

### 3.15 Tribal Cultural Resources

This section evaluates potential impacts related to tribal cultural resources during construction, invasive plant management, and maintenance of the Project. Construction activities include the earthwork involved in the estuarine restoration and infrastructure improvement portions of the Project. Invasive plant management activities include the removal of dense-flowered cordgrass (*Spartina densiflora*), European beachgrass (*Ammophila arenaria*), and dwarf eelgrass (*Zostera japonica*) using any one or a combination of the methods described in Section 2.5 (Proposed Invasive Plant Management). Maintenance activities include periodic repairs and improvements to the non-motorized boat put-in, trails, parking lots and road within the Project Area, and also include monitoring activities. Tribal cultural resources include resources that are of specific concern to California Native American tribes, with knowledge of such resources limited to tribal people. Refer to Section 3.5 (Cultural Resources) for a discussion of prehistoric or historic archaeological sites, structures, or objects, and to Section 3.6 (Geology and Soils) for a discussion of paleontological resources. The study area for this section is the same as the Project Area.

#### 3.15.1 Setting

##### *Native American Contact*

Formal consultation for this Project was initiated between the lead agency (CDFW) and California Native American tribes culturally affiliated with the study area on July 26, 2018, pursuant to CEQA and Public Resources Code (PRC) Section 21080.3.1, as well as CDFW's Tribal Communication and Consultation Policy. Letters were sent to representatives of the Bear River Band of Rohnerville Rancheria, the Big Lagoon Rancheria, the Blue Lake Rancheria, the Cher-Ae Heights Indian Community of the Trinidad Rancheria, the Hoopa Valley Tribe, the Round Valley Reservation/Covelo Indian Community, and the Wiyot Tribe. A response was received from the Cher-Ae Heights Indian Community of the Trinidad Rancheria on August 23, 2018 stating that the study area is outside the geographical area of concern for the Trinidad Rancheria. No other responses have been received to date, and no Tribes requested formal consultation for the Project.

On October 26, 2017, Origer & Associates contacted the Native American Heritage Commission (NAHC), requesting information on any known sacred lands or other cultural sites that may be present within the study area (Origer & Associates 2017). No response from the NAHC has been received to date.

#### 3.15.2 Regulatory Framework

##### *State*

##### **California Public Resources Code Section 21074**

California PRC Section 21074 details what can be considered a tribal cultural resource.

- a) *Tribal cultural resources are either of the following:*

- 1) *Sites, features, places, cultural landscapes, sacred places and objects with cultural value to a California Native American tribe that are either of the following:*
  - a. *Included or determined to be eligible for inclusion in the California Register of Historical Resources (CRHR).*
  - b. *Included in a local register of historical resources as defined in subdivision (k) of PRC Section 5020.1.*
- 2) *A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of PRC Section 5024.1. In applying the criteria set forth in subdivision (c) of PRC Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.*
  - b) *A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.*
  - c) *A historical resource described in PRC Section 21084.1, a unique archaeological resource as defined in subdivision (g) of PRC Section 21083.2, or a “nonunique archeological resource” as defined in subdivision (h) of PRC Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).*

#### **California Public Resources Code Section 21084.1**

A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the CRHR. Historical resources included in a local register of historical resources, as defined in subdivision (k) of PRC Section 5020.1, or deemed significant pursuant to criteria set forth in subdivision (g) of PRC Section 5024.1, are presumed to be historically or culturally significant for the purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in, the CRHR, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (g) of PRC Section 5024.1 shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.

#### **Assembly Bill 52**

Assembly Bill 52 (AB 52), the Native American Historic Resource Protection Act, sets forth a proactive approach intended to reduce the potential for delay and conflicts between Native American and development interests. Projects subject to AB 52 are those that file a notice of preparation for an Environmental Impact Report or notice of intent to adopt a negative or mitigated negative declaration on or after July 1, 2016. AB 52 adds tribal cultural resources to the specific cultural resources protected under CEQA. Under AB 52, a tribal cultural resource is defined as a site,

feature, place, cultural landscape (must be geographically defined in terms of size and scope), sacred place, or object with cultural value to a California Native American tribe that is either included or eligible for inclusion in the CRHR, or included in a local register of historical resources. A Native American Tribe or the lead agency, supported by substantial evidence, may choose at its discretion to treat a resource as a tribal cultural resource. AB 52 also mandates lead agencies consult with tribes, if requested by the tribe, and sets the principles for conducting and concluding consultation.

### **California Register of Historical Resources**

The CRHR is a listing of all properties considered to be significant historical resources in the state. These include all properties listed or determined eligible for listing on the National Register of Historical Places (NRHP), including properties evaluated under Section 106 of the National Historic Preservation Act, and State Historical Landmarks. The criteria for listing are the same as those of the NRHP. The CRHR statute specifically provides that historical resources listed or determined eligible for listing on the CRHR by the State Historical Resources Commission, or resources that meet the CRHR criteria are resources which must be given consideration under CEQA.

Resources eligible for listing include buildings, sites, structures, objects or historic districts that retain historic integrity and are historically significant at the local, state or national level under one or more of the following criteria:

- Criterion 1. Associated with events that have made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California or the United States;
- Criterion 2. Associated with the lives of persons important to local, California or national history;
- Criterion 3. Embodies the distinctive characteristics of a type, period, region or method of construction or represents the work of a master or possesses high artistic values; or
- Criterion 4. Has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California or the nation.

Resources must retain enough of their historic character or appearance to be recognizable as historical resources and to convey the reasons for their significance. A resource that has lost its historic character or appearance may still have sufficient integrity for the CRHR, if, under Criterion 4, it maintains the potential to yield significant scientific or historical information or specific data.

### **California Environmental Quality Act**

CEQA requires lead agencies to determine if a project would have a significant effect on tribal cultural resources. The CEQA Guidelines define a tribal cultural resource according to California PRC Section 21074.

While some tribal cultural resources include physical archaeological resources, described above, cultural resources are not limited to physical resources that have scientific significance. Tribal cultural resources also include cultural landscapes and

non-unique archaeological resources. Non-unique resources are resources that are deemed culturally significant to a tribe, but do not contain information needed for scientific purposes, and may not be the best specimen in terms of quality, uniqueness, or age.

### California Coastal Act

The study area is within the Coastal Zone. The California Coastal Act (Coastal Act) contains policies relevant to cultural resources, particularly in relation to allowable uses of diking, filling, or dredging of open coastal waters, wetlands, estuaries and lakes. The following Coastal Act sections are relevant to this analysis:

*Public Resources Code Section 30116 Sensitive coastal resource areas*

*“Sensitive coastal resource areas” means those identifiable and geographically bounded lands and water areas within the coastal zone of vital interest and sensitivity. “Sensitive coastal resource areas” include the following:*

*(d) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.*

*Public Resources Code Section 30244 Archaeological or paleontological resources*

*Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

*Public Resources Code Section 30107.3 Environmental Justice*

*“Environmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.*

### Regional and Local

Lands within the study area are owned by CDFW or are under the jurisdiction of the State Lands Commission and therefore will not require a Conditional Use Permit from Humboldt County nor adherence to the Humboldt County General Plan or the Local Coastal Program Eel River Area Plan. Because potential Project impacts related to tribal cultural resources would be limited to the study area, local and regional regulatory policies are not included in this analysis.

### 3.15.3 Evaluation Criteria and Significance Thresholds

Under criteria based on Appendix G of the CEQA Guidelines, the Project would be considered to have a significant impact on a tribal cultural resource if it would cause a substantial adverse change in the significance of a tribal cultural resource (as defined in PRC Section 21074) that is:

- A resource listed or eligible for listing in the CRHR, or in a local register of historical resources as defined in PRC Section 5020.1(k); or

- A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of PRC Section 5024.1.

### **3.15.4 Methodology**

The evaluation of potential impacts on tribal cultural resources is based on the potential for ground disturbance during construction, invasive plant management or maintenance activities to disturb or destroy known or previously unrecorded tribal cultural resources. The impact analysis included in this section is based on the Historic Resources Study prepared for the Project by Origer & Associates (2017), and consultations with California Native American tribes traditionally and culturally affiliated with the geographic area of the Project.

### **3.15.5 Impacts and Mitigation Measures**

**Impact TCR-1:            Would the Project cause a substantial adverse change in the significance of a tribal cultural resource listed or eligible for listing in the California Register of Historical Resources, or determined by the lead agency to be significant pursuant to subdivision (c) of the Public Resources Code section 5024.1?**

As described above, in July 2018, CDFW requested in writing feedback on the Project from California Native American tribes culturally affiliated with the study area, pursuant to CEQA and PRC Section 21080.3.1. Letters were sent to ten individuals representing seven Native American tribes. The letters included a thorough description of the Project, and invited tribes to provide information or concerns with regards to tribal or other cultural resources within the study area. A response was received from the Cher-Ae Heights Indian Community of the Trinidad Rancheria on August 23, 2018 stating that the study area is outside the geographical area of concern for the Trinidad Rancheria. No other responses have been received to date, and no tribes requested formal consultation for the Project.

As described in Chapter 3.5 (Cultural Resources), an Historical Resources Study was prepared for the Project (Origer & Associates 2017). The study included a records and literature search at the Northwest Information Center (NWIC) of the California Historical Resources Information System; communication with the NAHC to request a review of the Sacred Lands File; additional contact with appropriate local Native American tribes; and a pedestrian archaeological survey of the study area.

The records and literature search identified one recorded cultural resource of potential importance to Native American tribes within the study area. The recorded site, referred to as the Welapl site (P-12-000170), is a Wiyot archaeological site discovered by Loud in 1918. There is little information about this site in Loud (1918), but it is likely it was used as a dwelling place by Wiyot people before the turn-of-the-century (Origer & Associates 2017). During an archaeological field reconnaissance survey of the study area, the areas in which the Welapl site (P-12-000170) were plotted by the NWIC and Loud (1918) were inspected, but no archaeological evidence was found of this archaeological site.

The CRHR eligibility criterion, listed in Subsection 3.15.2, is utilized when determining potential significance of tribal cultural resources. The Welapl site is not considered significant under Criterion 1 because there is nothing to suggest that it is associated with any events that have made a significant contribution to regional or local history or the cultural heritage of California or the United States. The site is not significant under Criterion 2 because there is nothing to suggest that the location is associated with the lives of persons important to local, California or national history. The site is not significant under Criterion 3 because it has no distinctive characteristics, rather it is only described as “neither occupied nor named by recent Wiyot.” However, the site could be significant under Criterion 4, although no evidence of the archaeological site was found during the cultural resources survey (Origer & Associates 2017).

The Project includes invasive plant management activities in the areas in which the Welapl site were plotted by the NWIC and Loud. As noted above, an archaeological field reconnaissance survey of the plotted areas did not identify archaeological evidence for the site. However, if the archaeological site is encountered during Project activities, a significant impact could occur.

In addition, it is possible that additional unrecognized surficial resources or subsurface archaeological deposits are present within the study area. If as-of-yet unknown tribal cultural resources are encountered during construction, invasive plant management or maintenance activities, a significant impact could occur.

**Mitigation Measures:** Implement Mitigation Measures TCR-1, and CR-1 and CR-2.

#### **Mitigation Measure TCR-1: Protect Unknown Tribal Cultural Resources**

If potential tribal cultural resources are uncovered during construction, the Project contractor shall halt work within 100 feet (30 meters) of the discovery, and CDFW shall be immediately notified. Should any tribal cultural resources be discovered during construction on lands under the jurisdiction of SLC, CDFW shall consult with SLC. Workers shall avoid altering the materials and their context, and shall not collect cultural materials. CDFW shall notify California Native American tribes culturally affiliated with the study area. If, after coordination with the Tribe(s), a qualified archaeologist, and the SLC, CDFW determines that the find potentially qualifies as a tribal cultural resource for purposes of CEQA (per CEQA Statute 21084.3), all work must remain stopped in the immediate vicinity to allow evaluation of any materials and recommendation of appropriate treatment. Avoidance of impacts to the tribal cultural resource is preferable. In considering any suggested measures to mitigate impacts to tribal cultural resources, CDFW shall determine whether avoidance is feasible in light of factors such as the nature of the find, Project design, and other considerations. If avoidance is infeasible, other appropriate measures as recommended by the Tribe (i.e., preservation in place; reburial onsite; moved to an appropriate location) shall be instituted. Work may proceed on other parts of the Project while mitigation for tribal cultural resources is being carried out. The final disposition of tribal cultural resources recovered

on state lands under the jurisdiction of SLC must be approved by the Commission.

#### **Mitigation Measure CR-1: Environmental Awareness Training**

Prior to the initiation of any construction work, an archaeologist who meets the U.S. Secretary of Interior's professional standards shall conduct environmental awareness training for construction crews and other relevant Project personnel. At a minimum, the training will cover the kinds of cultural materials that may be present in the Project Area and the protocols to be followed should any such materials be uncovered during construction. Training shall be required at the onset of each year of construction and maintenance activities to educate new construction personnel.

Prehistoric archaeological site indicators include: obsidian and chert flakes and chipped stone tools; grinding and mashing implements (e.g., slabs and handstones, and mortars and pestles); bedrock outcrops and boulders with mortar cups; and locally darkened midden soils. Midden soils may contain a combination of any of the previously listed items with the possible addition of bone and shell remains, and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic, and metal objects; milled and split lumber; and structure and feature remains such as building foundations and discrete trash deposits (e.g., wells, privy pits, dumps).

#### **Mitigation Measure CR-2: Protection of the Welapl Site**

Prior to initial ground disturbing work in the vicinity of the Welapl site, an archaeologist who meets the U.S. Secretary of Interior's professional standards shall re-survey the area for the presence of surficial cultural resource deposits. The archaeologist shall also excavate 4-5 auger borings in the vicinity of the site to assess subsurface conditions.

If historical or archaeological resources are found in the vicinity of the site, CDFW shall implement measures to protect the integrity of the resource and ensure that no additional resources are impacted, as provided in Mitigation Measure CR-4. If no historical or archaeological resources are identified during the surface inspection or subsurface exploration, Project activities may commence without monitoring by an archaeologist.

Subsequent invasive plant management activities in the vicinity of the Welapl site would not be subject to the surface and subsurface assessment requirements provided above, unless otherwise required by CDFW and/or SHPO in accordance with Mitigation Measure CR-4.

**Level of Significance:** Less than significant after mitigation.

Implementation of Mitigation Measures TCR-1, CR-1, and CR-2 would reduce potentially significant impacts on tribal cultural resources to a less-than-significant level by providing environmental awareness training for construction personnel, archaeological surveys, a process for evaluation of any resources encountered during construction, and avoidance or data recovery measures consistent with appropriate laws and requirements.

### **3.15.6 Cumulative Impacts**

#### **Impact TCR-C-1: Would the Project contribute to a cumulatively significant impact to Tribal Cultural Resources?**

Implementation of the cumulative projects listed in Table 3-1 (Projects Considered for Cumulative Impacts) may require grading and excavation that could potentially affect tribal cultural resources. If these resources are not protected, the cumulative effect of the Project plus cumulative projects could be significant. CEQA requirements for protecting tribal cultural resources would be applicable to each of the cumulative projects. As discussed in this section, record searches and research were undertaken to ensure that tribal cultural resources that could be impacted were identified. Mitigation Measures TCR-1, CR-1 and CR-2 would reduce impacts to a less-than-significant level. With implementation of the mitigation measures, the Project's contribution to this cumulative impact would not be cumulatively considerable, and therefore less than significant.

**Mitigation Measures:** No additional mitigation is necessary.

**Level of Significance:** Less than significant.

### **3.15.7 References**

Origer and Associates. 2017. Historical Resources Study for the Ocean Ranch Estuary Restoration Project Humboldt County, California, prepared for Ducks Unlimited (DU Project No. US-CA-398-4), December.