morton Bay Geothermal Project

Docket No. 23-AFC-01

Application for Certification for the
Elmore North Geothermal Project

Docket No. 23-AFC-02

Application for Certification for the
Black Rock Geothermal Project

Docket No. 23-AFC-03

**APPLICANTS’ JOINT REPORT ADDRESSING THE ANALYSES REQUESTED IN
REVISED JOINT SCHEDULING ORDER AND REQUEST FOR INFORMATION
REGARDING CULTURAL AND TRIBAL CULTURAL RESOURCES**

Pursuant to the Committees’ *Revised Joint Scheduling Order and Request for Information Regarding Cultural and Tribal Cultural Resources*¹ (“Revised Joint Order”) and *Joint Order Extending Deadline to January 17, 2025, to Reply to Staff’s Responses to the Committee Requests For Information on Cultural and Tribal Cultural Resources*², Morton Bay Geothermal LLC, Elmore North Geothermal LLC, and Black Rock Geothermal LLC (collectively, “the Applicants”) jointly submit the attached report addressing the analyses requested in Ordering Paragraphs 2 and 3 of the Revised Joint Order, including responses to California Energy Commission Staff’s *Response to Request for Information Regarding Cultural and Tribal Cultural Resources* (“CEC Staff Response”).³

The analyses requested in the Revised Joint Order are presented below in bold font, followed by the Applicants’ responses. Where responses for individual projects are appropriate, such responses are designated by the appropriate Applicant. The responses address regulatory aspects of the cultural resource and tribal cultural resource analysis for Black Rock Geothermal Project (“BRGP”),

Elmore North Geothermal Project (“ENGP”), and Morton Bay Geothermal Project (“MBGP”) permitting under the Warren Alquist Act (“WAA”) and California Environmental Quality Act (“CEQA”). The Applicants are not directing any of the responses at the affiliated Tribes and are not calling into question the cultural value of the proposed Southeast Lake Cahuilla Active Volcanic Cultural District (“SELCAVCD”) to the California Native American tribes.

¹ TN#s: 260569, 260571, 260570.

² TN#s: 260914, 260915, 260916.

³ TN#s: 260729, 260731, 260730.

2. Staff is directed, by December 18, 2024, to file in the dockets for each respective Proposed Project, a report of any existing analyses Staff has already conducted regarding nomination of the Cultural District, including the following, if it exists.

Existing Analyses

Section 5.4, Cultural and Tribal Cultural Resources of the Preliminary Staff Assessments (“PSAs”) prepared by CEC Staff for the BRGP, ENGP, and MBGP each contain the existing analyses CEC Staff has conducted regarding cultural and tribal cultural resources. The PSAs propose implementation of identical conditions of certification (“COCs”), proposed condition of certification COC CUL/TRI-8, which would provide for preparation of documentation and nomination by the Applicants of the SELCAVCD to the National Register of Historic Places (“NRHP”), followed by preparation of documentation and nomination by the Applicants to the California Register of Historical Resources if listing in the NRHP is unsuccessful. Specific references and analyses relating to nomination of the SELCAVCD are available at the following pages:

Project	PSA Page Number
Black Rock Geothermal Project	5.4-76 through 5.4-77 (TN# 257697)
Elmore North Geothermal Project	5.4-74 through 5.4-75 (TN#: 256843)
Morton Bay Geothermal Project	5.4-81 (TN#: 257470)

The Applicants’ assessments of condition of certification COC CUL/TRI-8, as proposed, are available at the following pages of comments submitted on the PSAs:

Project	Comment Page Number
Black Rock Geothermal Project	TN#: 258977, pp. 5-33 through 5-34.
Elmore North Geothermal Project	TN#: 258976, pp. 5-35.
Morton Bay Geothermal Project	TN#: 258975, pp. 5-32 through 5-33.

2a. Analysis of the potential direct, indirect, and cumulative impacts of the proposed Mitigation Measure CUL/TRI-8 on the environment, including the extent to which listing of the Cultural District by the NRHP and/or CRHR would pose any inconsistencies with any adopted or pending general plans, specific plans, regional plans, climate change plans or other plans, including SB 125 and the County’s Lithium Valley Specific Plan.

Existing Analyses

The PSAs provide the following statements regarding the potential impacts of COC CUL/TRI-8, as proposed, although the Applicants note that the Final Staff Assessments (“FSAs”) issued by CEC Staff may have revised or augmented analyses:

Project	PSA Page Number	Potential Impacts
Black Rock Geothermal Project	5.4-76 through 5.4-77 (TN# 257697)	“The CEC staff proposes CUL/TRI-8 to reduce the severity of this impact. This COC calls for detailed documentation of the SELCAVCD and nominating it to the California Register of Historical Resources and National Register of Historic Places. Mere documentation cannot reduce this impact to a less-than-significant level, but nomination to these registers would increase protection of the SELCAVCD from future impacts by limiting future geothermal development close to the cultural district. With nomination being outside the applicant and CEC’s control, however, it is possible that CUL/TRI-8 will not, ultimately, be realized. Therefore, the significance level of this impact remains significant even after implementation of CUL/TRI-8.”
Elmore North Geothermal Project	5.4-74 through 5.4-75 (TN#: 256843)	Identical statement to BRGP.
Morton Bay Geothermal Project	5.4-81 (TN#: 257470)	“The CEC staff proposes COC CUL/TRI-8 to reduce the severity of this impact. This COC calls for detailed documentation of the SELCAVCD and nominating it to the California Register of Historical Resources and National Register of Historic Places. Mere documentation cannot reduce visual degradation of the SELCAVCD viewshed to a less-than-significant level, but nomination to these registers would increase protection of the SELCAVCD from future impacts. The significance level of this impact remains significant even after implementation of COC CUL/TRI-8.”

The County of Imperial also submitted comments regarding the potential conflict between CUL/TRI-8 and the County’s proposed Lithium Valley Specific Plan in reply to the *CEC Staff Response*.⁴

⁴ County of Imperial, Letter Re: Legal Effects of CEC Filing Pre-Project Approval Applications to Registers of Historic Places, January 8, 2025 (TN#: 260924, 260925, 260926.)

Applicants' Response to CEC Staff Response

The *CEC Staff Response* addresses the consistency of COC CUL/TRI-8, as proposed, with the existing Imperial County General Plan and the Lithium Valley Specific Plan under development by Imperial County.

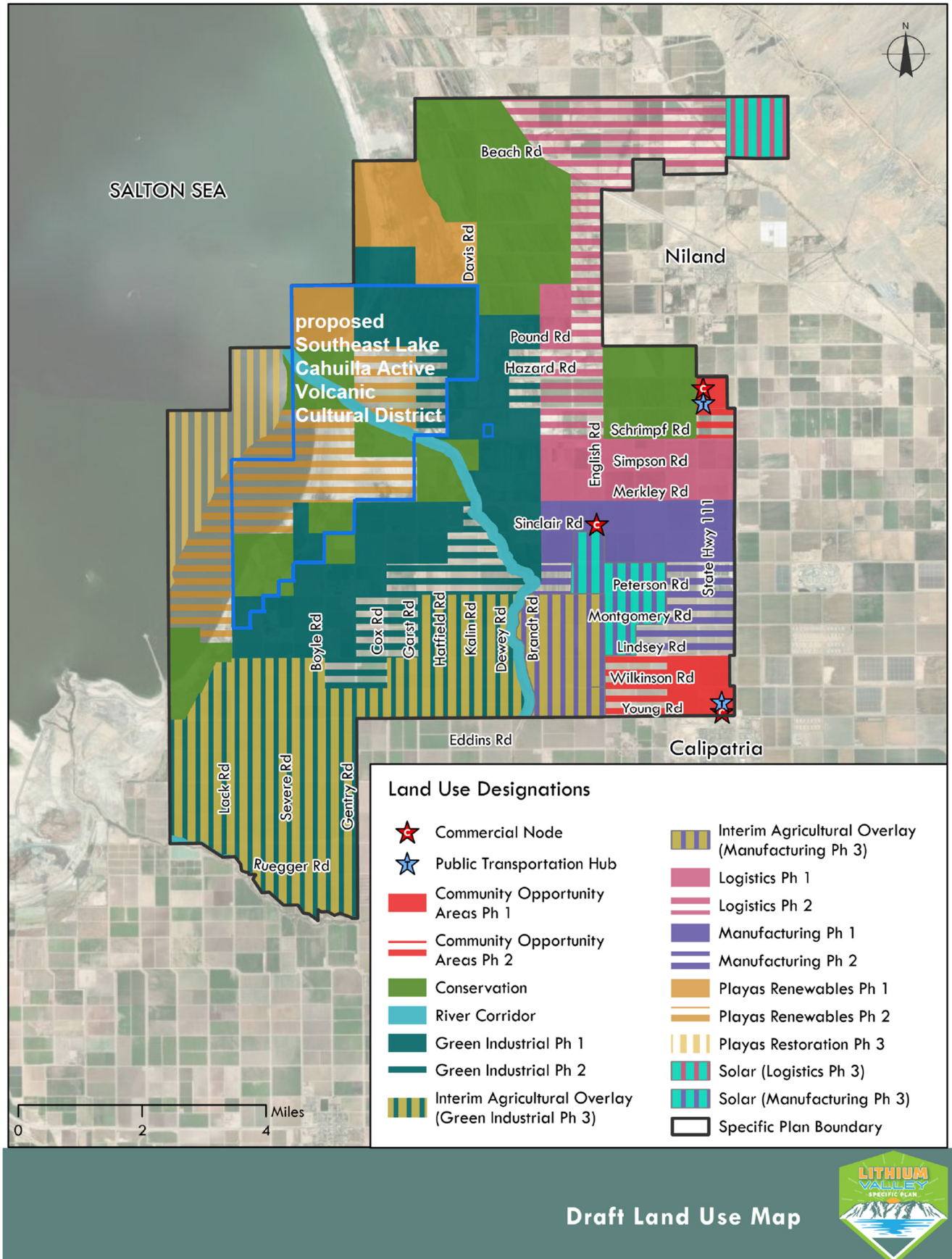
The Applicants understand that the discussion in the *CEC Staff Response* with respect to consistency with laws, ordinances, regulations, and standards (“LORS”) is limited, and intended to provide “preliminary examples for the edification” of the Committees.⁵ Because the preliminary examples provided address only the Conservation & Open Space Element, it should be noted that the BRGP, ENGP, and MBGP are all located with the Salton Sea Known Geothermal Resource Area (“Salton Sea KGRA”) on lands subject to the Renewable Energy and Transmission Element of the existing Imperial County General Plan.⁶ The PSAs expressly state that COC CUL/TRI-8, as proposed, will limit future geothermal development, including outside of the boundaries of the SELCAVCD. This is inconsistent with Goal 3 of the Renewable Energy and Transmission Element, “Support development of renewable energy resources that will contribute to and enhance the economic vitality of Imperial County”, along with the corresponding Objectives 3.1 through 3.7.⁷

The stated benefit of limiting future geothermal development in the areas near the proposed SELCAVCD is also inconsistent with Senate Bill (“SB”) 125 and the draft Lithium Valley Specific Plan. This in turn could limit the State’s efforts to develop both much needed baseload renewable energy and the Lithium Valley Commission’s stated objectives, including the development of a domestic supply of lithium. An estimated overlay of the potential SELCAVCD boundaries, as proposed in the PSAs, with the Draft Land Use Map for the Lithium Valley Specific Plan is provided below. The map demonstrates that future geothermal, lithium and renewable energy development are proposed both within and near the proposed SELCAVCD.

⁵ *CEC Staff Response*, PDF p. 4.

⁶ TNs#: 249723, 249737, 249752, Section 5.11-1.

⁷ See, “Renewable Energy and Transmission Element, County of Imperial General Plan”, p. 25 (<https://www.icpds.com/planning/land-use-documents/general-plan/renewable-energy-and-transmission-element>).



The Lithium Valley Specific Plan is:

... intended to map out and expedite the development and permitting of additional power plants, mineral recovery, lithium battery manufacturing, and other renewable industries within an approximately 51,786-acre area adjacent to the Salton Sea. A major goal is to encourage renewable energy industry investment that provides quality local jobs, while minimizing adverse effects on the environment and public health. This project will be a pivotal step for Imperial Valley and the nation towards a more sustainable and localized economy.⁸

Similarly, SB 125 established the Lithium Extraction Tax Law, which was intended to “promote a robust California-based lithium extraction industry that considers the needs of the local communities where the lithium extraction occurs, while recognizing the significant benefit of having a domestic supply of lithium for the state’s goals for reducing the emissions of greenhouse gases.”⁹ Per Imperial County, SB 125 facilitates the development of “Imperial County’s lithium resource in an area that is a part of the Salton Sea Known Geothermal Resource Area, known as Lithium Valley.”¹⁰

Enacting a mitigation measure that is specifically intended to limit future development of geothermal resources in the portions of the Salton Sea KGRA outside of the SELCAVCD puts into question the ability to achieve the State’s goals as set forth in SB 125, and the County’s goals relating to development of the Lithium Valley Specific Plan. Limiting future geothermal development in and near the SELCAVCD area will also limit the State of California’s ability to achieve their climate change goals as set forth in SB 100, and unduly targets future development of one of the only generating technologies that is both an eligible renewable energy resource under California’s Renewable Portfolio Standard¹¹ and a firm resource capable of “providing power whenever needed, for as long as needed.”¹² Therefore, COC CUL/TRI-8 is inconsistent with the County’s existing General Plan, proposed Lithium Valley Specific Plan, and the State’s climate change goals.

2b. Analysis of the impacts of the proposed Mitigation Measure CUL/TRI-8 on disadvantaged and environmental justice communities.

Existing Analyses

The Applicants are not aware of any analysis that has been conducted with respect to proposed conditions of certification CUL/TRI-8 with respect to disadvantaged and environmental justice

⁸ <https://lithiumvalley.imperialcounty.org/planning/>

⁹ Cal. Rev. & Tax Code, section 4700(b).

¹⁰ <https://lithiumvalley.imperialcounty.org/planning/>

¹¹ See, RPS Eligibility Guidebook, Ninth Ed. Rev., Ch. 2, Table 1 (at 4) and § E (at 13).

¹² Fact Sheet: Decision Requiring Clean Energy Procurement for Mid-Term Reliability” (July 1, 2021) California Public Utilities Commission

communities. Per Section 6 of the PSAs, no Native American environmental justice populations have been identified that either reside within six miles of the project or that rely on any subsistence resources that could be impacted by the proposed Projects.

Applicants' Response to CEC Staff Response

BRGP, ENGP, and MBGP along with the proposed SELCAVCD are within the disadvantaged and environmental justice community of unincorporated Calipatria, California (Census Tract: 6025010102) and neighbors Westmorland, California (Census Tract 6025010102), another disadvantaged community. The constraints identified below are limitations on betterment opportunities, improved air quality, and access to a restored Salton Sea that these disadvantaged communities and Imperial County's disadvantaged communities could miss out on due to the proposed COC CUL/TRI-8.

COC CUL/TRI-8 is expressly intended to limit future geothermal development in the areas near the proposed SELCAVCD, which overlaps with the center of the Salton Sea KGRA. The educational, career, business creation, tax-base and community betterment opportunities that would come with future geothermal development, along with the potential auxiliary industries as outlined in the Imperial Valley Specific Plan and SB 125 could be limited and discouraged by COC CUL/TRI-8.

Poor air quality and environmental exposures can exacerbate asthma, which are a known health issue in Imperial County. Dust from exposed playa contribute to poor air quality. A portion of the potential SELCAVCD overlaps with Red Hill Bay, which is owned by the Imperial Irrigation District ("IID") and part of IID's Salton Sea Air Quality Mitigation Program. The Imperial County Air Pollution Control District is working with Imperial Irrigation District to mitigate dust emissions from exposed playa. It should be evaluated whether COC CUL/TRI-8, as proposed, may limit IID's ability to use best available control measures for controlling area sources of PM10. In addition to foregoing the environmental and air quality benefits of future baseload renewable geothermal energy that could otherwise displace more intensive conventional generating resources, limiting future geothermal development in and near the SELCAVCD could limit the potential funds that could be generated by SB 125. A portion of those funds would be allocated to restore the Salton Sea, reduce/prevent exposed playa and the associated dust emissions, and allow for local communities to access a restored Salton Sea.

2c. Analysis of the impacts of the proposed Mitigation Measure CUL/TRI-8 on the potential loss of benefits to habitat and tribal cultural resources, dust mitigation, and access to clean water, including pursuant to SB 125.

Existing Analyses

The PSAs do not analyze the potential loss of benefits to habitat and tribal cultural resources, dust mitigation, and access to clean water as a result of proposed conditions of certification CUL/TRI-8.

Applicants' Response to CEC Staff Response

As identified in the Applicants' response to 2b above, a portion of the potential SELCAVCD overlaps with Red Hill Bay, which is owned by IID and part of IID's Salton Sea Air Quality Mitigation Program. It should be evaluated whether COC CUL/TRI-8, as proposed, may limit IID's ability to use best available control measures for controlling area sources of PM₁₀. Additionally, the broader efforts to control dust (PM₁₀) emissions from exposed playa, through IID's Salton Sea Air Quality Mitigation Program and SB 125, could be hampered by COC CUL/TRI-8.

2d. Analysis of the evidence supporting the boundaries of the Cultural District as currently proposed. Nothing herein is directing the filing or public disclosure of confidential information. Confidential information may be discussed in general terms as appropriate. Additionally, to the extent necessary to support the proposed boundaries, Staff shall, and the other Parties may to the extent known to them, cite material filed in the dockets of the proceedings designated as confidential without publicly disclosing the information.

Existing Analyses

The PSAs do not contain a substantive discussion of the criteria used to delineate the boundaries of the SELCAVCD as currently proposed. The PSAs, as well as the *CEC Staff Response*, provide the following statements regarding how the boundaries of the Cultural District were created.

Project	PSA Page Number	Statements Regarding Boundaries of SELCAVCD
Black Rock Geothermal Project	5.4-53 (TN# 257697)	<p>~ Information provided to CEC Staff by tribal representatives during consultation.</p> <p>~The location of the 10 components of the Cultural District identified in the PSAs.</p> <p>~The physical and visual connectivity, or continuity, among the components.</p> <p>~The setting, including the visual setting created by the Salton Sea, "which contributes to the district by creating a visual setting much like Lake Cahuilla did in pre contact times" (TN 260723, TN 260724, and TN 260725; see also TN 256843 pg. 5.4-51; TN 257470 pg. 5.4-55, and TN 2576967 pg. 5.4-53).</p> <p>~Consideration of land ownership to simplify the property owner notification process during nomination by focusing on lands owned by the Imperial Irrigation District and the United States government (i.e., Unit A), except for Unit B (Mud</p>

Project	PSA Page Number	Statements Regarding Boundaries of SELCAVCD
		<p>Pots and Old Volcanoes), which is located on private land.</p> <p>~The boundaries of the Salton Sea Shallow Geothermal Anomaly.</p> <p>~Fluctuations in the water line of the Salton Sea.</p> <p>~USGS quadrangle map section and subdivision lines.</p> <p>~Boundaries may require adjustment to include additional contributing components and character defining features identified in the future as well as buffers from land use that tribal representatives may consider incompatible with the Cultural District.</p>
Elmore North Geothermal Project	5.4-51 (TN#: 256843)	Identical to BRGP.
Morton Bay Geothermal Project	5.4-55 (TN#: 257470)	Identical to BRGP and ENGP.

The Applicant presented its own analysis of the boundaries of the SELCAVCD in its comments on the PSAs:

Project	Comment Page Number
Black Rock Geothermal Project	TN#: 258977, pp. 5-21 through 5-23, 5-26.
Elmore North Geothermal Project	TN#: 258976, pp. 5-23 through 5-25, 5-28.
Morton Bay Geothermal Project	TN#: 258975, pp. 5-20 through 5-22, 5-25.

In summary, the Applicants acknowledged the cultural value of the SELCAVCD to the affiliated tribes but stated concerns with the PSAs' delineation of the boundary.

Applicants' Response to CEC Staff Response

The *CEC Staff Response* states that the boundaries of the SELCAVCD roughly follow the boundaries of the Salton Sea Shallow Geothermal Anomaly, but do not explain which boundaries of the Salton Sea Shallow Geothermal Anomaly were used or why the anomaly was used in the delineation of the SELCAVCD. The Applicants understands and respects the cultural value of the SELCAVCD to the tribes as a dynamic and changing active volcanic landscape. However, why modern mapping of underground geothermal resources in the area was used to develop the scale and scope of the proposed SELCAVCD boundary, and the connection of such resources to the identified physical components of the SELCAVCD valued by the tribal communities, is not explained.

The *CEC Staff Response* also states that the boundaries of the SELCAVCD adhere to USGS quadrangle map sections and subdivisions, stating that this is consistent with the Native American Heritage Commission (NAHC) practices for Sacred Lands File searches. The methods for delineating boundaries of a Sacred Lands File are distinct from the methods employed in the delineation of a CRHR and/or NRHP eligible district. After receiving the boundaries of a sacred lands resource from California Native American representatives, the NAHC may expand the boundary out to neighboring USGS quadrangle land divisions to increase agency awareness of the sacred lands resource and encourage early government-to-government consultation with the affiliated tribe(s). The purpose of boundaries for CRHR and/or NRHP eligible districts are to capture the historically or culturally significant components of the district in accordance with regulatory guidelines and procedures (e.g., National Parks Service Bulletins for Evaluating and Documenting Traditional Cultural Properties and Defining Boundaries for National Register Properties).

Defining the boundaries of a traditional cultural property can present considerable problems. In the case of the Helkau Historic District in northern California, much of the significance of the property in the eyes of its traditional users is related to the fact that it is quiet, and that it presents extensive views of natural landscape without modern intrusions. These features are crucial to the medicine making done by traditional religious practitioners in the district. If the boundaries of the district were defined on the basis of these factors, however, the district would take in a substantial portion of California's North Coast Range. Practically speaking, the boundaries of a property like the Helkau District must be defined more narrowly, even though this may involve making some rather arbitrary decisions. In the case of the Helkau District, the boundary was finally drawn along topographic lines that included all the locations at which traditional practitioners carry out medicine-making and similar activities, the travel routes between such locations, and the immediate viewshed surrounding this complex of locations and routes. (Parker and King 1998:18).

In some cases, it may be impossible to achieve agreement on a boundary, and the preparer of the nomination will find it necessary to set the boundary using their best judgment to provide a clear justification for the boundary. The justification should state if the boundary has not been agreed to by the community that values the place...The boundary of a TCP as justified in the National Register nomination is not an attempt to limit or define a living community's understanding of a culturally significant place. Just as a written description on a form can never fully articulate what such a place means to the living community, a boundary drawn on a map cannot fully capture a living community's understanding of the place's spatial limits, if indeed, in the understanding of the community,

there is one. The boundary as defined in the nomination is a management tool that allows the place to be considered within the NHPA framework. The application of the boundary does not mean that the place is limited to this confined space in the minds of the living community that values it, nor does it mean that policies and approaches that are respectful of the place should end at this boundary... Even when boundaries are drawn somewhat narrowly, the setting—the surrounding environment—may be an aspect of the place's integrity and should be discussed in the nomination. Viewsheds are important; they should be considered in a boundary delineation and, even if not included in the boundary, may be identified as character defining features. Information about aspects that are important to the traditional community is critical to understanding the significance of the place to those who value it. Intrusions, if severe enough, may compromise the place's integrity. (National Parks Service 2024:85-87)

As proposed, the SELCAVCD boundary encompasses 7,400 acres of IID, U.S. Government, and privately owned land in two discontinuous units (i.e., Unit A and Unit B) despite regulatory guidance indicating that the delineation of a discontinuous district may not be appropriate. Furthermore, of the 7,400 acres of land contained within the current boundaries of the SELCAVCD, approximately 7,070 acres consist of previously disturbed vacant land that, as stated in the PSAs, lacks historical integrity of setting. This accounts for roughly 95 percent of land within the current SELCAVCD boundary.

2e. Analysis of the effectiveness, adequacy, and nexus of the nomination of the Cultural District to mitigate or avoid any potentially significant impacts of the Proposed Projects on tribal cultural resources. This analysis may include legal analysis.

Existing Analyses

Section 5.4, Cultural and Tribal Cultural Resources of the PSAs prepared by CEC Staff for the BRGP, ENGP, and MBGP each contain the existing analyses CEC Staff has conducted regarding cultural and tribal cultural resources. The PSAs identify two significant and unmitigable impact under CEQA: visual degradation of the SELCAVCD viewshed and disruption of the mud volcanoes and mud pots.¹³ However, the PSAs do not explain what the specific visual impacts are, or how CUL/TRI-8 will mitigate the identified visual impact. A different condition, CUL/TRI-9, is proposed to mitigate the alleged disruption of the mud volcanoes and mud pots. Similar to the issues with CUL/TRI-8, specific impacts are not identified, nor is the conclusion that the impacts are significant and unmitigable explained or supported by evidence. Specific PSA references and analyses relating to nomination of the SELCAVCD are available at the following pages:

¹³ For example, see BRGP PSA, p. 5.4-76.

Project	PSA Page Number	Analysis of Effectiveness/Adequacy/Nexus
Black Rock Geothermal Project	5.4-76 through 5.4-77 (TN# 257697)	“Mere documentation cannot reduce this impact to a less-than-significant level, but nomination to these registers would increase protection of the SELCAVCD from future impacts by limiting future geothermal development close to the cultural district. With nomination being outside the applicant and CEC’s control, however, it is possible that CUL/TRI-8 will not, ultimately, be realized. Therefore, the significance level of this impact remains significant even after implementation of CUL/TRI-8.”
Elmore North Geothermal Project	5.4-74 through 5.4-75 (TN#: 256843)	Identical statement to BRGP.
Morton Bay Geothermal Project	5.4-81 (TN#: 257470)	“Mere documentation cannot reduce visual degradation of the SELCAVCD viewshed to a less-than-significant level, but nomination to these registers would increase protection of the SELCAVCD from future impacts. The significance level of this impact remains significant even after implementation of COC CUL/TRI-8.”

The Applicants’ assessments of condition of certification COC CUL/TRI-8, as proposed, are available at the following pages of comments submitted on the PSAs:

Project	PSA Comment Page Number
Black Rock Geothermal Project	TN#: 258977, pp. 5-33 through 5-34.
Elmore North Geothermal Project	TN#: 258976, pp. 5-35.
Morton Bay Geothermal Project	TN#: 258975, pp. 5-32 through 5-33.

Applicants’ Response to CEC Staff Response

Prior to addressing the sections of the *CEC Staff Response* regarding the effectiveness, adequacy, and nexus of nomination of the SELCAVCD as a mitigation measure, it is important to address a few of the factual assertions made in the *CEC Staff Response*. First, as explained in the Applicants’ comments on the PSA, there is no scientific evidence demonstrating that the Projects will disrupt the functioning of the Old Mud Pots and Mud Volcanos, nor do the PSAs explain what would constitute a disruption of the functioning of the Old Mud Pots and Mud Volcanos or how that disruption would be a significant adverse impact under CEQA.¹⁴ Data and analyses

¹⁴ Morton Bay Geothermal Project (23-AFC-01) Preliminary Staff Comments, Attachment C: Mud Pots Impact Assessment (TN#: 258975); Elmore North Geothermal Project (23-AFC-02) Preliminary Staff Comments, Attachment C: Mud Pots Impact Assessment (TN#: 258976); Black Rock Geothermal Project (23-AFC-03) Preliminary Staff Comments, Attachment C: Mud Pots Impact Assessment (TN#: 258977).

submitted to date support the conclusion that surficial activity of features such as the Old Mud Pots are influenced by shallow hydrological changes related to climate change, rainfall variations, and the drying of the Salton Sea.¹⁵ In contrast, the geothermal resources to support power plant operations are drawn from the deeper geothermal reservoir.¹⁶ As recognized by the California Department of Conservation, Geologic Management Division ("CalGEM"), data supports the conclusion that the underlying geothermal resource in the Salton Sea Geothermal Field is "a stable resource" with sufficient resources to support the projects' total 357 net megawatts of generation.¹⁷ Reservoir modeling of the geothermal resource further demonstrated a proven ability to sustainably support 990 net megawatts of capacity.¹⁸ This leaves over 180 megawatts of remaining proven geothermal capacity and over 2,000 megawatts of remaining potential geothermal energy capacity at the Salton Sea KGRA after also accounting for existing output of approximately 400 net megawatts and 49.9 net megawatts from the approved Hell's Kitchen Lithium and Power project along with the Applicants' proposed projects.¹⁹ It is a robust resource that can sustainably supply the BRGP, ENGP, and MBGP without disrupting the functioning of the Old Mud Pots and Mud Volcanos.

Second, none of the Projects will physically alter, damage, or destroy any known contributing component of the SELVACD, nor will the Projects affect current tribal access to the places identified as contributing components of the SELCAVCD. Third, as stated above, the current boundaries of the SELCAVCD are comprised of approximately 7,400 acres, of which approximately 7,070 acres are previously disturbed vacant land. The Applicant respectfully questions the proportionality of the current boundaries with respect to contributing components. A small fraction of that vacant land within the current boundaries of the SELCAVCD, is proposed for wells, well pads, temporary construction uses, and pipelines. The proposed power plants and power plant buildings are all located outside of the SELCAVCD. It is therefore unclear how the proposed projects would physically impact the SELCAVCD across approximately 80 percent of its north-south axis, as referenced in the CEC Staff Response. It must be clarified that the Projects will not physically impact 80 percent of the SELCAVCD, should the current boundaries remain unchanged.

With respect to COC CUL/TRI-8 as proposed in the PSA, CEQA requires that environmental documents "emphasize feasible mitigation measures and feasible alternatives to projects." (See,

¹⁵ Morton Bay Geothermal Project (23-AFC-01) Preliminary Staff Comments, Attachment C: Mud Pots Impact Assessment, p. 1 (TN#: 258975); Elmore North Geothermal Project (23-AFC-02) Preliminary Staff Comments, Attachment C: Mud Pots Impact Assessment, p.1 (TN#: 258976); Black Rock Geothermal Project (23-AFC-03) Preliminary Staff Comments, Attachment C: Mud Pots Impact Assessment, p. 1 (TN#: 258977).

¹⁶ Morton Bay Geothermal Project (23-AFC-01) Preliminary Staff Comments, Attachment C: Mud Pots Impact Assessment, p. 1 (TN#: 258975); Elmore North Geothermal Project (23-AFC-02) Preliminary Staff Comments, Attachment C: Mud Pots Impact Assessment, p.1 (TN#: 258976); Black Rock Geothermal Project (23-AFC-03) Preliminary Staff Comments, Attachment C: Mud Pots Impact Assessment, p. 1 (TN#: 258977).

¹⁷ Black Rock (23-AFC-03), Elmore North (23-AFC-02) and Morton Bay (23-AFC-01) Geothermal Resource Evaluation Testimony, p. 3 (TN#: 250207.)

¹⁸ See, CalGEM, Geothermal Resource Evaluation Testimony by Charlene Wardlow and Jesus M. Salera (23-AFC-01) p. 3 (TN#: 250207); see also, Morton Bay Geothermal Project, *Responses to Informal Data Request Set 1*, p. 1 (April 29, 2024) (TN#: 256064.)

¹⁹ Black Rock (23-AFC-03), Elmore North (23-AFC-02) and Morton Bay (23-AFC-01) Geothermal Resource Evaluation Testimony, p. 3 (TN#: 250207.)

Pub. Resources Code 21003; see also, 21080.5(d)(2), 21082.3.) In turn, a mitigation measure is “feasible” if it is “capable of being accomplished in a successful manner within a reasonable amount of time, taking into account economic, environmental, social, and technological factors.” (Pub. Resources Code 21061.1.) As acknowledged in the PSAs for BRGP and ENGP, the proposed mitigation—nomination to the NRHP or CRHR—is outside the control of both the Applicants and the CEC and may not “ultimately be realized.” Thus, it is uncertain whether the proposed mitigation is actually capable of being accomplished in a successful manner and therefore feasible in accordance with CEQA.

Further, the *CEC Staff Response* states that nomination would “establish substitute resources and environments within the SELCAVCD for preservation and ongoing management.” Nomination does not actually achieve the goals of preservation or ongoing management of the SELCAVCD. In particular, COC CUL/TRI-8 does not address the following:

1. **Immediate physical threats to the resource.** During the Tribal Cultural Resources Workshop held at Imperial Valley College on December 9, 2024, tribal representatives identified non-project related activities impacting Obsidian Butte and requested assistance from the Applicants to intervene. A nomination may be a lengthy process that does not prevent further impacts from occurring at Obsidian Butte nor would a nomination alone lead to preservation, protection, or management of the resource.
2. **Absence of protection measures.** Nomination of the SELCAVCD to a register does not provide legal protection against changes to or destruction of the resource. The nomination is a report that is descriptive and qualitative and does not serve as a preservation or management document for any part of the SELCAVCD. Even if nomination leads to listing, which is not guaranteed, the listed status does not provide any protective or management measures.
3. **Inadequate documentation.** A nomination requires geographic boundaries of a resource to be set and formally described, however, CEC Staff stated in their response that the boundaries of the SELCAVCD may adjust in the future as more or additional information comes to light. Furthermore, CEC Staff indicate in all three PSAs that the SELCAVCD lacks integrity of setting yet proposes a discontinuous boundary in conflict with the National Parks Service guidelines. A nomination of a district requires an inventory and evaluation of all contributing and non-contributing components and an assessment of integrity, individually and collectively. CEC Staff have not identified or evaluated non-contributing components of the SELCAVCD or considered the impact of non-contributing components on the CRHR or NRHP eligibility of the SELCAVCD. For example, the PSAs identify the Pond of Good Water and Salt Deposit as contributing components to the SELCAVCD, but do not address why resources that no longer exist are identified as contributing components to the SELCAVCD.
4. **Lack of clarity regarding significant and unavoidable impacts.** In the PSAs, CEC Staff found that construction of the ENGP, MBGP, and/or BRGP would result in significant and unavoidable impacts to viewsheds in the SELCAVCD. CEC Staff have not, to date, provided sufficient identification or inventory of significant views nor an explanation for how they would be impacted (e.g., complete obstruction, partial obstruction, introduction of new visual elements in general viewshed), why the impacts

are considered significant and unavoidable, and why impacts cannot be mitigated to a level of less than significant. CEC staff also found significant and unavoidable impacts to the Mud Pots/Volcanoes resulting from the projects, but do not provide the source of any evidence to support this claim, as explained above.

5. **Complex adverse impacts.** In accordance with CEQA, a significant and unavoidable impact to a cultural or tribal cultural resource is an impact that results in a loss of integrity and prohibits the character defining features, elements, or components of the resource from conveying its regulatory significance under CRHR criteria. However, it is clear from the proposed mitigation measure—nomination of the SELCAVCD to the NRHP and CRHR—that CEC Staff believes that the SELCAVCD would still retain integrity following construction and operation of the projects. This position cannot be reconciled with other statements that the potential impacts of the projects are significant and unmitigable.

2f. Analysis of the adequacy and feasibility of any identified alternatives to Mitigation Measure CUL/TRI-8, such as conservation of Obsidian Butte, realigning the Morton Bay cooling tower, and adjusting the location of Black Rock.

Existing Analyses

The PSAs do not identify with specificity the potential adverse impacts of the Projects and do not explain the nexus between the potential impacts and the proposed condition. The PSAs also do not analyze the effectiveness, adequacy, and feasibility of any identified alternatives to Mitigation Measure COC CUL/TRI-8, such as the conservation of Obsidian Butte, realigning the Morton Bay cooling tower, and adjusting the location of Black Rock.

Applicants' Response to CEC Staff Response

To address tribal concerns with significant and unavoidable impacts that may result from the proposed projects, the Applicants have proposed suitable alternative mitigation to CUL/TRI-8, which include pursuit of a conservation easement over Obsidian Butte and site plan revisions to reduce impacts on certain viewsheds. The Applicants anticipate that the conservation easement will specifically provide for the preservation, documentation, and management of Obsidian Butte. These alternative mitigation measures address the specific impacts to certain viewsheds and the Old Mud Pots/Volcanoes, and are commensurate with the degree of impact on the resource resulting from the proposed project(s), individually and cumulatively.

Site Plan Revisions to Reduce Impacts on Certain Viewsheds

The PSA did not include a visual impact analysis of culturally significant viewsheds associated with the SELCAVCD. This is problematic in that CEC Staff has concluded that the three proposed geothermal plants, individually and cumulatively, would result in significant and unavoidable visual impacts to the SELCAVCD without documenting the key observation points, criteria, or methods applied to its impact assessment.

The Applicants developed geographic coordinates of key observation points at accessible components of the SELCAVCD, including the Old Mud Pots/Volcanoes, Red Hill North Peak, Red Hill South Peak, Rock Hill, Obsidian Butte North, and Obsidian Butte South based on-site meetings with the Kwaaymii Laguna Band of Indians. Culturally significant distant landscape features identified in the PSA and during the first and second Tribal PSA Workshops include the entire Chocolate Mountain range, the Cargo Muchacho's, Pilot Knob, Mount Signal, and the Superstition Mountains. A visual impact analysis of the SELCAVCD should explain the type of visual impact or obstruction alleged (i.e., full, substantial, partial/moderate, or partial/minor) and assess the degree of such impacts (i.e., substantial, moderate, minor, or negligible).²⁰

The Applicants propose the following definitions of the type of visual impact in relation to the SELCAVCD resulting from the blocking or obstruction of culturally significant views between components or from components to distant culturally distant landscape features identified in the PSA by new structures associated with the proposed project(s).

- Full obstruction: A new development completely blocks the view from an identified key observation point to a culturally significant component or landscape feature, prohibiting the viewer from seeing any part of the component or feature, thus severing visual continuity. This would result in a major visual impact.
- Substantial obstruction: A new development blocks a significant portion of the view from a key observation point to a culturally significant component or landscape feature, making it difficult to see key elements of the component of landscape feature. This would result in a major visual impact.
- Moderate partial obstruction: A new development blocks a small portion of the view from a key observation point to a culturally significant component or landscape feature, but the overall view is largely intact. This would result in a moderate visual impact.
- Minor partial obstruction: A new development introduces visual elements peripheral to the view from a key observation point to a culturally significant component or landscape feature but does not block the view and the visual experience, while partly affected, maintains integrity of setting, feeling, and association. This would result in a minor visual impact.

Utilizing these criteria for assessment of the potential visual impacts to the SELCAVCD demonstrates the efficacy of the Applicants' proposed mitigation measures for the projects that address the specific visual impacts identified in the PSA with respect to the SELCAVCD.

Elmore North Geothermal Project

Reorientation of ENGP Cooling Tower's conforms to requests by the Kwaaymii Laguna Band of Indians during the first Tribal PSA Workshop on September 6, 2024, to reduce the visual

²⁰ See Federal Highways Administration (1988 [2015]) *Guidelines for the Visual Impact Assessment of Highway Projects* (https://www.environment.fhwa.dot.gov/env_topics/other_topics/VIA_Guidelines_for_Highway_Projects.aspx); See also, California High Speed Rail Authority (2012) EIR/EIS Merced to Fresno Section, Chapter 3.16 Aesthetic and Visual Resources (https://hsr.ca.gov/wp-content/uploads/2022/08/final_EIR_MerFres_3_16Aesthetics.pdf).

footprint of ENGP within the viewshed to distant landscape features, such as Rock Hill to the Chocolate Mountains. The Applicant accomplished this by reorienting the cooling towers from a northwest-southeast direction to an east-west direction to reduce the proposed plant's visual footprint. The reorientation of the ENGP cooling towers provides an incremental improvement from Rock Hill to the Chocolate Mountains.

With respect to the pipeline alignment, the Applicant modified the location of the production pipeline route to avoid potential impacts to wetlands and desert pupfish. The production pipeline route for ENGP is routed through Red Hill Bay, where wells, well pads, pipelines, and MBGP's transmission generation tie line are already proposed. This modification to the proposed plan does not constitute a significant change to the proposed projects. It should also be noted that this area of Red Hill Bay is already heavily disturbed by significant grading and trenching. Finally, the production pipeline is near ground level and would not obstruct views from key observation points to distant landscape features or nearby documented tribal cultural resources.

Morton Bay Geothermal Project

The configuration of MBGP as presented in the PSA would result in the full visual obstruction of views to and from the Old Mud Pots/Volcanoes and Red Hill North Peak and Red Hill South Peak, as well as substantial visual obstruction of views to and from the Old Mud Pots/Volcanoes and Rock Hill, Obsidian Butte North, and Obsidian Butte South.

Reorientation of the cooling towers and other site plan revisions at MBGP would result in significant improvements to the SELCAVCD's visual continuity and significantly reduce the degree of visual obstruction between the Old Mud Pots/Volcanoes and Red Hill North Peak and Red Hill South Peak by relocating the cooling tower outside the direct view between these components. The proposed site plan revisions would also significantly reduce the degree of obstruction and improve visual continuity to and from the Old Mud Pots and Rock Hill, the Old Mud Pots and Obsidian Butte North, and the Old Mud Pots and Obsidian Butte South.

Partial visual obstruction would remain to views from Old Mud Pots/Volcanoes to distant landscape features (Mount Signal and Superstition Mountains), and from Red Hill North Peak, Red Hill South Peak, Rock Hill, Obsidian Butte North, and Obsidian Butte South to the Chocolate Mountains. Thus, the Applicant's proposal to revise the site plan would neither improve nor further impair viewsheds to this distant landscape feature.

Black Rock Geothermal Project

The configuration of BRGP as presented in the PSA would introduce a partial visual obstruction of views from Obsidian Butte North to the Cargo Muchacho Mountains and Pilot Knob, and from Rock Hill to Mount Signal. The configuration also lies on the periphery of views between Obsidian Butte North, Red Hill North Peak, Red Hill South Peak, and Rock Hill, between Obsidian Butte South, Red Hill North Peak, Red Hill South Peak, and Rock Hill, and from Rock Hill to the Superstition Mountains, and the Old Mud Pots to Mount Signal and Superstition Mountain.

The shift of BRGP to the southwest was in direct response to comments from Kwaaymii Laguna Band of Indians and Fort Yuma Quechan Tribe. The shift would remove all structures from obstructing the view from Obsidian Butte North to the Cargo Muchacho Mountains and Pilot Knob, except for a sliver portion of the proposed freshwater pond with a height of approximately five feet. This would preserve visual continuity from the SELCAVCD to these distant landscape features significantly improving visual continuity and reducing the degree of obstruction. The proposed shift to the southwest also moves most of the proposed facility outside the direct view from Rock Hill to Mount Signal, leaving the southeastern half of the cooling towers, with a height of approximately 45 feet, and the freshwater pond, with a height of approximately 5 feet, as a possible partial obstruction.

Analysis

Overall, site plan revisions proposed by the Applicant would result in a net gain to the visual continuity of the SELCAVCD when compared to the site plan presented in the PSA by significantly improving visual continuity and reducing the degree of visual obstruction between components of the SELCAVCD and from components to distant culturally significant landscape features. Such improvements to visual continuity of the SELCAVCD indicate the effectiveness of the site plan revisions as alternative mitigation to visual impacts. When coupled with the conservation easement of Obsidian Butte, these mitigation measures serve as a feasible alternative to mitigation measure COC CUL/TRI-8 that mitigates identified impacts to less than significant.

Response to CEC Staff's Claim that the Shift Moves BRGP Significantly Closer to Obsidian Butte

The shift of BRGP was made in direct response to comments from Kwaaymii Laguna Band of Indians and Fort Yuma Quechan Tribe to reduce the visual impact of BRGP from the primary road, McKendry Road, used to enter Obsidian Butte. As discussed above, shifting the BRGP would significantly reduce visual impacts and provide a net gain to the visual continuity of the SELCAVCD compared to the site plan presented in the PSA.

CEC Staff states that the proposed relocation of BRGP shifts the project site approximately 550 feet closer to Obsidian Butte and two previously recorded archaeological sites associated with Obsidian Butte. It is important to note that the BRGP is located outside of the SELCAVCD boundary and would not result in a direct physical impact to known features of the SELCAVCD. Therefore, any change occurring from the shift would relate to indirect impacts, which according to the PSAs include both visual and noise.

With respect to indirect impacts resulting from noise, CEC Staff have yet to disclose the reference points employed in the measurement of distance between Obsidian Butte and either the BRGP project site as depicted in the PSA or the revised site location, nor verified whether these points are consistent with those used in the placement of noise receptors to assess project impacts. The Applicant identified geographic coordinates for two key observation points on Obsidian Butte based on onsite meetings with the Kwaaymii Laguna Band of Indians, which are tentatively referred to as Obsidian Butte North and Obsidian Butte South. Using these key

observation points, the Applicants' measured distances between the BRGP and Obsidian Butte are as follows:

- The distance between Obsidian Butte North and the revised site plan (approximately 2,843 feet) is approximately 24 feet closer than the location of the site plan as presented in the PSA.
- The distance between Obsidian Butte South and the revised site plan (approximately 3,181 feet) is approximately 550 feet closer than the location of the site plan as presented in the PSA.

The measurements indicate that the revised site plan location shifts the project approximately 550 feet closer to Obsidian Butte South, however, the nearest point between the revised project site and Obsidian Butte South (i.e., approximately 3,181 feet in distance) is more than 300 feet further away than the nearest point between the revised site plan location and Obsidian Butte North (i.e., approximately 2,843 feet in distance). Thus, the net change of distance between the revised site plan location and Obsidian Butte is only 24 feet closer than the site plan location presented in the PSA. It is highly unlikely that such a negligible shift in distance would have an influence, positive or negative, on noise impacts identified in the PSA.

Furthermore, there is no indication that the revised site plan location would impact the two archaeological sites associated with Obsidian Butte. Archaeological sites of this type and nature are often eligible for the information value or potential, which is not subject to indirect impacts. The BRGP project lies outside the SELCAVCD boundary and would not introduce any physical/direct impacts to these unevaluated archaeological sites.

Conservation of the Obsidian Butte Component of the SELCAVCD

Establishment of a conservation easement over Obsidian Butte addresses impacts resulting from the proposed project(s) by promoting preservation, documentation, management, and recognition of the SELCAVCD. It is also in line with protection and preservation mitigation recommendations for Tribal Cultural Resources provided in Assembly Bill 52 (Pub. Resources Code § 21084.3(b)). Furthermore, a conservation easement around Obsidian Butte conforms to current land use designations presented in the Lithium Valley Specific Plan Draft Land Use Map. Imperial County currently proposes to designate several areas within the SELCAVCD for conservation, including Obsidian Butte, Rock Hill, and Red Hill.

The Applicants' proposed alternative mitigation aligns with the goals and objectives of current plans and presents a forward-thinking approach to the SELCAVCD's management while emphasizing partnership with and respect for affiliated tribes, the environment, and their tribal cultural resources. Dedication of Obsidian Butte into a conservation easement, along with a management plan and long-term endowment, would serve as a model for future and further mitigation resulting from unforeseeable development in the area. This would "eliminate months-long delays in identifying and evaluating the significance of the SELCAVCD for any future projects in the area", set "forth a framework for funding future mitigation of impacts...encouraging the preservation of...tribal cultural resources" (*CEC Staff Response* pg. 11).

The Applicant strongly believes a conservation easement approach will create the most balanced outcome for all interested parties. The conservation easement proposal may be specifically tailored to accomplish preservation, protection and management priorities and maintain the ability for responsible development in the future. The proposed management plan could address tribal access to and management of Obsidian Butte, future land use limitations, and mitigation for impacts resulting from further and future development. The Applicants' proposed long-term endowment would assist in the management of conservation activities at Obsidian Butte and could serve as a compensatory mitigation bank for addressing future impacts from unforeseeable development. The IID, which owns the land surrounding Obsidian Butte, has expressed interest in the conservation easement alternative mitigation. CEC Staff and tribal representatives have also responded positively to the conservation easement alternative mitigation measure.

Regarding SB 125, the *CEC Staff Response* states that projects funded through the bill must consider impacts to the SELCAVCD, regardless of its nomination or listing status. It acknowledged that nomination would not enhance awareness or ensure early planning and communication with tribal representatives during the environmental review process. This position also applies to non-SB 125 projects in the area with respect to the effectiveness of the nomination, and its ability to enhance awareness and ensure early planning and communication with tribal representatives. Projects subject to CEQA review will consider impacts to the SELCAVCD with respect to the CEC's agency determination of eligibility and its current listing in the NAHC Sacred Lands File, without the need for CUL/TRI-8 and the issues it poses, including with respect to feasibility.

In *CEC Staff's Response*, it is claimed that the proposed conservation easement is limited to 248 acres of the SELCAVCD's roughly 7,400 acres and is therefore disproportional mitigation to the nomination, which considers the entirety of the current boundaries of the SELCAVCD. This perspective frames the discussion of the feasibility of the conservation easement as alternative mitigation to COC CUL/TRI-8 in terms of gross acreage, minimizing the actual scope and scale of the proposed easement. CEC Staff has not revealed the arbitrary boundary, or the methods used to calculate the 248 acres they identify for conservation easement. The boundaries have not been set and the Applicants intend to discuss the proposed boundary with the landowner, IID and Tribal representatives.

As mentioned above, Imperial County currently proposes conservation of Rock Hill and Red Hill in the Lithium Valley Specific Plan Draft Land Use Map. If combined with a conservation easement over Obsidian Butte, that would account for actual preservation and management of three large contributing elements to the SELCAVCD.

The Applicant believes the conservation easement of Obsidian Butte is a feasible and appropriate alternative mitigation measure to COC CUL/TRI-8. It addresses project-specific and cumulative impacts and presents a forward-thinking approach to management of an identified contributing component to the SELCAVCD. Recent conversations between the Applicants and tribal representatives have been productive from the Applicants' perspective; however, further conversations are needed for specific input from Tribal representatives regarding the Applicants' proposed mitigation measures, including the proposed conservation easement. A meeting with

IID and Tribal representatives has also been tentatively scheduled for February 13, 2025, which will enable further discussion and development of the conservation easement as an alternative mitigation measure to COC CUL/TRI-8.

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Respectfully submitted,

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