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<b>Project Title:</b>	Morton Bay Geothermal Project (MBGP)
<b>TN #:</b>	260729
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<b>Description:</b>	Staff Response to Request for Information Regarding Cultural and Tribal Cultural Resources
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**STATE OF CALIFORNIA**  
**STATE 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**

**Staff's Response to: REQUEST FOR  
INFORMATION REGARDING CULTURAL  
AND TRIBAL CULTURAL RESOURCES**

On December 5, 2024, the committees in the three captioned projects filed a joint Request for Information as part of the Revised Scheduling Orders. Staff responds to the series of question by setting forth each question and providing the relevant response.

All questions received concern a single item from the Preliminary Staff Assessment (PSA), specifically the Condition of Certification (COC) CUL/TRI-8. Staff reserves the right to augment, revise, retract or otherwise amend any of the information provided when comments are addressed and revisions, if any, are incorporated into the Final Staff Assessment (FSA) for each application. At this time, staff's analysis and recommendation for the FSAs is not yet complete, and these responses are provided in good faith but are subject to change.

**CEC 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**

No reports exist and none will be filed in the docket. The assertion by Imperial County's representative suggesting CEC staff was undertaking a nomination of the cultural district (District) is false. Complete analysis of the District and the nomination as mitigation will be developed and fully set forth in the final staff assessment (FSA).

For clarification to the committees, during the September 6, 2024 Tribal Issues Preliminary Staff Assessment (PSA) Workshop, staff noted that documenting cultural and tribal cultural resources on California Department of Parks and Recreation (DPR) 523 resource forms was appropriate. Cultural resource managers such as the CEC staff and the applicant's consultants commonly refer to this kind of documentation as "recording" or "recordation" (OHP 1995).

Recordation of cultural or tribal cultural resources on DPR 523 forms is a common form of documentation supporting agency determinations whether a cultural or tribal cultural resource is significant according to criteria in the California Environmental Quality Act (CEQA) (OHP 1995, pages 1–2). Preparing DPR 523 forms is a convenient support—not a required task—for agency determinations of resource significance. For scheduling reasons, the CEC staff, as of the writing of this response, has opted not to prepare DPR 523 forms in support of its FSA recommendation that the Cultural District is a significant tribal cultural resource under CEQA.

**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 National Register of Historic Places (NRHP) and/or California Register of Historical Resources (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.**

The consistency of the proposed mitigation with all laws, ordinances, regulations, and standards (LORS) will be fully set forth in the FSA. Staff has not finalized this analysis and reserves the right to augment and revise the preliminary assessment set forth in this response.

Registration of a cultural or tribal cultural resource on the NRHP or CRHR would not have any direct, indirect, or cumulative impacts on the environment. Registration on the NRHP or CRHR requires no action other than preparing and submitting the appropriate

registration forms (CSP 2024a, 2024b). CRHR and NRHP registration produces no effect on the environment.

The FSA will explain how nomination of the Cultural District to the CRHR or NRHP is consistent with adopted and pending general plans, specific plans, regional plans, climate change plans or other plans. This includes the Imperial County General Plan, County Municipal Ordinance, and Lithium Valley Specific Plan.

Here are some preliminary examples for the edification of the committee: Nomination of the Cultural District to the CRHR or NRHP is consistent with Imperial County's General Plan. For instance, in the Conservation & Open Space Element of the General Plan, the County of Imperial set Goal 3, "Preserve the spiritual and cultural heritage of the diverse communities of Imperial County," with the following objectives.

- Objective 3.1: Protect and preserve sites of archaeological, ecological, historical, and scientific value, and/or cultural significance.
- Objective 3.2: Develop management strategies to preserve the memory of important historic periods, including Spanish, Mexican, and early American settlements of Imperial County.
- Objective 3.3: Engage all local Native American Tribes in the protection of tribal cultural resources, including prehistoric trails and burial sites. (ICPDS 2016, page 38.)

The Cultural District possesses archaeological, ecological, historical, and scientific value, as well as cultural significance to Cahuilla, Kamia, Kumeyaay, and Quechan tribes (TN 257697, pages 5.4-10–12, 5.4-14–17, 5.4-21, 5.4-24, 5.4-27–29, 5.4-32, and 5.4-50–60). The Cultural District is also a tribal cultural resource. Nominating the Cultural District to the CRHR or NRHP is consistent with the County's objectives 3.1 and 3.3.

As a secondary benefit, nominating the Cultural District to the CRHR or NRHP advances Goal 9 of the Conservation & Open Space Element, namely Conservation and Restoration of Salton Sea and its related objectives. Goal 9 asserts that the "County shall work towards comprehensive restoration of the Salton Sea in order to provide recreation, healthy habitat for wildlife, and economic revitalization in the region." (ICPDS 2016, page 41.) Consider objectives 9.3 and 9.4, related to Goal 9:

- Objective 9.3: Coordinate with US Fish and Wildlife Service, California Department of Fish and Wildlife, and the Salton Sea JPA in developing programs to protect and restore migratory bird habitat, desert pup fish, and other sensitive or endangered species associated with the Salton Sea.
- Objective 9.4: Develop educational programs to promote a greater understanding of the value and importance of the Salton Sea habitat management areas among County residents. (ICPDS 2016, page 41.)

As documented in the CEC staff's PSA, California Native American tribes identify migratory birds, desert pupfish, and other animals and plants as essential components of the Cultural District (TN 257697, pages 5.4-45, 5.4-54, and 5.4-56). Nominating the Cultural District to the CRHR or NRHP would bring attention to the existing conservation priorities identified in objectives 9.3 and 9.4.

Additional areas of compatibility between nominating the Cultural District to the CRHR or NRHP and General Plan conservation goals include conservation of biological and geological resources (ICPDS 2016, pages 38–39).

Cumulative impacts of the projects are partially mitigated through the nomination, as there are no adverse environmental impacts from nomination or listing of the District pursuant to CUL/TRI-8. If successful, the listing will assist future developers in avoiding, mitigating or compensating for significant impacts to the District from any similarly impactful project by providing clear information on the existence of the resource at the early planning stages.

Although staff reserves the right to continue to evaluate the conformance of the proposed project to applicable LORS, at this time staff predicts that it will conclude that the proposed project, with Condition of Certification (COC) CUL/TRI-8, would conform to applicable LORS (see TN 257697, Table 5.4-5). Staff's LORS analysis included County Municipal Ordinance, Title 9, Division 17 (Renewable Energy Resources), §§ 91702.00(B)(1), which stipulates, "Project construction and operations shall be conducted so as to protect wildlife and other biological resources, cultural resources and military operations." Nominating the Cultural District to the CRHR or NRHP would add some protection to wildlife, other biological resources, and cultural resources. This COC, therefore, is consistent with this municipal ordinance governing renewable energy resources.

Comments received regarding LORS conformance will be addressed appropriately in the FSA. Staff notes the comment letter regarding the nomination of the District was filed by a non-party after the close of the comment period, and not during a workshop, and therefore does not require a response under CEQA or the CEC's Certified Regulatory Program.

### **Lithium Valley Specific Plan**

Preliminarily, nominating the Cultural District to the CRHR or NRHP appears to be consistent with available information on the Lithium Valley Specific Plan. Fully developed analysis will appear in the FSA. Land use designations in the Lithium Valley Specific Plan's Draft Land Use Map within the Cultural District consist of Conservation, Green Industrial Phases 1 and 2, Playas Renewables Phases 1 and 2, and River Corridor (LVSP n.d.). Consulting the complementary Land Use Alternatives Memorandum (RICK

2023), three out of four broad land use designations are considered potentially compatible with the preservation of cultural and tribal cultural resources:

- Conservation – Conservation, restoration, and mitigation land are potentially allowed uses (RICK 2023, page 21)
- Green Industrial Phases 1 and 2 – Cultural resource preservation is not a potentially allowed or ancillary use (RICK 2023, pages 15–16)
- Playas Renewables Phases 1 and 2 – Cultural resource preservation is a potentially allowed use (RICK 2023, page 19)
- River Corridor/Floodway – Consistent with cultural resource preservation, potentially allowed uses include riparian restoration and native riparian habitat (RICK 2023, page 22)

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

The analysis of the impacts of the project on any Environmental Justice (EJ) community will be fully set forth in the FSA. Preliminarily, Staff provides the committee with this information:

California law defines EJ as “the fair treatment of people of all races, cultures and income with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” (Gov. Code, § 65040.12; Pub. Resources Code, §§ 71110–71118.) All departments, boards, commissions, conservancies and special programs of the Resources Agency must consider EJ in their decision-making process if their actions have an impact on the environment, environmental laws, or policies. Actions requiring EJ consideration may include:

- Adopting regulations;
- Enforcing environmental laws or regulations;
- Making discretionary decisions or taking actions that affect the environment;
- Providing funding for activities affecting the environment; and
- Interacting with the public on environmental issues (TN 257697, pages 6-1 and 6-2)

Nominating the Cultural District to the CRHR or NRHP would not prevent disadvantaged communities or EJ populations from enjoying recreational activities within the district’s boundaries or have any other disproportionate effect on any EJ community. Rather, it is the information from EJ communities that support the existence of the District. (PSA Sec. 5.4 TN257697.) Nominating the CRHR or NRHP would benefit EJ communities (namely, the Agua Caliente Band of Cahuilla Indians, Kwaaymii Laguna Band of Indians, and the Fort Yuma Quechan Indian Tribe) by requiring local, state, and federal agencies

to consider the potential impacts of development and management on the Cultural District. Currently, these tribes are burdened with arguing the existence of the Cultural District every time a project is proposed in or near the Cultural District. Their advocacy for cultural preservation requires many unpaid and uncompensated hours of internet research, answering consultant and agency inquiries, traveling to meetings and hearings, and hosting field visits to culturally sensitive and powerful areas. Nominating the Cultural District to the CRHR or NRHP would relieve the tribes of some of the burden of advocacy.

Moreover, were a nomination to be successful, the listing does not prohibit discretionary agencies from exercising their authority under CEQA to approve a project despite the existence of any significant and unavoidable impact of a project on the District. Listing merely alleviates the tribal members from the burden of re-establishing the fact of the District's existence in each discretionary decision proceeding.

The CEC staff respectfully reminds the Committees that in addition to California Native American tribes, a coalition of residents, community-based organizations, unions, and EJ advocates have repeatedly supported the Cultural District and thorough mitigation measures for this tribal cultural resource. (TN 258984, pages 10–12; TN 258986, pages 10–12; TN 258987; TN 258990; TN 258992; TN 259012, pages 7–8; TN 259013, pages 7–8; TN 260665, page 4; TN 260666, page 4; TN 260667, page 4.) Staff has assessed that the voices of disadvantaged and EJ communities align with the identification and preservation of the Cultural District. At this time staff is unaware of any scenario where the procedural protections afforded a nominated or listed resource would adversely affect an EJ population.

**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.**

Nominating the Cultural District to the CRHR or NRHP would benefit habitat conservation and preservation of tribal cultural resources, may be compatible with dust mitigation efforts, and would not affect access to clean water. The benefits to habitat conservation and preservation of tribal cultural resources are numerous and described in the PSAs. To recap, the Cultural District has plants and animals as integral elements, such that affiliated California Native American tribes have a vested interest in supporting habitat management that is consistent with native values. Nominating the Cultural District only advances preservation of tribal cultural resources, not the opposite.

Concerning dust mitigation and access to clean water, it is difficult to see how nominating the Cultural District would be a detriment. The affiliated California Native

American tribes support dust mitigation at the Salton Sea and water quality management. Nominating the Cultural District to the CRHR or NRHP does not preclude dust mitigation or clean water programs.

Potential restoration projects funded through the programs established by SB 125 would need to consider the impacts to the District with or without nomination or listing of the District. The listing would better inform the processes established via SB 125, resulting in more well-planned preservation and restoration projects in furtherance of the Salton Sea Management Plan, and the types of projects to be funded through SB 125.

**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.**

Again, the full evaluation and expression of the results of staff's analysis is appropriately included in the FSA, and these preliminary remarks are subject to change. Based on current data, the Cultural District consists of two discontinuous units (Figure 5.4-2), units A and B. The former contains the five volcanic domes of Obsidian Butte, Rock Hill, Red Island, and Mullet Island; two areas of Mud Volcanoes and Mud Pots (CA-IMP-003256H and The New Mud Pots and Volcanoes); a Pond of Good Water (CA-IMP-3251H); and the Saltwater Pond (CA-IMP-003255). Unit B contains the Mud Volcanoes and Old Mud Pots (CA-IMP-003257H). (TN 257697, page 5.4-50; see figure below.)





**Legend**  
[Red dashed line symbol] Southeast Lake Cahuilla Active Volcanic Cultural District (Draft)

**Working Draft**  
**4/6/2023**

  
**1:30,000**



Source: ESRI & USGS.

The Cultural District incorporates the main cultural features of the Salton Buttes: Obsidian Butte, Rock Hill, Red Hill, Mullet Island, the sets of mud pots, as well as their physical and visual connectivity, and setting. The boundary shape is drawn from information presented to CEC cultural staff by tribal representatives during the consultation process. The Cultural District boundary roughly follows the Salton Sea Shallow Geothermal Anomaly, although it is depicted with a smaller footprint. Because the water line for the Salton Sea is not static, the delineation of boundary lines mostly corresponds with United States Geological Survey quadrangle map section and section subdivision lines, which is consistent with the Native American Heritage Commission practices for Sacred Lands File searches. The Salton Sea contributes to the district by creating a visual setting resembling Lake Cahuilla in pre-contact times. Future identification of additional contributing and character defining features and buffers from potential incompatible uses, as defined by the perspective of the living traditional community (local tribes), may result in adjustment of boundaries in the future. Given the dynamic nature of this landscape, boundaries also consider fluctuations in the water line of the sea. (TN 257697, page 5.4-53.)

**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.**

The CEC staff concludes that COC CUL/TRI-8 is an effective mitigation measure and that the record supports a demonstrable nexus between impacts on the Cultural District and proposed mitigation of the supporting nomination. As identified in the CEC staff's PSAs, PSA workshops, and filings by California Native American tribes, the proposed projects would cause multiple impacts on the Cultural District. These impacts include blocking culturally significant sight lines to and from components of the Cultural District and landmarks outside of the district boundaries; disrupting the functioning of the Old Mud Pots and Mud Volcanoes; and introducing noise that would interfere with ceremony and teaching. Furthermore, all three projects would result in excavation and other ground disturbance within the Cultural District boundaries to install power poles, construct power plant buildings, stage construction, install pipelines, and develop geothermal wells.

CEQA identifies five broad types of mitigation measures: (1) avoidance, (2) minimization, (3) rectification, (4) reduction or elimination, and (5) compensating (Cal. Code Regs., tit. 14, § 15370). Nominating the Cultural District per COC CUL/TRI-8 is a form of compensatory mitigation. Nomination would establish substitute resources and environments within the Cultural District for preservation and ongoing management. Although nomination of a cultural resource or tribal cultural resource to the CRHR or

NRHP does not produce a hard stop for development or alterations to a listed cultural resource or tribal cultural resource, it

- Increases agency and developer awareness of the resource's existence
- Defines the boundaries of the listed resource
- Identifies the characteristics of the resource and its area(s) of significance
- Fosters early planning and communication among developers, agencies, California Native American tribes, and the public (as appropriate) regarding assessment of impacts and devising appropriate mitigation measures (CSP 2024a, 2024b)

These outcomes are a marked improvement over the status quo for the Cultural District. Consider that Carmen Lucas and her counsel, Courtney Coyle, advised the applicants' consultants that the proposed BRGP, ENGP, and MBGP are in or near the Cultural District in August 2022 (email from Coyle to Gena Granger and Kyle Knabb, in Jacobs 2023d, Appendix C and page 41). The applicants and their cultural resource consultant did not document the Cultural District at that time and filed their applications seven months later, in mid-April 2023, without addressing the Cultural District. Nominating the Cultural District to the CRHR or NRHP would eliminate months-long delays in identifying and evaluating the significance of the Cultural District for any future projects in the area.

COC CUL/TRI-8 has appropriate nexus to identified impacts on the Cultural District, notably including the cumulative impacts of the three projects and planned future development of geothermal energy facilities and industrialization of the region for lithium extraction. Physical impacts within the Cultural District are distributed across approximately 80 percent of the District's north-south axis and the visual impacts identified in the CEC staff's PSAs occur throughout the Cultural District. Nominating the Cultural District to the CRHR or NRHP would ensure that similar impacts resulting from any future projects would receive earlier consideration during environmental impact reviews. Absent the prospect of complete impact avoidance, recognition and mandatory consideration of the Cultural District in planning efforts is the intended outcome of COC CUL/TRI-8 for affiliated California Native American tribes. Moreover, the Nomination is aligned with SB 125 which sets forth a framework for funding future mitigation of impacts of lithium development through, among section other focus areas, encouraging the preservation of, and avoiding impacts to, tribal cultural resources. (See Fish and Game Code section 2952(c)(4).)

The CEC staff concludes in the PSAs that although COC CUL/TRI-8 would reduce the severity of impacts on the Cultural District, it would not reduce the impacts to a less-than-significant level.

**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.**

The detailed response to this item will appear in the FSA as staff responds fully to comments received during the comment period. In partial response, due to the committee's inquiry, staff provides a summary here of that analysis, and reserves the right to modify, revise and or evolve this analysis for the FSA, due to the shortened time provided to reply.

On December 4, 2024, the applicants filed project rearrangements, including relocating the BRGP to the southwest and realigning the ENGP and MBGP cooling towers (TN 260469, TN 260470, TN 260471). The objective behind these changes to the proposed projects is to reduce some of the visual impacts on the Cultural District.

The BRGP project site is now proposed to be situated about 700 feet south of its original location (TN 260469, Figure 1-4R2). This placement of the project site is directly responsive to requests from the Kwaaymii Laguna Band of Indians and Fort Yuma Quechan Indian Tribe to move the BRGP away from McKendry Road, which provides the main road access to Obsidian Butte. In addition, the applicant designed access to the new project site to come from the east (Boyle Road) to keep construction traffic off the McKendry Road approach to Obsidian Butte. During the second Tribal PSA Workshop on December 9, 2024, the Kwaaymii Laguna Band of Indians observed, however, that the new BRGP project site is located nearer (more westerly) to Obsidian Butte than was the original BRGP project site. Kwaaymii Laguna pointed out that the objective was to move the BRGP project site further from Obsidian Butte. The CEC staff has compared the two BRGP locations and concludes that the new BRGP project site is about 550 feet closer to Obsidian Butte than the original project site. It also brings the proposed BRGP closer to two recorded archaeological sites, P-13-000452 and CA-IMP-006638 (ASA 1957; Lange 2009; Romandia 1976; Sharpe 2003). At the workshop, the applicant for BRGP stated that it cannot move the new project site further east because of infrastructure constraints. The CEC staff is analyzing these project changes and consulting with the affiliated tribes about them. At present, it is not at all clear that moving the BRGP project site to the southwest will eliminate visual impacts on Obsidian Butte or reduce them to a less-than-significant level.

The applicant for the ENGP reoriented the cooling tower from a northwest-southeast line to one that is east-west (TN 260470, Figure 2-1R2). The reorientation does not appear to improve or worsen visual impacts on the Cultural District. Figure 2-1R2 also shows a change in pipeline reroute away from a dirt road and Garst Road to cross a field north of the project site. This pipeline's original alignment east-west along a dirt road and north on Garst Road kept the pipeline outside or on the periphery of the

Cultural District. The new pipeline alignment transgresses the Cultural District boundary and would require about 2,900 lineal feet of pipeline installation within the Cultural District. This change would likely exacerbate impacts on the Cultural District.

The applicant for the MBBP reoriented that cooling tower from a northwest–southeast line to one that is east–west (TN 260471, Figure 2-1R2). The applicant reoriented the cooling tower to accommodate changes to the design of surface ponds on the project site and to reduce visual impacts on specific elements of the Cultural District. To this end, the applicant placed all buildings and aboveground structures west of and in line with the cooling tower. The new project site arrangement might permit less obstructed views to the west from the Old Mud Pots and Mud Volcanoes, at least on a west-by-southwest sight line. Due east and west-by-northwesterly views from the Old Mud Pots and Mud Volcanoes, however, might still be constrained. At the December 9, 2024 second Tribal PSA Workshop, the Kwaaymii Laguna Band of Indians and Fort Yuma Quechan Indian Tribe observed that the applicant’s figures in TN 260471 do not facilitate assessing whether the new MBBP arrangement improves culturally significant sight lines to and from the Cultural District.

The applicants, County of Imperial, and Imperial Irrigation District (IID) have signaled conceptual support for protection of Obsidian Butte in a conservation easement (TN 260522). The CEC staff and consulting tribes agree that, with the right conditions included, a conservation easement for Obsidian Butte is meaningful mitigation, though not a fully suitable alternative to registration of the District. The applicant made it clear, however, at the second Tribal PSA Workshop that it sees a conservation easement over Obsidian Butte as a substitute for COC CUL/TRI-8. The Kwaaymii Laguna Band of Indians replied that a conservation easement over Obsidian Butte is not an adequate substitute for COC CUL/TRI-8; rather, both are needed. Staff agrees with Kwaaymii Laguna’s position. Obsidian Butte occupies about 248 acres within the roughly 7,400-acre Cultural District. Proposing to conserve 248 acres while neglecting even to nominate (which, recall, changes nothing with respect to land ownership nor does it prohibit development) the entire district to the CRHR or NRHP raises significant issues about the proportionality of replacing COC CUL/TRI-8 with the conservation easement only.

### **References To Be Cited in Each FSA:**

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Dated: December 18, 2024

STATE ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

By: \_\_\_/s Kari Anderson\_\_\_\_\_

Attorney for Staff