

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

3.18 Tribal Cultural Resources

3.18.1 Introduction

This section addresses tribal cultural resources in the study area and the potential impacts of the types of restoration projects that would be permitted under the Order. (Section 2.6, *Categories of Restoration Projects in the Order*.) Cultural resources are discussed separately in Section 3.7, although tribal cultural resources are included in the cultural resources section because some of the same mitigation measures for reducing impacts on cultural resources also apply to tribal cultural resources.

The environmental setting and evaluation of impacts on tribal resources is based on a review of existing published documents, including city and county general plans; information regarding example projects similar to those permitted under the Order that may be implemented by other agencies; and other information sources listed in Chapter 8, *References*.

The Native American Heritage Commission provided comments specifically addressing tribal cultural resources in response to the notice of preparation (NOP). See Appendix B for NOP comment letters.

Key Terms

For this analysis, the term *cultural resource* is defined as follows:

Indigenous and historic-era sites, buildings, structures, districts, and landscapes, or other evidence associated with human activity considered of value to a culture, a subculture, or a community for scientific, traditional, religious, or other reason. These resources include the following types of CEQA-defined resources: historical resources, archaeological resources, and human remains.

CEQA Guidelines section 15064.5 defines the term *historical resource* as follows:

- ◆ A resource in the California Register of Historical Resources (California Register)
- ◆ A resource included in a local register of historical resources, as defined in PRC Section 5020.1(k), or identified as significant in a historical resource survey meeting the requirements of PRC Section 5024.1(g)
- ◆ Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California by the lead agency, provided the lead agency's determination is supported by substantial evidence in light of the whole record

If a lead agency determines that an archaeological site is a historical resource, the provisions of PRC Section 21084.1 and PRC Section 15064.5 apply. If an archaeological site does not meet the criteria for a historical resource contained in the State CEQA Guidelines (PRC Section 15000 et seq.), the site may be treated in accordance with the provisions of PRC Section 21083, pertaining to unique archaeological resources.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

The term *indigenous*, rather than *prehistoric*, is used as a synonym for “Native American–related” (except when quoting). *Pre-contact* is used as a chronological adjective to refer to the period before the arrival of Euroamericans in the subject area. “Indigenous” and “pre-contact” are often but not always synonymous: The former term refers to a cultural affiliation and the latter is chronological.

This section also includes the key terms defined below.

- ◆ **Architectural Resource.** This resource type includes historic-era buildings, structures (e.g., bridges, canals, roads, utility lines, railroads), objects (e.g., monuments, boundary markers), and districts. Residences, cabins, barns, lighthouses, military-related features, industrial buildings, and bridges are some examples of architectural resources.
- ◆ **Archaeological Resource.** This resource type consists of indigenous, or pre-contact, and historic-era archaeological resources:
 - *Indigenous archaeological resources* consist of village sites, temporary camps, lithic scatters, roasting pits/hearths, milling features, petroglyphs, rock features, and burials. Associated artifacts include obsidian and chert flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris; culturally darkened soil (midden) containing heat-affected rocks, artifacts, or shellfish remains; and stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs). Indigenous sites that were occupied into the historic era can have both pre-contact and historic-era artifacts.
 - *Historic-era archaeological resources* consist of town sites, homesteads, agricultural or ranching features, mining-related features, refuse concentrations, and features or artifacts associated with early military and industrial land uses. Associated artifacts include stone, concrete, or adobe footings and walls; artifact-filled wells or privies; and deposits of metal, glass, and/or ceramic refuse.

If a resource is considered a ruin (e.g., a building lacking structural elements, a structure lacking a historic configuration), it is classified as an archaeological resource.

3.18.2 Environmental Setting

This section describes the types of indigenous resources, some of which could qualify as tribal cultural resources, that could be affected by the types of restoration projects that would be permitted under the Order. The area of analysis covers the entire geographic extent of California and includes many types of tribal cultural resources.

The ethnographic setting and examples of indigenous resource types that may qualify as tribal cultural resources are described here to allow analysis at a program level of detail. This description does not preclude the need for or replace any project-level environmental review.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

Ethnographic Setting

Beginning in the early 16th century, but primarily during the late 19th and early 20th centuries, Native American lifeways and languages (i.e., ethnographic data) were documented throughout California. Whether provided by professional ethnographers or archaeologists, by field personnel from government agencies such as the Bureau of Indian Affairs, or by soldiers, merchants, settlers, or travelers, ethnographic accounts partly illuminate the traditions, beliefs, and cultures of Native American groups during specific points in time. Synthesized narratives such as the *Handbook of North American Indians*, Volume 8: *California* (Heizer 1978) categorize Native traditions and practices documented at the time in California; however, the complexity of regional diversity should not be overlooked.

At least six primary language families exist in California, and there may be more than 300 different dialects of approximately 100 languages. The “geolinguistic mosaic of the ethnographic period, with a startling diversity of languages and language families” indicates numerous major population shifts and migrations (Golla 2007:71). Ethnographers have also quantified at least 60 greater Indian cultures and as many as 250 specific tribes throughout the state.

Similarities between California’s native populations crossed geographic, climatic, and cultural boundaries. Acorns, where available, were a staple throughout California. Native populations relied on deer, elk, small mammals, birds, and fish, and they used resources to their fullest extent, with little to no waste product. Ethnographically documented communities were generally focused on a central tribe with smaller satellite tribelets, although this characteristic varied by region. Shamanism and ceremonialism played important roles in the lives of most California Native Americans; the specific religious traditions themselves differed between groups. Basketry was widespread, and some southern tribes also manufactured pottery. Hunting, trapping, and fishing technologies were shared across tribal and cultural boundaries but varied depending on environmental conditions.

Native American fishing techniques along inland waterways included constructing fish weirs or dams across rivers to trap anadromous fish during upstream migration. Weirs were constructed of wood poles, logs, and small stakes to obstruct fish passage up a waterway. Some fish weirs were built and used by small groups, mainly individual families, but communal constructions were also common (Gould 1975). Organized labor teams from many surrounding villages worked cooperatively to collect logs for the construction of a communal fish weir, catch fish, gather firewood, and process the catch. The dam would be in place for approximately 10 days before the group would tear it down. Other methods of fishing included net traps, harpoons, spears, platforms, and clubs (Kroeber and Barrett 1960). Tule balsa canoes and dugout canoes were also used for fishing (Wilson and Towne 1978). Among the other important riverine subsistence species were steelhead, candlefish, lamprey, eel, and trout.

Trade was well developed in California. The use of shell beads as currency was an important economic and cultural practice for many tribes. Food, ornaments, household items, clothing, industrial materials such as obsidian, finished items including canoes, pottery, basketry, and tobacco were used for trade items. Trade networks were well

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

established, and although it appears that there were not professional traders, central villages served as focal points for trading (Heizer 1978).

Regional differences in Native American beliefs are significant, yet there is a common identity and relationship with the environment. California Native peoples believe that nature is interrelated and immersed with sacred power. Most California tribes have creation histories that often explain the origins of the earth, human existence, and individual cultural attributes. These histories have often taught morality or defined the establishment of elements. Modern Native American beliefs vary but are rooted in their ancestral land and traditions.

Indigenous Resources and Waterways

Water—whether present in springs, creeks, rivers, lakes, bays, or the ocean—is one of the most important resources necessary for human use and settlement. Water, and access to water, provides sustenance, travel and trade corridors, and traditional boundaries. Indigenous cultural resources are present along waterways throughout California.

Indigenous archaeological resources generally found along California’s waterways include permanent or semi-permanent habitation sites, temporary camps or food processing localities, and isolated artifacts. Archaeological materials that can be found at sites along waterways include obsidian and chert flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris; culturally darkened soil (midden) containing heat-affected rocks, artifacts, or shellfish remains; stone milling equipment (e.g., mortars, pestles, handstones, milling slabs); and battered stone tools, such as hammerstones and pitted stones. Native American human remains can also be found at indigenous archaeological sites. These types of resources are generally not within stream channels; rather, they are located on riverbanks and in surrounding areas.

Other indigenous archaeological site types that could be in or adjacent to waterways are fish weirs and platforms. Flooding and sediment deposition episodes over millennia have buried many of these archaeological sites, resulting in complex archaeological sites with components both at and below the surface.

In addition to archaeological resources and human remains that may also qualify as tribal cultural resources, a variety of tribal cultural resources that may or may not also qualify as archaeological resources or human remains may be present along or in the vicinity of waterways throughout California. Some examples of such tribal cultural resource types are sacred places, traditional gathering and hunting areas, viewsheds, and landscapes.

Contemporary Values of California Native Americans

Today, California Native Americans find membership amongst many federally recognized tribes, as well as California Native American Tribes. Tribes continue to maintain a thriving culture, a deep connection to traditional homelands, and reverence for ancestral sites and heritage.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

The following discussion regarding Tribal values and cultural continuity has been adapted from Rosenthal et al. (2021):

“Tribal sense of place is “inseparably intertwined” with their historic and contemporary sense of themselves. Places provide the backdrop to religious understanding, traditional stories, knowledge of resources such as varying landscapes, bodies of water, animals and plants, and self-identity. Knowledge of place is central to the continuation and persistence of culture, even if former [Native American] occupants now live removed from the core of their traditional homelands through no fault of their own. [Tribes] view...interconnected sites and places...as living entities within a Native American landscape; their associations and feeling persist and connect with Tribal members today.” (Rosenthal et al., 2021:21).

“Each Tribe has a differing view of [landscapes] with consideration to varying cultural components and values, and a different history within the same [l]andscape. Knowledge is held within each Tribal environment, integral to the thoughts and worldview of each Tribal member. Tribal political, economic, and physical relationships to the landscape are integral to traditional values and beliefs. In this respect, indigenous places continue to exist within, throughout, and outside of modern infrastructure. To the European way of framing worldviews, these concepts may seem abstract, but to many Tribal members, they are only commonsense, and involve innate abilities and traditions.” (Rosenthal et al., 2021:27).

“Tribes maintain a thriving culture and continue to have a deep connection to their traditional homelands and reverence for their ancestral sites and heritage that each of these places evokes.” (Rosenthal et al., 2021:40)

Native American Consultation

The State Water Board sent a notification via email to 171 tribes (Certified mail to 25 AB52 and standard mail to 146 Executive Order B-10-11 designated tribes) contacts on July 19, 2019. In response to the notification letter, the State Water Board consulted with the 10 tribes who responded to the project notification letter sent. Tribes requested and State Water Board continued to provide tribes public updates on development of the Order and continued to take tribes input and comments as the PEIR and Order were drafted. In addition, the tribes asked that the State Water Board include Tribal Cultural Resource measures in the Order that would:

- ◆ Require tribal notification of projects within their territories (especially projects with ground disturbing activities) as early as possible in the project development phase so tribes have an opportunity to comment on location, design, survey and monitoring plans
- ◆ Included additional tribal information in project notifications
- ◆ Include project information such as name, description, location, engineering plans, location, and extent of ground-disturbing activities

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

3.18.3 Regulatory Setting

This section discusses federal, state, and regional and local plans, policies, regulations, and laws, and ordinances pertaining to tribal cultural resources.

Future permitted restoration projects that would be implemented under the Order may be subject to the laws and regulations listed below, as well as other local or individual restoration project requirements, depending on the project location.

Federal

National Historic Preservation Act Section 106 (USC 470f)

The National Historic Preservation Act (NHPA) Section 106 as amended (Section 106, 16 USC 470f) requires federal agencies having direct or indirect jurisdiction over a proposed federal or federally assisted “undertaking” to take into account the effects of the undertaking on historic properties in the United States, including the outer continental shelf and the exclusive economic zone. The NHPA Advisory Council on Historic Preservation has issued regulations regarding the Section 106 process, which explain how Federal agencies must take into account the effects of their actions on historic properties.

Native American Graves Protection and Repatriation Act (Public Law 101-601; 25 USC 3001 et seq.)

The Native American Graves Protection and Repatriation Act (NAGPRA) (Public Law 101-601; 25 USC 3001 et seq.) of 1990 is a federal law that describes the process for federal agencies to return certain Native American cultural items (human remains, funerary objects, sacred objects, and objects of cultural patrimony) to linear descendants, Indian tribes, and Native Hawaiian organizations. NAGPRA includes regulations for unclaimed and culturally unidentifiable Native American cultural items, intentional and inadvertent discovery of Native American cultural items on Federal and tribal lands, and penalties for noncompliance and illegal trafficking. All federal agencies are subject to NAGPRA. The excavation and inadvertent discovery of provisions of NAGPRA apply only to Federal and tribal lands.

American Indian Religious Freedom Act (Public Law 95-341, 42 U.S.C. 1996 Section 1 and 2)

The American Indian Religious Freedom Act (AIRFA), enacted August 1978 as amended, protects and preserves American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of American Indian, Eskimo, Aleut, and Native Hawaiians, which includes but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rights (Pub. L. 95-341, §1, Aug. 11, 1978, 92 Stat. 469). The AIRFA requires policies of all governmental agencies to eliminate interference with the free exercise of Native religion and to accommodate access and use of religious sites to the extent that is practicable and consistent with an agency’s essential functions.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

State

California Environmental Quality Act

CEQA (PRC Section 21000 et seq.) is the principal statute governing environmental review of projects occurring in California. CEQA requires lead agencies to determine whether a proposed project would have a significant effect on the environment, including a significant effect on tribal cultural resources. Under CEQA (PRC Section 21084.2), a project that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.

Assembly Bill 52 and Tribal Cultural Resources

Assembly Bill (AB) 52, enacted in September 2014, recognizes that California Native American Tribes have expertise with regard to their tribal history and practices. The law established a new category of resources in CEQA, *tribal cultural resources*, to consider tribal cultural values when determining the impacts of projects (PRC Sections 21080.3.1, 21084.2, and 21084.3).

PRC Section 21074(a) defines a tribal cultural resource as any of the following:

- ◆ Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American Tribe that are either of the following:
 - Included or determined to be eligible for inclusion in the California Register [of Historical Resources].
 - Included in a local register of historical resources, as defined in PRC Section 5020.1(k).
- ◆ 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 these criteria, the lead agency would consider the significance of the resource to a California Native American Tribe.

A cultural landscape that meets the criteria of PRC Section 21074(a) is also a tribal cultural resource if the landscape is geographically defined in terms of the size and scope. 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 resource as defined in PRC Section 21083.2 may also be a tribal cultural resource under CEQA if it meets the criteria identified in PRC Section 21074(a).

AB 52 requires CEQA lead agencies to analyze the impacts of projects on tribal cultural resources separately from impacts on archaeological resources (PRC Sections 21074 and 21083.09) because tribal cultural resources have cultural values beyond their ability to yield data important to prehistory or history. AB 52 also defines tribal cultural resources in a new code section (PRC Section 21074; discussed above). Lead agencies must engage in additional consultation with California Native American Tribes (PRC Sections 21080.3.1, 21080.3.2, and 21082.3).

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

California Register of Historical Resources

The California Register is “an authoritative listing and guide to be used by State and local agencies, private groups, and citizens in identifying the existing historical resources of the State and to indicate which resources deserve to be protected, to the extent prudent and feasible, from substantial adverse change” (PRC Section 5024.1[a]). Under PRC Section 5024.1, certain resources are automatically included in the California Register, including California properties formally determined eligible for, or listed in, the National Register of Historic Places (National Register).

To be eligible for the California Register, a cultural resource must be significant at the federal, state, and/or local level under one or more of the following four 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

A resource eligible for the California Register must be of sufficient age, and retain enough of its historic character or appearance (integrity), to convey the reason for its significance. The California Register consists of resources that are listed automatically and those that must be nominated through an application and public hearing. The California Register automatically includes the following resources:

- ◆ California properties listed in the National Register and those formally determined eligible for the National Register
- ◆ California Registered Historical Landmarks from No. 770 onward
- ◆ California Points of Historical Interest that have been evaluated by the California Office of Historic Preservation and have been recommended to the State Historical Commission for inclusion in the California Register

The following other resources may be nominated to the California Register:

- ◆ Historical resources with a significance rating of Category 3, 4, or 5 (properties identified as eligible for listing in the National Register, the California Register, and/or a local jurisdiction register)
- ◆ Individual historic resources
- ◆ Historic resources contributing to historic districts
- ◆ Historic resources designated or listed as local landmarks, or designated under any local ordinance, such as an historic preservation overlay zone

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

California Public Resources Code Section 5097

PRC Section 5097.99, as amended, prohibits obtaining or possessing Native American artifacts or human remains that are taken from a Native American grave or cairn. Knowingly or willfully obtaining or possessing Native American artifacts or human remains is a felony punishable by imprisonment. Similarly, unlawful removal of any such items with an intent to sell or dissect or with malice or wantonness is a felony punishable by imprisonment.

California Native American Historic Resources Protection Act

The California Native American Historic Resources Protection Act of 2002 imposes civil penalties, including imprisonment and fines up to \$50,000 per violation, on persons who unlawfully and maliciously excavate upon, remove, destroy, injure, or deface a Native American historic, cultural, or sacred site that is listed or may be listed in the California Register.

California Health and Safety Code Section 7050.5

Section 7050.5 of the California Health and Safety Code protects human remains by prohibiting the disinterment, disturbance, or removal of human remains from any location other than a dedicated cemetery. PRC Section 5097.98 (reiterated in State CEQA Guidelines Section 15064.59[e]) also identifies steps to follow if human remains are accidentally discovered or recognized in any location other than a dedicated cemetery.

Regional and Local

The study area encompasses multiple counties with multiple cities throughout California. Many of these counties and cities have local regulations and general plans with tribal cultural resources goals and policies that guide development and encourage providing and maintaining open space resources and preserving areas of outstanding cultural value in their communities. Many cities and counties in the study area have goals and policies that promote the preservation and of the area's tribal cultural resources.

3.18.4 Impacts and Mitigation Measures

Methods of Analysis

Effective for projects for which an NOP or a notice of negative declaration/mitigated negative declaration was filed on or after July 1, 2015, CEQA requires that a project's impacts on tribal cultural resources be considered as part of the overall analysis of project impacts (PRC Sections 21080.3.1, 21084.2, and 21084.3). The significance of a tribal cultural resource is assessed by evaluating the following factors as they apply to the resource:

- (1) Eligibility for listing in the California Register
- (2) Eligibility as a unique archaeological resource pursuant to PRC Section 21083.2 (g)
- (3) Listing status in the California Native American Heritage Commission's Sacred Lands File

In addition, a lead agency can independently determine a resource to be a tribal cultural resource.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources. Therefore, the analysis of whether project impacts may result in a substantial adverse change to the significance of a tribal cultural resource depends heavily on the results of consultation between the lead agency and culturally affiliated California Native American Tribes during the CEQA process.

The precise locations and detailed characteristics of potential future individual restoration projects are yet to be determined. Therefore, this tribal cultural resources analysis focuses on reasonably foreseeable changes from implementation of the types of projects and actions that might be taken in the future consistent with the level of detail appropriate for a program-level analysis.

Permanent impacts are considered those that would result from indefinite environmental conditions created by projects permitted under the Order (e.g., new infrastructure such as pumps would be located indefinitely in one location, resulting in infrastructure that could be located within close proximity of a tribal cultural resource). Temporary impacts are considered those that would be temporary in nature (e.g., construction-related activities).

Thresholds of Significance

In accordance with Appendix G of the State CEQA Guidelines, an impact related to tribal cultural resources is considered significant if the types of projects that would be permitted under the Order would do any of the following:

- ◆ Cause a substantial adverse change in the significance of a tribal cultural resource, defined in PRC 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:
 - Listed or eligible for listing in the California Register, 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. In applying the criteria set forth in subdivision (c) of PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American Tribe.

Impacts and Mitigation Measures

Table 3.18-1 summarizes the impact conclusion presented in this section for easy reference.

As part of the State Water Board or Regional Board's issuance of a NOA for a restoration project under the Order, compliance with the general protection measures and mitigation measures listed below would be required when applicable to a given project. Not all general protection measures and mitigation measures would apply to all restoration projects. The applicability of the general protection measures and mitigation measures would depend on the individual restoration activities, project location, and the

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
 PROGRAM ENVIRONMENTAL IMPACT REPORT
 CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
 3.18 TRIBAL CULTURAL RESOURCES

potentially significant impacts of the individual restoration project. Implementation of the mitigation measures would be the responsibility of the project proponent(s) under the jurisdiction of the State Water Board, appropriate Regional Board, or other authorizing regulatory agency.

**Table 3.18-1
 Summary of Impact Conclusions—Tribal Cultural Resources**

Impact Statement	Construction Activities	Constructed Facilities and Operations and Maintenance
3.18-1: Implementing future restoration projects permitted under the Order could cause a substantial adverse change in the significance of a tribal cultural resource, as defined in PRC Section 21074.	SU	SU

Source: Data compiled by Environmental Science Associates in 2019 and 2020

Note: SU = significant and unavoidable

Project proponents shall submit a Sacred Lands File & Native American Contacts List Request to the Native American Heritage Commission (NAHC) at the initial stages of project development (or as early as practicable) to determine if a project would have an impact on Native American cultural resources. The project proponent shall coordinate with the approving Water Board or other CEQA lead agency, if applicable, as soon as possible whenever tribes that are traditionally and culturally affiliated to a project area are identified. Any tribe identified by the NAHC will require notification of the proposed project by the lead agency as soon as practicable during early design. Tribes will be consulted if a request is received after initial notification. Consultation will include discussion regarding project design, cultural resource survey, protocols for construction monitoring, and any other tribal concern. Construction of the project will not commence until the approving Water Board or other CEQA lead agency achieves compliance with the California Environmental Protection Agency Tribal Consultation Protocol (April 2018) and the State Water Board’s Tribal Consultation Policy (June 2019).

Impact 3.18-1: Implementing future restoration projects permitted under the Order could cause a substantial adverse change in the significance of a tribal cultural resource, as defined in PRC Section 21074.

Effects of Project Construction Activities

Construction for restoration projects permitted under the Order could involve ground disturbance, vibration, and removal of architectural resources (e.g., agricultural outbuildings, irrigation facilities, power poles, utility lines, piping) and vegetation (e.g., trees, stumps). Constructing these projects may also affect the biological resources community (e.g., fishes, riparian vegetation), visual setting, noise levels, and air quality, among other resources. However, the exact details, including locations, of any such construction activities have yet to be determined. Therefore, it is not known whether

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

implementing future restoration projects permitted under the Order would affect any tribal cultural resources.

Construction of new infrastructure or modifications to existing infrastructure (e.g., bridges, culverts, fishways and screens, dams, levees, water conveyance features) could result in significant impacts on tribal cultural resources by introducing new visual elements to landscapes associated with or comprising tribal cultural resources. Ground-disturbing activities could result in significant impacts on tribal cultural resources through their partial or complete destruction. In addition, construction activities could alter the makeup of biological communities (e.g., fishes, riparian vegetation) that comprise tribal cultural resources (e.g., traditional hunting/fishing/gathering areas). Any impacts of these construction activities on such tribal cultural resources could be significant.

If construction activities for any of the restoration projects permitted under the Order were to result in either a direct impact (e.g., physical modification, damage, or destruction) or an indirect impact (e.g., alteration to setting, biological community, or visual setting) on any tribal cultural resources as defined in PRC Section 21074, the impact would be **potentially significant**. The Order does not include any general protection measures applicable to this impact.

Effects of Constructed Facilities (Natural or Artificial Infrastructure) and Operations and Maintenance of those Facilities

Constructed facilities and operations and maintenance for restoration projects permitted under the Order could involve ground disturbance, vibration, and modifications to architectural resources (e.g., agricultural outbuildings, irrigation facilities, power poles, utility lines, piping) and vegetation (e.g., trees, stumps). These projects may also affect the biological resources community (e.g., fishes, riparian vegetation), visual setting, noise levels, and air quality, among other resources. However, the exact details, including locations, of any such facilities and operational activities have yet to be determined. Therefore, it is not known whether implementing future restoration projects permitted under the Order would affect any tribal cultural resources.

If constructed facilities and operations for any of the restoration projects permitted under the Order were to result in either a direct impact (e.g., physical modifications, damage, or destruction) or an indirect impact (e.g., alterations to setting, biological community, visual setting) on any tribal cultural resources as defined in PRC Section 21074, the impact would be **potentially significant**. The Order does not include any general protection measures applicable to this impact.

Impact Conclusion

Construction activities and constructed facilities and operations and maintenance for restoration projects permitted under the Order are the types of activities that have potential to affect tribal cultural resources. Because the exact details, including locations, of any such activities have yet to be determined, it is not known whether implementing restoration projects permitted under the Order would affect any tribal cultural resources. Factors necessary to identify specific impacts on tribal cultural resources include the design and footprint of a project, type, and precise location and

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

timing (i.e., seasonal access for cultural ceremonies or resources) of construction activities and facilities, and type and location of operations activities. If any of the future restoration projects permitted under the Order were to affect tribal cultural resources as defined in PRC Section 21074, the impact would be **potentially significant**. As described above, the Order does not include any general protection measures applicable to this impact.

As part of the State Water Board or Regional Board's issuance of a NOA for a restoration project under the Order, compliance with Mitigation Measure TCR-1,-TCR-2, and CUL-4 would be required when applicable to a given project. Implementation of this mitigation measure would be the responsibility of the project proponent(s) under the jurisdiction of the State Water Board, appropriate Regional Board, or other authorizing regulatory agency.

Mitigation Measure TCR-1: Conduct Inventory and Significance Evaluation of Tribal Cultural Resources with Tribes that are Culturally and Geographically Affiliated with the Project Vicinity

Before implementation of any project permitted under the Order, the following shall be conducted: consultation with California Native American Tribes pursuant to PRC Section 21080.3; a cultural resources records search; a California Native American Heritage Commission (NAHC) Sacred Lands File (SLF) search; and an inventory and significance evaluation of tribal cultural resources identified that could be impacted by the project. These tasks shall be conducted as follows.

- ◆ Project proponent shall submit an NAHC SLF & Native American Contacts List Request at the initial stages of project development (or as early as practicable) to determine if a project would have an impact on tribal cultural resources.
- ◆ Project proponent shall coordinate with the approving Water Board or other CEQA lead agency, if applicable, as soon as possible to identify California Native American Tribes that are traditionally and culturally affiliated to a project area. The CEQA lead agency shall then conduct Tribal consultation, pursuant to PRC Section 21080.3, and as soon as practicable during early design, with such Tribes to determine whether any tribal cultural resources could be affected by the project. Consultation will include discussion regarding project design, cultural resources surveys, identification of tribal cultural resources, protocols for construction monitoring, and any other Tribal concerns. Construction of the project will not commence until the approving Water Board or other CEQA lead agency achieves compliance with the California Environmental Protection Agency Tribal Consultation Protocol (April 2018) and consultation pursuant to PRC Section 21080.3 has been concluded. If potential tribal cultural resources that may be impacted by the project are identified through consultation with California Native American Tribes that are traditionally and culturally affiliated to a project area, the following shall be conducted:
 - Documentation of any tribal cultural resources identified in the project area, which may require additional tasks such as ethnographic research and interviews.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

- ◆ If tribal cultural resources are identified in a project area, develop, before project implementation and in coordination California Native American Tribes that are traditionally and culturally affiliated to a project area, an approach for reducing such impacts. If any such tribal cultural resources are on or in the tide and submerged lands of California, this process shall also include coordination with the California State Lands Commission.

Mitigation Measure TCR-2: Implement Measures to Protect Tribal Cultural Resources during Project Construction or Operation. These measures include, but are not limited to, those outlined in PRC Section 21084.3.

If tribal cultural resources or indigenous archaeological resources that may qualify as tribal cultural resources are encountered during project construction or operation of any project permitted under the Order, all activity within 100 feet of the find shall cease and the find shall be flagged for avoidance. The lead agency, a qualified archaeologist, defined as one meeting the U.S. Secretary of the Interior's Professional Qualifications Standards for Archeology, and California Native American Tribes that are traditionally and culturally affiliated to a project area shall be immediately informed of the discovery. The qualified archaeologist and representatives from the notified Native American Tribes shall inspect the discovery and notify the lead agency of their initial assessment.

If the lead agency determines, based on recommendations from the qualified archaeologist and California Native American Tribes that are traditionally and culturally affiliated to a project area, that the resource may qualify as a tribal cultural resource (per PRC Section 21074), then the resource shall be avoided if feasible. If avoidance of the resource is not feasible, the lead agency shall consult California Native American Tribes that are traditionally and culturally affiliated to a project area to determine treatment measures to minimize or mitigate any potential impacts on the resource pursuant to PRC Section 21083.2 and State CEQA Guidelines Section 15126.4. If any such resources are on or in the tide and submerged lands of California, this process shall also include coordination with the California State Lands Commission. Once treatment measures have been determined, the lead agency shall prepare and implement a tribal cultural resources management plan that outlines the treatment measures for the resource. Treatment measures typically consist of the following steps:

- ◆ Determine whether the resource qualifies as a tribal cultural resource (per PRC Section 21074) through analysis that could include additional ethnographic research, archaeological investigations, or laboratory analysis.
- ◆ If it qualifies as a tribal cultural resource (per PRC Section 21074) implement measures for avoiding or reducing impacts such as the following:
 - Avoid and preserve the resource in place through measures that include but are not limited to the following:
 - Plan and construct the project to avoid the resource and protect the cultural and natural context.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
CHAPTER 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES
3.18 TRIBAL CULTURAL RESOURCES

- Plan greenspace, parks, or other open space to incorporate the resources with culturally appropriate protection and management criteria.
- Treat the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, through measures that include but are not limited to the following:
 - Protect the cultural character and integrity of the resource.
 - Protect the traditional use of the resource.
 - Protect the confidentiality of the resource.
- Implement permanent conservation easements or other interests in real property, with cultural appropriate management criteria for the purposes of preserving or using the resource or place.

Mitigation Measure CUL-4: Implement Measures to Protect Human Remains during Project Construction or Operation

See Section 3.7.4, *Impacts and Mitigation Measures*, in Section 3.7, *Cultural Resources*.

Mitigation Measures TCR-1, TCR-2, and CUL-4 would be implemented to reduce the impacts of restoration projects permitted under the Order. However, because the extent and location of such actions are not known at this time, it is not possible to conclude that the mitigation measures, or equally effective mitigation measures, would reduce significant impacts to a less-than-significant level in all cases. Therefore, this impact would be **significant and unavoidable**.