

3.14 Tribal Cultural Resources

3.14.1 Introduction

This section addresses the tribal cultural resources located within the project area. This section provides an overview of the environmental and regulatory settings that apply to the project. Also discussed in this section are the significance criteria used for determining environmental impacts, potential impacts associated with the project, and, where applicable, mitigation measures that would reduce those impacts to a less-than-significant level.

3.14.2 Scoping Comments

Comments related to tribal cultural resources impacts were received during the public scoping process. These comments and the location where they are addressed in the tribal cultural resources analysis are provided in Table 3.14-1.

Table 3.14-1 Tribal Cultural Resources Scoping Comments

Agency/Entity	Comment	Location in Tribal Cultural Resources Section that Comment is Addressed
Garril Page	I combine these two headings [Cultural Resources/Tribal Cultural Resources] as I have commented extensively on these subjects in prior EIR, and EIR/EIS opportunities. Having been told the USACE and County have collected such materials for inclusion in the current EIR, I herewith incorporate those Comments by reference. If, in fact, the current consultants have found and read my prior Comments, they have been advised regarding historical, cultural and tribal resources in Ross from 1960-2018. I assume the Town of Ross has mentioned relevant reports and resources for which Ross has contracted separately.	Section 3.14.3 (see also Section 3.4 Cultural Resources, 3.4.3 Environmental Setting, Project Setting, Record Search)
Garril Page	I will add that the FAP Riparian Corridor proposes excavation and land disturbance in areas of early tribal settlements. The Project lead agency must exercise extreme diligence in honoring artifacts uncovered in the project area.	3.14.4 Regulatory Setting, Regional and Local Regulations

3.14.3 Environmental Setting

Project Setting

The project area is located in the ancestral territory of the Habasto tribelet of the Coast Miwok. Ethnographic information on the Coast Miwok is provided in Subsection 3.4.3 Ethnographic Context of Section 3.4 Cultural Resources.

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Native American Consultation

A request was made to the Native American Heritage Commission (NAHC) on June 15, 2020, to review its files for the presence of sacred sites at or near the project location. The NAHC replied on June 16, 2020, stating that a search of their files did not identify the presence of significant tribal resources in or near the project area.

The District sent project-notification letters to two tribes (see Table 3.14-2) for the purpose of consultation as required by Public Resources Code (PRC) Section 21080.3.1. The letters were sent via U.S. Certified Mail with a return receipt on June 23, 2020. Follow-up emails were sent on August 5, 2020. The Federated Indians of Graton Rancheria (FIGR) responded in an emailed letter dated August 6, 2020, in which they formally requested consultation on the project. Per their request, confidential record-search information was forwarded to the tribe on August 21, 2020. The Ione Band of Miwok Indians did not respond to the notification letter or follow-up email. All correspondence related to PRC Section 21080.3.1 is presented in Appendix E.

Table 3.14-2 Native American AB 52 Consultation

Contact	Tribe	Letter Date	Email Follow-up Date	Next Steps
Buffy McQuillen Tribal Heritage Preservation Officer	Federated Indians of Graton Rancheria	June 23, 2020	August 5, 2020	August 6, 2020: FIGR responded in an emailed letter. August 21, 2020: Confidential record search information was forwarded to the tribe. October 21, 2020; District sent a follow-up email to the Tribe to ask if they wished to consult further on the project. December 3, 2020; District sent follow-up email to the Tribe to request review of Mitigation Measure 3.4-2. December 8, 2020: FIGR accepted Mitigation Measure 3.4-2.
Sara D. Setshwaelo, Chairperson	Ione Band of Miwok Indians	June 23, 2020	August 5, 2020	No response received as of the date of this Draft EIR.

The District entered into formal consultation with the FIGR on August 21, 2020. However, the District has not yet received any information from the tribe regarding tribal cultural resources. The District wrote to the FIGR in an email on December 3, 2020, providing them with the mitigation measure for review and requesting conclusion of consultation if the tribe has no comments. FIGR responded in email on December 8, 2020, accepting the mitigation measure and concluding consultation on the project.

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3.14.4 Regulatory Setting

The following laws, statutes, regulations, codes, and policies would apply to the project and are defined as standard conditions for the project.

Federal Regulations

National Historic Preservation Act

Federal law does not address tribal cultural resources; however, a tribal cultural resource may qualify as a traditional cultural property (TCP) and be considered a historic property as eligible for listing in the National Register of Historic Places (NRHP) (see Section 3.4 Cultural Resources for full discussion). TCPs are locations of cultural value that are historic properties. A place of cultural value is eligible as a TCP “because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community” (Parker & King, 1990). A TCP must be a tangible property, meaning that it must be a place with a referenced location, and it must have continually been a part of the community’s cultural practices and beliefs for the past 50 years or more. Unlike tribal cultural resources, TCPs can be associated with communities other than Native American tribes although the resources are usually associated with tribes. By definition, TCPs are historic properties; that is, they meet the eligibility criteria as a historic property for listing in the NRHP. Therefore, as historic properties, TCPs must be treated according to the implementing regulations found under Title 36 CFR § 800, as amended in 2001.

State Regulations

California Register of Historical Resources

PRC Section 5024.1 is a listing of those properties that are to be protected from substantial adverse change, and it includes properties that are listed, or have been formally determined to be eligible for listing, in the NRHP, State Historical Landmarks, and eligible Points of Historical Interest (see Section 3.4 Cultural Resources for a full description).

Assembly Bill 52

The California State Legislature passed Assembly Bill (AB) 52, which added language to the PRC regarding the evaluation of impacts on tribal cultural resources under CEQA, and which requires consultation with California Native American tribes with a traditional and cultural affiliation with a project area. AB 52 requires lead agencies to analyze project impacts on tribal cultural resources separately from archaeological resources (PRC Sections 21074, 21083.09). AB 52 defines tribal cultural resources in a new section of the PRC (Section 21074). AB 52 also requires lead agencies to engage in additional consultation procedures with respect to California Native American tribes (PRC Sections 21080.3.1, 21080.3.2, 21082.3).

Specifically, PRC Section 21084.3 states the following:

1. Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.
2. If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in

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the consultation process provided in Section 21080.3.2, the following are examples of mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts:

- a. Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
- c. Permanent conservation easements or other interests in real property, with culturally
- d. Appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- e. Protecting the resource.

In addition, the Office of Planning and Research updated Appendix G of the CEQA Guidelines to provide sample questions regarding impacts on tribal cultural resources (PRC Section 21083.09).

Public Resources Code

PRC Section 21074

Tribal cultural resources have the following meaning under PRC Section 21074(a):

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 CRHR.
 - b. Included in a local register of historical resources as defined in PRC Section 5020.1(k).
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 PRC Section 5024.1(c). In applying the criteria set forth in PRC Section 5024.1(c), the lead agency shall consider the significance of the resource to a California Native American tribe.
3. A cultural landscape that meets the criteria of PRC Section 21074(a) if the landscape is geographically defined in terms of the size and scope.
4. A historical resource as described in PRC Section 21084.1, a unique archaeological resource as defined in PRC Section 21083.2, or a non-unique archaeological

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resource as defined in PRC Section 21083.2 may also be a tribal cultural resource if it meets the criteria of PRC Section 21074(a).

PRC Section 5020.1

According to CEQA Guidelines Section 15064.5, the term “historical resources” includes resources that are listed in a local register. As defined in PRC Section 5020.1(k), “local register of historical resources” means a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution.

PRC Section 5024.1

A Lead Agency, in its discretion and supported by substantial evidence, may determine a resource to be significant pursuant to criteria set forth in subdivision (c) of PRC Section 5024.1. As defined in PRC Section 5024.1, a resource may be listed as an historical resource in the California Register if it meets any of the following NRHP criteria:

1. Is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage.
2. Is associated with the lives of persons important in our past.
3. Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values.
4. Has yielded, or may be likely to yield, information important in prehistory or history.

PRC Sections 5097.98-5097.991

PRC Sections 5097.98-5097.991 discuss the procedures to follow up on the discovery of Native American human remains. They also establish that it is a felony to obtain or possess Native American artifacts or human remains taken from a grave or cairn (see Section 3.4 Cultural Resources for a full description).

California Native American Graves Protection and Repatriation Act

The California Native American Graves Protection and Repatriation Act of 2001 is the State repatriation policy for Native American remains (see Section 3.4 Cultural Resources, for a full description).

Regional and Local Regulations

Marin Countywide Plan

The following goals and policies in the Marin Countywide Plan are relevant to the project:

HAR-1.1: Preserve Historical and Archaeological Resources. Identify archaeological and historical resource sites.

HAR-1.2: Document Historical Information. Provide documents, photographs, and other historical information whenever possible to be catalogued in the Anne T. Kent California Room in the Marin County Free Library.

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HAR-1.3: Avoid Impacts to Historical and Archaeological Resources. Ensure that human activity avoids damaging cultural resources, where feasible.

Marin County Development Code

Marin County has the following code section to ensure that the construction of new development and the establishment of new and modified uses contribute to the maintenance of a stable and healthy environment, that new development is harmonious in character with existing and future development, and that the use and enjoyment of neighboring properties are protected, as established in the Countywide Plan.

22.20.040: Archaeological and Historic Resources. In the event that archaeological or historic resources are discovered during any construction, construction activities shall cease, and the Agency shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, and disposition of artifacts may occur in compliance with State and Federal law. The disturbance of an Indian midden may require the issuance of an Excavation Permit by the Department of Public Works, in compliance with Chapter 5.32 (Excavating Indian Middens) of the County Code.

Town of Ross General Plan

The following policies of the Town of Ross General Plan related to tribal cultural resources are applicable to the project (Town of Ross, 2007).

Goal 4. Protecting Historic Places and Resources

4.5 Archaeological Resources. Implement measures to preserve and protect archaeological resources. Whenever possible, identify archaeological resources and potential impacts on such resources. Provide information and direction to property owners in order to make them aware of these resources. Require archaeological surveys, conducted by an archaeologist who appears on the Northwest Information Center's list of archaeologists qualified to do historic preservation fieldwork in Marin County, in areas of documented archaeological sensitivity. Develop design review standards for projects that may potentially impact cultural resources.

3.14.5 Impact Assessment Methodology

Significance Criteria

Consistent with State CEQA Guidelines Appendix G (Environmental Checklist) and Marin County Environmental Review Guidelines, the project could have a significant impact if it would:

- a. Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

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- i. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k); or
- ii. 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 Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

Approach to Impact Analysis

The following analysis discusses the potential significant impacts of the project related to changes in tribal cultural resources impacts in the project area. This section includes an analysis of potential short-term (construction) and long-term (operation) impacts of the project. Impact evaluations are assessed based on the existing conditions described earlier in this section.

3.14.6 Impact Discussion

Impact Analyzed

<p>Impact 3.14-1: The project could cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:</p> <ul style="list-style-type: none"> i. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k); or ii. 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 Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe. 	Significance Determination
	<p>Construction: Less than Significant with Mitigation</p> <p>Operation and Maintenance: No Impact</p>

Construction

As discussed in Section 3.4 Cultural Resources, there are no known historical resources that are listed or eligible for listing in the CRHR in the project area. The project would not impact any known tribal cultural resource that is listed or eligible for listing in the CRHR. However, construction of the project could discover archaeological deposits that local tribes deem to be tribal cultural resources, as defined under PRC Section 21074(a); this is particularly applicable to

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the discovery of human remains. The discovery of tribal cultural resources could result in significant impacts on the resources if they were not properly managed.

Archaeological resources discovered during construction would be subject to **Mitigation Measure 3.4-2: Inadvertent Discoveries of Archaeological Resources**, which requires stopping work within 50 feet of uncovered archaeological resources, and requiring examination of the finds by a qualified archaeologist. The discovery of a Native American resource, which could be determined to be a tribal cultural resource, would require the involvement of a Native American representative. The mitigation measure, furthermore, requires that tribal cultural resources be treated according to PRC 21084.3, by considering all preservation options that include avoidance and preservation in place or otherwise treating the resource with culturally appropriate dignity.

By following the procedures in Mitigation Measure 3.4-2, the District would avoid substantial adverse changes in the significance of an archaeological resource that are also tribal cultural resources; therefore, the impact on tribal cultural resources would be less than significant with mitigation.

Operation and Maintenance

Operation and maintenance of the project will not involve ground-disturbing activities. The proposed project elements include a more natural channel in Frederick Allen Park and within the lower College of Marin reach in Unit 2. Operation and maintenance of the project would have no impact on tribal cultural resources.

Mitigation: Implement Mitigation Measure 3.4-2.

Significance after Mitigation: Mitigation Measure 3.4-2 specifies procedures to avoid adverse effects to archaeological resources by stopping work when archaeological materials are discovered, evaluating the significance of the find, and developing appropriate treatment to protect the site or mitigate impacts. Should the archaeological resource also be determined to be a tribal cultural resource, the mitigation measure requires application of treatments under PRC 21084.3. Avoidance and preservation in place would be the preferred option, followed by other measures preserves or restores the cultural character and integrity of a tribal cultural resource. As a result, the impact on archaeological resources would be less than significant with mitigation.

3.14.7 References

Marin County . (2007, November 6). Marin Countywide Plan.

Marin County. (1994, May 17). Environmental Impact Review Guidelines (EIR Guidelines). *Policy and Procedures for Implementation of the California Environmental Quality Act (CEQA)*.

Parker, P. L., & King, T. F. (1990). Guidelines for Evaluating and Documenting Traditional Cultural Properties. National Register Publication 38. National Park Service, Washington, DC. Revised 1998.

Town of Ross. (2007, June). Town of Ross General Plan.