

CALIFORNIA STATE LANDS COMMISSION
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Established in 1938



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Steve Werner, Senior Planner
County of Humboldt
Planning & Building Department, Planning Division
3015 H Street
Eureka, CA 95501

VIA REGULAR & ELECTRONIC MAIL (SWerner@co.humboldt.ca.us)

Subject: Draft Environmental Impact Report (EIR) for the Humboldt Wind Energy Project, Humboldt County

Dear Mr. Werner:

The California State Lands Commission (Commission) staff has reviewed the subject Draft EIR for the Humboldt Wind Energy Project (Project), which is being prepared by the County of Humboldt Planning and Building Department, Planning Division (County). The County is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on State sovereign land, the Commission will act as a responsible agency.

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). 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.

As general background, 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 tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

The Eel River, at the Project location, includes State-owned sovereign land and, as Table 2-6 in the Draft EIR correctly asserts, a lease from the Commission will be required for the crossing under the Eel River as part of the Project.

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(Cont.)

Project Description

The Project would construct and operate up to 60 wind turbine generators (WTGs) and associated infrastructure with a nameplate generating capacity (i.e., theoretical maximum energy generation) of up to 155 megawatts (MW). In addition to the wind turbines and transformers, the Project would include ancillary facilities such as temporary staging areas, access roads, 34.5-kilovolt (kV) collection lines (collection system), an operations and maintenance (O&M) building, a substation with energy storage infrastructure, utility switchyard modification, and a 115-kV gen-tie. A segment of the gen-tie would cross the Eel River, which would be constructed underground using a horizontal directional drilling technique. The project's point of interconnection with the Pacific Gas and Electric Company (PG&E) transmission grid would be PG&E's Bridgeville Substation.

Environmental Review

Commission staff requests that the County consider the following comments on the Draft EIR, to ensure that impacts to Public Trust resources and State sovereign land are adequately analyzed for the Commission's use of the EIR to support a future lease approval for the Project.

Biological Resources

1. **Invasive Species**: One of the major stressors in California waterways is introduced species. The Draft EIR analyzes impacts related to land-based invasive species but does not do the same for aquatic invasive species (AIS). Therefore, the Draft EIR should consider the Project's potential to encourage the establishment or proliferation of AIS such as the quagga mussel, or other nonindigenous, invasive aquatic species including aquatic plants. For example, construction equipment brought in from long stays at distant projects may transport new species to the Project area via hull biofouling or found in soil transport of work and hauling vehicles. Marine and aquatic organisms attach to and accumulate on the hull and other submerged parts of a vessel, such as the barges that will be transporting Project

S3-2

materials into Humboldt Bay. If the analysis in the Draft EIR finds potentially significant AIS and plant impacts, possible mitigation could include contracting vessels from nearby, or requiring contractors to perform a certain degree of hull and vehicle-cleaning. The CDFW's Invasive Species Program could assist with this analysis as well as with the development of appropriate mitigation (information at <https://www.wildlife.ca.gov/Conservation/Invasives>).

S3-2
(Cont.)

Cultural Resources

2. The Draft EIR states that the Project may affect traditional Cultural and Tribal properties within the proposed Project footprint. The EIR identifies significant and unavoidable impacts to the Significance of a Historical Resource and to the Significance of a Tribal Cultural Resource (Impacts 3.6-3 and 3.6-4, respectively). Commission staff suggest that all proposed mitigation be developed in consultation with the Tribal groups that will be impacted by the final selected alternative. Mitigation for the impacts affecting Tribal resources should be clear and the mitigation for the proposed Project impacts should be approved by the Tribal groups.

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Recreation

3. The EIR should include a more robust discussion of potential Recreation impacts. The Draft EIR currently contains a brief, conclusory one-paragraph discussion that states that the Project would have no impact on recreation because the Project would not generate new residents. The Draft EIR does not consider potential recreational impacts that could occur through Project-generated public access restrictions to Public Trust resources such as the Eel River. These potential impacts would not be restricted to new residents. As a responsible agency and a trustee of Public Trust resources, the Commission will need to understand and be able to evaluate the Project's potential Recreational impacts to sovereign Public Trust land in order to approve the lease that will be required for the Project.¹ For this reason, a thorough impact analysis of access to the Eel River above and below the proposed 115-kV gen-tie should be included in the EIR to evaluate impacts to Eel River access during construction. Commission staff strongly encourages an analysis of potential impacts to public access sites within the proposed Project footprint and downstream of the 115-kV gen-tie. Any future Project maintenance requirements of the below surface crossing of Eel River gen-tie should be identified and evaluated for future activities. The analysis should consider how the public may be affected by the proposed Project, including impacts to various forms of recreation, fishing, and navigation, and include mitigation to reduce or avoid such impacts along the impacted reach of the Eel River.

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¹ For additional information on the Public Trust and the public's rights to access and use sovereign lands and navigable waters (see <https://www.slc.ca.gov/public-engagement/>).

Environmental Justice

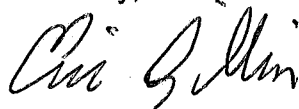
4. The Draft EIR does not state whether the County intends to discuss and analyze potential environmental justice related issues, including an assessment of public access and equity implications and who would bear the burdens or benefits from the proposed Project. Commission staff believes the Draft EIR, as an informational public document, is an appropriate vehicle to disclose and discuss how the proposed Project would attain or be consistent with the County's equity goals and statewide policy direction.

Thank you for the opportunity to comment on the Draft EIR for the Project. As a responsible agency, the Commission will need to rely on the certified EIR for the issuance of any amended or new lease as specified above and, therefore, we request that you consider our comments prior to certification of the EIR.

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Please send copies of future Project-related documents, including electronic copies of the Final EIR, Mitigation Monitoring and Reporting Program, Notice of Determination, CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available. Please refer questions concerning environmental review to Christopher Huitt, Senior Environmental Scientist, at (916) 574-2080 or christopher.huitt@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Ninette Lee, Public Land Manager, at (916) 574-1869 or ninette.lee@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
J. Garrett, Commission
C. Huitt, Commission
N. Lee, Commission