

## **4.0 RESPONSES TO COMMENTS FROM THE WIYOT TRIBE**

### **4.1 NEED FOR A TIMELINE IN THE EIR**

This comment expresses the opinion that the Draft EIR lacks a “timeline” or “schedule” associated with the mitigation measures, and that these measures and the associated policies are “essentially meaningless.”

The District disagrees. CEQA does not require that an EIR contain a timeline or schedule for the implementation of mitigation measures – although when an EIR identifies one or more significant effects, which require the agency to make written findings (CEQA Guidelines section 15091), then CEQA does require the agency to adopt a program for monitoring or reporting on measures it has identified for mitigating or avoiding significant effects (CEQA Guidelines section 15097; see Chapter 1.0 in the Draft EIR). Such a mitigation monitoring or reporting plan is part of the CEQA process for this Plan.

In addition, as discussed in Chapter 1.0 of the Draft EIR, this programmatic EIR is focused on the policy content of the Management Plan, rather than specific projects. As explained in that chapter and elsewhere, the assessment of environmental effects in each issue area of the EIR resulted, where appropriate, in the identification of “mitigation measures” in the form of revisions, additions, and deletions with respect to the draft policies. Through this process the District’s intent was to develop a set of final policy directions that resulted in a Management Plan that is, to the extent possible, “self-mitigating.” In that way, decisions on specific projects or programs to implement the Management Plan will consistently be guided by these policies regardless of any “timeframe” or “schedule.” Future specific projects will also undergo additional CEQA reviews, tiered to this EIR.

### **4.2 CORRECT NAME FOR WIYOT TRIBE**

The District acknowledges that the official name of the tribe is now the “Wiyot Tribe,” and will no longer use the former name of “Table Bluff Reservation-Wiyot Tribe.”

### **4.3 TYPOGRAPHIC ERROR**

This comment is correct. The cited text should have read: “... *where* they had been archived ....”

### **4.4 GRANTS FROM THE STATE COASTAL CONSERVANCY**

This comment states that the date of the \$61,000 Coastal Conservancy grant to the tribe is incorrect. Upon further review, the District agrees, although the District notes that the comment does not raise a significant environmental issue. In this context, it should be noted that the information concerning the several grants and improvement projects was included in the Draft EIR solely to document the tribe’s recent interactions with other agencies and its overall management direction for tribal portions of Indian Island.

“In more recent years, the Wiyot Tribe has taken steps to protect and restore Indian Island and Tuluwat village, with the goal of restoring the traditional site of the tribe’s World Renewal Ceremony through the “Indian Island Cultural and Environmental Restoration Project” (Wiyot Tribe website 2006). In 2000, the tribe purchased 1.5 acres of Indian Island for the purpose of environmental and cultural restoration. Also at about that time, the State Coastal Conservancy provided funds to the Northern California Indian Development Council, Inc., a nonprofit organization, to prepare a feasibility plan for restoring salt marsh habitat, protecting archaeological resources, and providing interpretive and educational opportunities for 80-acre area north of the Highway 255 embankment. The study, completed in 2003, outlined a restoration project that included restoring and enhancing habitat, protecting cultural resources, removing hazardous materials from an historical boat repair yard, and controlling erosion.<sup>1</sup>

“In 2004, the tribe acquired approximately 60 acres of Indian Island north of Highway 255 from the City of Eureka. In that same year, the tribe was selected by the U.S. Environmental Protection Agency (EPA) to receive a \$200,000 brownfields cleanup grant to be used to clean up a contaminated dry dock and ship repair facility (USEPA 2004). Also in 2004, the tribe was awarded a \$56,840 grant from the National Park Service to protect the Tuluwat village midden from erosion caused by boat wakes, wind waves, tides and currents. In 2006, the tribe received a \$61,000 grant from the State Coastal Conservancy to establish native saltmarsh and upland vegetation at the Tulawat (sic) village site for the purposes of creating habitat and enhancing scenic values.”<sup>2</sup>

#### **4.5 INDIAN ISLAND TIDELAND MANAGEMENT**

This comment states an opinion that language in draft policy CEP-12 concerning reburial (of Native American remains) is not reflective of the Tribe’s cultural practices and policies and that the policy language must be removed.

The District recognizes that Indian Island is an area of significant cultural importance to the tribe and that the tribe is pursuing environmental and cultural restoration goals on land owned by the tribe north of Highway 255, although the District also concludes that the comment does not reflect a substantial issue for the EIR. Regarding uses of Indian Island, the District acknowledges that its enabling legislation (Chapter 1.0, Section 5.5) defines its jurisdiction as including only those portions of the bay’s islands bayward of the mean high tide line. As discussed in Chapter 12.0 of the Draft EIR, the District is not a land use planning agency and lacks legal authority to regulate land uses in upland areas adjacent to the bay. The District’s area of primary jurisdiction, however, does incorporate all tideland areas within the bay, and the District’s approach to baylands management must be consistent and even-handed among all users of the bay’s tidelands.

In overall management of this area of the bay, the District has an interest in working cooperatively with the Wiyot Tribe, the U.S. Fish and Wildlife Service (Humboldt Bay National Wildlife Refuge), and the City of Eureka in the protection of sensitive environmental and cultural resources and in the implementation of the HBMP.

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1 State Coastal Conservancy, Staff Recommendation; October 27, 2005: Indian Island – Tuluwat Site Habitat Enhancement Project (File No. 00-087-02) viewed June 2006 on the Conservancy’s website at <http://www.coastalconservancy.ca.gov/>.

2 Ibid.

Accordingly, Policy CEP-12 is revised to read as follows (deleted text in ~~strike through~~; added text underlined):<sup>3</sup>

**CEP-12: Indian Island use is restricted to environmental and Native American purposes, and management decisions shall be made cooperatively**

Policy: ~~Upland portions of Indian Island south of Highway 255 shall be managed pursuant to adopted City of Eureka plans as a site for habitat, scientific research, and education. Tideland areas shall be managed according to the policies set forth in this chapter. Existing uses may be maintained but shall not be expanded, except that reburial of Native American remains may be authorized by the District.~~

~~Indian Island north of Highway 255, to which the Wiyot Tribe received title in 2004, shall be managed pursuant to an agreement that will be developed between the District and the Tribe. Generally the tideland areas within this part of the island shall be governed by the management policies set forth in this chapter, unless pursuant to mutual agreement between the District and the Tribe.~~

The District shall consult with the City of Eureka, the Wiyot Tribe, and other interested parties in the management of uses and resources in the tidelands of Indian Island. Tideland areas subject to District jurisdiction shall be managed according to the policies set forth in this Plan. Tideland uses of tribally owned areas within Indian Island may include environmental restoration, cultural resource protection, brownfield cleanup, the Tribe's restoration of a traditional ceremonial site, and other uses that are compatible with the scope of this Plan.

#### **4.6 REVISION OF POLICY HFA-3**

This comment suggests that draft policy HFA-3 be revised to include a provision among the procedures to ensure compliance regarding cultural resources to make direct contact with affected tribal organizations. The District finds this to be a reasonable addition to this policy, which was intended to suggest a variety of possible approaches, although this procedural context does not reflect a substantial environmental issue. The items listed in the draft policy were summarized from a list of recommendations provided by the Native American Heritage Commission (see Responses to the Notice of Preparation in Draft EIR Appendix A). The draft language of new Policy HFA-3 from the Draft EIR is amended to read as follows (all new text underlined):

**HFA-3: Institute procedures to ensure compliance regarding cultural resources and related matters**

Policy: In implementing this plan, the District shall ensure that project proponents comply with state law and regulations (including, but not limited to, CEQA, the CEQA Guidelines, and recommendations of the Native American Heritage Commission) with respect to identifying and mitigating potential effects on historical properties, archaeological sites, and human remains. The District shall consider the following procedures, as appropriate:

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<sup>3</sup> The "original" text of Policy CEP-12 shown above is the text in the Draft Management Plan. The amended text presented above is therefore a substitution for the amended text shown on page 14-18 of the Draft EIR. The District has concluded that the substitute measure will be no less protective of environmental values than would the suggested text in the Draft EIR.

- a. Contacting the affected or potentially affected tribal organizations
- b. Contacting the North Coast office of the California Historic Resources Information Center to obtain a cultural resources records search
- c. Conducting archaeological field investigations
- d. Contacting the Native American Heritage Commission for a Sacred Lands file search
- e. Including in construction plans and documents provisions to be followed in the event of an accidental discovery and, in areas of known cultural sensitivity, to arrange for the presence of a certified archaeologist and/or a culturally affiliated Native American monitor
- f. In cases where significant cultural resources are identified in project planning, considering avoidance as defined in Section 15370

#### **4.7 POSSIBLE REVISION OF POLICY CAS-6**

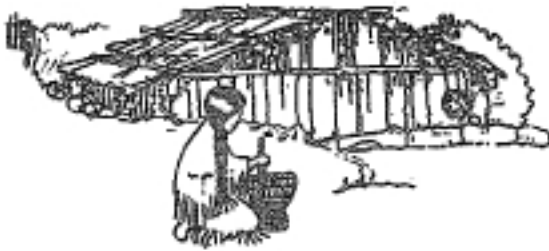
The comment requests that the word “minor” be removed from revised Policy CAS-6, regarding the District’s authorization of fill for cultural resource protection purposes. As presented in the Draft EIR, this policy reads as follows (all new text underlined):

**CAS-6: Fill placement may be used for cultural resource protection purposes**

Policy: The District may authorize the placement of minor amounts of fill in order to protect sensitive cultural resource sites in danger of erosion, saltwater intrusion, or other potential damage or degradation. Such fill shall be placed only following a demonstration that no other method adequately protects the sensitive cultural resource sites.

The District finds that this comment raises a substantial issue regarding the management of Humboldt Bay. This policy was crafted to be intentionally parallel to similar policies in other sections of the Plan (see Policies HWM-4, RFA-8, and CAS-5), which provide a policy basis for the District to allow impacts to wetlands from limited placement of fill under specified conditions, in order to accomplish Management Plan programmatic objectives. Authorization for unrestricted filling within the tidelands of Humboldt Bay is not compatible with these objectives. Therefore the District has concluded that changing the policy would create circumstances that are substantially inconsistent among Plan policy elements, and the District will retain the policy as presented in the Draft EIR.

The word “minor” also acknowledges that the District lacks authority to unilaterally authorize unlimited fill placement. Fill cannot be placed within the bay’s tidelands without additional authorizations from other state and federal agencies, and responsible bay management requires a degree of consistency among the requirements of the several agencies with tideland management authority.



# Wiyot Tribe

RECEIVED

MAY 30 2006

H.B.H.R. & C.D.

May 25, 2006

Humboldt Bay Harbor, Recreation, and Conservation District  
David Hull  
PO Box 1030  
Eureka, CA 95502

**Re: Comments on Draft EIR**

Dear Mr. Hull,

The Wiyot Tribe has reviewed the draft EIR for the Humboldt Bay Management Plan. Overall, it is clear the District has made noteworthy improvements in its consideration of the Wiyot Tribe and associated cultural and environmental interests.

The Wiyot Tribe very much looks forward to working with the District on the referenced MOU and other activities through which we can help the District better manage cultural resources. Please feel absolutely welcome to contact the Wiyot Tribe at any point in time to begin this critical collaborative effort.

- 4.1 | The one aspect of the draft EIR that is consistently lacking is a timeline or a schedule associated with the attainment of mitigation policies. Without such a timeline, these mitigation measures and associated policies are essentially meaningless. This conundrum is magnified by the fact that there is also not a "trigger" for implementing these mitigation measures absent public pressure. The Wiyot Tribe does not believe it is our responsibility nor the responsibility of the general public to ensure the District meets its own self-authored requirements. The Wiyot Tribe strongly encourages the District to include a timeline in the final EIR to ensure mitigation measures are actually completed. Otherwise, the District will have moved forward with adverse impacts without completing the correlating mitigation requirements.

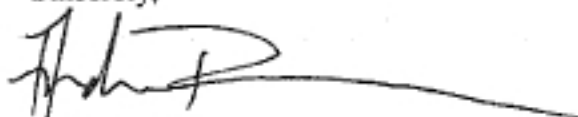
The Wiyot Tribe does have a handful of specific comments. These are generally technical details. The Wiyot Tribe expects these comments will be edited into the final EIR.

- 4.2 | 1. The name of the Wiyot Tribe was officially changed on the Federal Register this past winter. Instead of "Table Bluff Reservation-Wiyot Tribe," the tribe is now called only "Wiyot Tribe." Please change your document accordingly to reflect the new name.
- 4.3 | 2. Page 14-3 has a typo in the third paragraph. The fifth line should begin with "where," not "were."

- 4.4 | 3. Page 14-4 incorrectly states the Wiyot Tribe received a \$61,000 grant from the Coastal Conservancy in 2001. This is incorrect. The erosion control grant referred to was received in 2006. A prior grant from the Coastal Conservancy was awarded to author a Feasibility Study for the cultural and environmental restoration of the Tuluwat Village site on Indian Island.
- 4.5 | 4. On page 14-18, the final three lines of CEP-12 referring to reburial absolutely must be removed. This was communicated quite clearly<sup>1</sup> to the document's authors by the Wiyot Tribe in February of 2006, as well in during our prior two letters of formal comment to the District for the Humboldt Bay Management Plan. The Wiyot Tribe has no plans or goals to implement reburial on Indian Island. Regardless, reburial would never occur in tidelands, as written in the draft EIR, but on uplands. Furthermore, reburial is not a use in and of itself. It is an activity that would categorically fall under the cultural resource protection, already described in CEP-12. The reference is offensive and is a relic of base text from the City of Eureka's General Plan, an archaic document. Again, this text must absolutely be removed. Its intent will be intact with the remaining, more appropriate, language in CEP-12.
- 4.6 | 5. On page 14-19 under HFA-3, please also list direct contact of affected tribal organizations. Already, this is the practice of the City of Arcata, the City of Eureka, and Humboldt County. It seems reasonable to expect the District to also contact the Wiyot Tribe in these circumstances, in addition to the other entities listed.
- 4.7 | 6. On page 14-19, please remove the word "minor" from CAS-6. There should be no restriction on the amount of fill available for the protection of the cultural resources, above and beyond what is allowable by stated and federal regulations. To restrict this practice to minor fill only would negate the practicality of protecting cultural resources through this mechanism.

Thank you very much for taking the time to consider these important comments.

Sincerely,



Andrea Davis  
Environmental Director

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<sup>1</sup> I recall specifically saying, "Highlight the text and hit the delete button."