

3.10 Land Use and Planning

This section contains a discussion of the existing land uses in the study area, and evaluates the potential impacts related to land use and planning 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. For this section the study area is the same as the Project Area.

3.10.1 Setting

Existing Land Use

The study area is located near the community of Loleta, in Humboldt County. It is generally bounded by the Pacific Ocean to the west, North Bay to the south, McNulty Slough to the east and Table Bluff to the north. As described in Chapter 2, Project Description, the study area is located in the Ocean Ranch Unit (ORU) of the approximate 2,600 acre (1,052 hectare) Eel River Wildlife Area (ERWA), which has been owned by the California Department of Fish and Wildlife (CDFW) since 1951, and managed for fish and wildlife habitat and wildlife-oriented public recreational use.

Historically, much of the area that is now the ORU was estuarine saltmarsh. Sometime between 1916 and 1948, the saltmarsh portion of the ORU was diked, isolated from tidal waters, and drained to create pasture through tide gates to McNulty Slough. In 1986, the Ocean Ranch property was acquired by CDFW to be managed as shallow freshwater habitat for waterfowl and other native wildlife (see Figure 2-2 Project Area). The Ocean Ranch property was divided into five distinct management areas, denoted as Areas A through E. In 1994, a levee breach occurred along McNulty Slough and caused flooding of Area A. The breach, in combination with subsequent failures of other water control structures within Ocean Ranch and between Ocean Ranch, McNulty Slough and North Bay have resulted in decisions to discontinue management and maintenance of artificial freshwater wetland habitat, and have allowed most of the area to revert to saltmarsh and/or brackish marsh.

The Project Area currently has approximately 3.5 miles (5.6 kilometers) of ocean front dunes dominated by invasive European beachgrass, as well as slough channels, mud flats, tidally inundated saltmarsh dominated by invasive dense-flowered cordgrass, historic dikes, and some brackish and freshwater wetlands.

The predominant use of the study area is wildlife habitat, where a diverse variety of species utilize habitats onsite, including a large assemblage of fishes; marine mammals; numerous birds, including raptors, waterfowl, shorebirds, and songbirds;

amphibians; and reptiles. Primary recreational uses include hunting, wildlife viewing, art, science, spiritual rejuvenation, contemplation, and social gathering.

Surrounding Land Uses

Land uses in the vicinity of the study area are dominated by agriculture. Recreational opportunities exist north of the study area at the Table Bluff County Park and the South Spit Wildlife Area, as well as southeast of the study area at Crab Park. As noted above, the Project is located within the ERWA, which extends south and east of the study area and contains saltmarsh, pasture, wet meadow, brackish marsh, and coastal scrub. The ERWA also includes one of the largest riparian forests remaining on California's North Coast (CDFW 2018). A wide variety of wildlife utilize the ERWA and recreational uses include fishing, wildlife viewing, birdwatching, hiking and hunting.

General Plan Land Use and Zoning

Lands within the study area are owned by CDFW or are under the jurisdiction of the State Lands Commission (SLC) and are not subject to land use review by Humboldt County. Therefore, a discussion of local and regional land use, planning, or regulatory policies are not included in this section. The following paragraphs specific to the Humboldt County land use designations, zoning, and permitted uses for the study area are included for informative purposes, and to provide context for other analyses in this Draft EIR where the study area has been expanded and where local land use planning policies may apply (see Section 3.0, Introduction).

The study area is located on land designated as predominantly Agricultural Exclusive, and Commercial Recreation in the Humboldt County General Plan. The zoning of the study area is primarily Agriculture Exclusive, 60-acre (24 hectares) minimum (AE-60), combined with Coastal Wetlands (W), Flood Hazard Areas (F), Streams and Riparian Corridor Protection (R), and Transitional Agricultural Lands (T). Principally permitted uses in the AE-60 zone include single family residential, general agriculture, timber production, and cottage industries. Conditionally permitted uses in the AE-60 zone include wetland restoration, fish and wildlife management, watershed management, resource-related recreation and coastal access facilities. Zoning at the northern extent of the study area is Commercial Recreation (CR) with a combining zone of Beach and Dune Areas (B). The principally permitted use in the CR zone includes public recreation. Conditionally permitted uses in the CR zone include a variety of residential, civic, commercial and natural resources uses including fish and wildlife habitat management, watershed management, and wetland restoration. The zoning of slough and other portions of the study area are Natural Resources (NR/R). The principally permitted use for natural resources zoned land is management for fish and wildlife. Conditionally permitted uses in the NR/R zone include wetland restoration, development of hunting blinds and similar minor facilities, improvement of boating facilities in estuaries, access way development and improvement and removal of trees for firewood, disease control and public safety purposes.

3.10.2 Regulatory Framework

Federal

There are no federal land use plans, policies or regulations pertaining to the Project.

State

State Lands Commission Policy

The SLC is a trustee agency for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on sovereign land, the SLC will act as a responsible agency under CEQA.

The SLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways across California. The SLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions. All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The state holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation and open space. On tidal waterways, the state's sovereign fee ownership extends landward to the mean high water line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court (SLC 2018a).

Lands owned by the state and which are under the jurisdiction of the SLC may be leased for such purpose or purposes as the SLC deems advisable including but not limited to, grazing leases and leases for commercial, industrial and recreational purposes. The Project Area is currently under a 49-year General Permit Lease Number PRC 7153.9, granted in 1988, which authorizes levee construction and maintenance for wildlife habitat restoration. The Project, which includes estuarine restoration, would occur within the lease area on tidally influenced state sovereign land and is authorized under the current lease (SLC 2018b).

A portion of the dune restoration area is located outside of the lease area and is on lands the state acquired as swamp and overflowed land. The SLC subsequently transferred jurisdiction and control of the land to CDFW but retained control over all minerals. Upon review of information and SLC records, the SLC has determined that the activities proposed for the dune restoration area will not affect minerals under the jurisdiction of the SLC (SLC 2018b).

Although a lease amendment is not required, the SLC policy pertaining to amendments, modifications or revocations to granted tidal or submerged lands is listed below.

Public Resources Code, Division 6. Public Lands, Part 2. Leasing of Public Lands.

Chapter 2. Development and Improvement of Granted Tide and Submerged Lands [6701-6707]

6701. Subject to the provisions of Section 6702, no amendment, modification, or revocation, in whole or in part, of any grant of tide or submerged lands heretofore made or that may be hereafter made by the Legislature shall impair or affect the rights or obligations of third parties, including lessees, lenders for value, holders of contracts conferring the right to the use and occupation of, or the right to conduct operations upon or within such lands, arising from leases, contracts, or other instruments lawfully entered into prior to the effective date of such amendment, modification or revocation.

California Coastal Act Policy

The Project is within the California's Coastal Zone. Multiple California Coastal Act (Coastal Act) policies governing land and marine resources apply to the Project. Coastal Act sections applicable to land use include:

Section 30001.5 Legislative findings and declarations; goals

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

- (a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.*
- (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.*
- (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.*
- (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.*
- (e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.*

Section 30230 Marine resources; maintenance

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine

environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30233 Diking, filling or dredging; continued movement of sediment and nutrients

(a) *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

(1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*

(2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*

(3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

(4) *Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

(5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*

(6) *Restoration purposes.*

(7) *Nature study, aquaculture, or similar resource-dependent activities.*

(b) *Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.*

(c) *In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary.*

- (d) *Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients, which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.*

Section 30241 Prime agricultural land; maintenance in agricultural production

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

- (a) *By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.*
- (b) *By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.*
- (c) *By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.*
- (d) *By developing available lands not suited for agriculture prior to the conversion of agricultural lands.*
- (e) *By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.*
- (f) *By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.*

The Project is funded in part by the National Oceanic and Atmospheric (NOAA) Restoration Center through a Community-Based Restoration Program (CRP) Grant. As a federal funding agency, the NOAA Restoration Center has requested the

California Coastal Commission (CCC) review the Project using the Federal Consistency review process described in the Coastal Zone Management Act (CZMA), rather than through issuance of a Coastal Development Permit. Subject to the federal consistency provisions of CZMA, the NOAA Restoration Center will submit a Consistency Determination to the CCC that includes a detailed description of the Project, a discussion of anticipated coastal effects, and an evaluation of the Project's consistency with the policies of the Coastal Act, as well as a statement indicating that Project will be undertaken in a manner that is consistent to the maximum extent practicable with the California Coastal Management Program.

Regional and Local

As described above, lands within the Project Area are owned by CDFW or are under the jurisdiction of the SLC and are not subject to land use review by Humboldt County. Therefore, a discussion of local and regional land use, planning, or regulatory policies are not included in this section.

3.10.3 Evaluation Criteria and Significance Thresholds

The Project would cause a significant impact related to land use and planning, as defined by the CEQA Guidelines (Appendix G), if it would:

- Physically divide an established community; or
- Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

3.10.4 Methodology

As described above, the study area for land use and planning is the same as the Project Area, and contains uplands, tidal lands and submerged lands. A significant impact would occur if implementation of the Project would result in inconsistencies or conflicts on these lands with the adopted goals and policies of applicable rules and regulations of the Coastal Act or SLC.

Areas of No Project Impact

Construction, invasive plant management and maintenance of the Project would not result in impacts related to one of the significance criterion identified in Appendix G of the current CEQA Guidelines. Because the Project would not impact the following significance criteria, this criterion is not discussed further in the impact analysis:

- **Would the Project physically divide an established community?** There are no residential uses within the study area and the study area is not part of an established community. The nearest community is Loleta, located approximately four miles (6.4 kilometers) to the east. No aspect of the Project would physically divide the community of Loleta or other established community.

3.10.5 Impacts and Mitigation Measures

Impact: LU-1: Would the Project cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?

The study area has been managed for wetlands and wildlife habitat for nearly five decades. The Project would improve the tidal hydrologic function onsite and would not cause a major deviation from the land uses practiced onsite for the last fifty years.

The wetlands and slough features within the study area were modified in the early part of the 20th century through the construction of levees which created “dry” land conditions able to support agricultural use. The study area has not been utilized for agricultural use since the 1980’s, however approximately 28 acres (11.3 hectares) of the study area is considered to contain prime farmland if irrigated (NRCS 2017). This soil type is thought to be a remnant feature resulting from the land modifications described above, which is further discussed in Section 3.2 (Agricultural & Forestry Resources).

The CCC has jurisdiction over the study area and requires projects be consistent with the Coastal Act. California Coastal Act Sections 30001.5, 30230, 30233, and 30241 were determined to be applicable to the Project. Section 30001.5 focuses on the protection, restoration, and conservation of coastal resources, as well as maximizing access to coastal resources. Section 30230 focuses on maintaining, enhancing, and, where feasible, restoring marine resources. Section 30233 lists the allowable reasons for diking, filling, or dredging within the coastal zone. Section 30241 seeks to maintain the maximum amount of prime agricultural land, to ensure the protection of the area’s agricultural economy, and minimize conflicts between agricultural and urban land uses. The Project’s primary purpose is habitat restoration and improved public access. The Project would restore and enhance the Project Area through restoration of 571 acres (231 hectares) of saltmarsh, and 279 acres (113 hectares) of coastal dunes, as well as provide additional recreational opportunities through creation of a non-motorized trail system, boat put-in, and other recreational amenities. Restoration is also an allowable reason for diking, filling, or dredging within the coastal zone. Accordingly, the Project would be consistent with Section 30001.5, 30230, and 30233 of the Coastal Act.

In regards to Section 30241, although the study area contains some land designated as Prime Farmland, implementation of the Project would not interfere with agriculture production nor would it convert the prime farmland to an urban use. The study area is not currently being utilized for agricultural use – and has not been for nearly 30 years - and therefore would not conflict with Section 30241 of the Coastal Act. A discussion of how the Project complies with other agriculture-related policies of the Coastal Act is provided in Section 3.2 (Agriculture and Forestry Resources). In addition, the NOAA Restoration Center will submit a Consistency Determination to the CCC to verify the Project is consistent to the maximum extent possible with the Coastal Act.

The lease granted to CDFW by SLC regarding all lands under their jurisdiction authorizes improvements to the levee and tide gate system in the study area for maintenance and enhancement of wildlife values of the area (SLC 1987). The SLC reviewed all activities proposed under the Project in October 2018 and determined that implementation of the Project would not require a new or amended lease (SLC 2018b).

In conclusion, the Project would not conflict with an applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project including the CCC or SLC. Accordingly, no impact on land use or planning would occur.

Mitigation Measures: No mitigation is necessary.

Level of Significance: No impact.

3.10.6 Cumulative Impacts

Impact: LU-C-1: Would the Project contribute to a cumulatively significant impact related to land use and planning?

As discussed in Section 3.10.4, the Project would not result in impacts relative to dividing an established community. Therefore, implementation of the Project would not contribute to any related cumulative impact on any community in the vicinity. As discussed in Impact LU-1, the Project would not conflict with an applicable land use plan, policy or regulation of an agency with jurisdiction over the Project; because there is no impact related to land use planning, the Project would not contribute to any related cumulative impact.

Mitigation Measures: No mitigation is necessary.

Level of Significance: No Impact.

3.10.7 References

California Department of Fish and Wildlife (CDFW). 2018. Eel River Wildlife Area. Available at: <https://www.wildlife.ca.gov/Lands/Places-to-Visit/Eel-River-WA>

Humboldt County. 2017. General Plan, October.

Humboldt County. 1989. Humboldt County General Plan Volume II Eel River Area Plan of the Humboldt County Local Coastal Program, October.

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State Lands Commission (SLC). 1987. Lease, July.

State Lands Commission (SLC). Mail correspondence, Subject: Notice of Preparation (NOP) for a Draft Environmental Impact Report (EIR) for the Ocean Ranch Restoration Project, Humboldt County (July 16, 2018a)

State Lands Commission (SLC). Mail correspondence, Subject: Ocean Ranch Restoration Project, Humboldt County (October 29, 2018b).