

# BLUE LAKE RANCHERIA

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August 25, 2023

Larry Oetker, Executive Director  
Rob Holmlund, Director of Development  
Humboldt Bay Harbor, Recreation, and Conservation District  
P.O. Box 1030  
Eureka, California 95502-1030

Via Email to: [loetker@humboldtby.org](mailto:loetker@humboldtby.org) and [districtplanner@humboldtby.org](mailto:districtplanner@humboldtby.org)

**Re: Blue Lake Rancheria Comments on Notice of Preparation of a Draft Environmental Impact Report for the Humboldt Bay Offshore Wind Heavy Lift Multipurpose Marine Terminal Project.**

To Executive Director Oetker, and Director Holmlund, and Others This May Concern:

The Blue Lake Rancheria, a federally recognized Wiyot Area Tribal Nation and government (Tribe) submits these comments on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Humboldt Bay Offshore Wind Heavy Lift Multipurpose Marine Terminal Project (Project) released June 26, 2023, by the Humboldt Bay Harbor, Recreation and Conservation District (Harbor District).

This comment letter includes the Tribe's general and contextual comments and increasing concerns for this Project, incorporates and attaches the Redwood Region Climate and Community Resilience Hub (CORE Hub) technical comments which the Tribe is a signatory to, and includes selected DEIR scoping recommendations which are unfortunately brief due to inadequate time to comment.

The Tribe is an internationally recognized leader in climate resilient infrastructure development and decarbonization strategies. The Tribe has extensive experience forming strategic partnerships (including with other Tribes, local governments and agencies, state and federal governments, and our regional subject matter experts, and some of the largest vendors and contractors in the nation/globe) to deliver leading-edge energy and related infrastructure on time, on budget, and with the lowest possible carbon footprint. The Tribe's success in these areas includes capital projects of over \$200 million, and an indirect economic benefit for the region of over \$320 million. The Tribe's projects are also designed to deliver crucial community benefits, including resources and infrastructure for emergency preparedness and response.

The Tribe is deeply concerned about the impacts of climate change to Humboldt Bay and other cultural and natural resources and supports immediate action to decarbonize our shared energy and infrastructure systems. The Tribe is serious about implementation of climate change mitigations, and understands from governmental, regulatory, and owner / operator experience how to embrace new technologies, equipment, and systems as models that have then made significant market development

impacts through replication. The Tribe understands the importance of future-proofing projects for emerging technologies which may not be available or cost effective today but will be in the immediate or near-term future. Further, the Tribe understands how to create projects with bold climate and social benefit narratives that are successful in obtaining public and private funding, in-kind technical assistance, and other resources.

The Tribe has also suffered significant harms from past exploitative and extractive economic eras, including the gold rush, timber rush, land rush, salmon rush, water rush, cannabis rush, and biomass energy rush. All these have, to varying degrees, exploited natural resources, extracted wealth from the region, and consolidated power in grossly inequitable ways. The Tribe is also the only Tribal Nation with lands spanning the Mad River / Baduwa't and is an active co-manager of the Mad River / Baduwa't watershed, with decades of providing robust air and water quality monitoring, fish counts, ecosystem studies, data collection, and tributary, fish passage, riparian, and in-stream restoration activities. Balancing ecosystem health with economic development is one of the Tribe's areas of expertise.

#### **Concerns Regarding Capacity, Expertise, Project Scale**

The Project will create enormous changes in Humboldt Bay and surrounding areas and ecosystems, growing from a port with relatively small amounts of commercial operations and the Harbor District's current annual operating budget in the tens of millions, to a port with a profile that will likely be equivalent to larger commercial ports, and annual project and operating budgets in the billions.

The Tribe is highly concerned about the Harbor District's lack of experience with large port operations and projects of this size. As a case in point, the Harbor District's process to develop the Project to date has fallen far short of the minimum requirements for collaborative engagement with Tribal Nations and has led to the unacceptable selection by the Harbor District of Crowley Maritime Services (Crowley) within an exclusive right to negotiate agreement as a potential port development partner. The selection process was evidently done without engagement with the Tribe, or apparently without engagement with other Tribes or constituencies in the region. Evidence of this is available on the Harbor District's website.

The Tribe requires "justice beyond jobs," where these once-in-a-generation wind energy industry projects bring far more equitable infrastructure and economic benefits to Tribal Nations and local communities. Yet without Tribal engagement, and without Tribes' free, prior, and informed consent, the Harbor District negotiated a project labor agreement (PLA) that included terms and conditions affecting Tribal Nations and Tribal members. In its current form, the PLA illegally and/or seriously damaged Tribal sovereignty by including processes (such as apprenticeship programs) subjected to state regulation inapplicable to Tribal Nations and which involve Tribal members. The structure of the PLA is unacceptably flawed with respect to Tribal components, creates an unacceptable precedent in terms of prescribing state subject matter jurisdictions and civil regulatory authority on to Tribes and their governmental management of their labor practices. These serious issues could have been averted had the Harbor District sought meaningful engagement with Tribes on the PLA terms. As the process unfolded there was less than six (6) business days for Tribes to view the proposed PLA and respond appropriately. The Harbor District's decision to impose such a short review window actively prevents Tribal and other engagement with highly complex labor union topics, which are impacting and new to many of the region's constituencies, including Tribes.

The Harbor District's selection of Crowley with Crowley's public record of sex trafficking, and forced labor allegations and violations,<sup>1</sup> environmental violations,<sup>2</sup> and business operation issues and violations<sup>3</sup> is unacceptable. To date, the Harbor District has provided no public communications or responses regarding these serious issues. Crowley's actions are indicative of corporate leadership and culture fundamentally incompatible with the values and multi-decade strategic partnerships this region must build to host the offshore wind energy industry safely and equitably. The Tribe urges the Harbor District to exercise any termination for cause or other applicable clause(s) in its exclusive right to negotiate to rescind that agreement.

The Tribe recommends conducting a second, more transparent port developer selection process. That process must include criteria that demonstrate a company's human rights record, including any policies that prevent sexual crimes, and protections against Missing and Murdered Indigenous People (MMIP), efforts to ensure safety for women in the workplace, compliant and legal business practices, in depth information on their climate mitigation strategies, goals, and progress to date, and proof of performance of their approaches to environmental and cultural protections.

The Tribe recommends the Harbor District adopt the deeply representative developer selection process model developed by the Redwood Coast Energy Authority (RCEA) in their successful process to select a wind developer partner for the region. That process included several public meetings, preserved all the confidentiality required of a negotiation process, and included a wide array of regional constituencies to assist RCEA in vetting the request for proposals (RFPs), including review, interviews, and final selection. Regardless of the developer selected, the Tribe insists the Harbor District's agreements, plans, and operational implementation includes enforceable safeguards to protect against increased risk of sexual assault, sex-trafficking and Missing or Murdered Indigenous Persons (MMIP).

The Tribe is well-aware of the speed that is needed to combat carbon emissions that are causing climate change and because of this is in conditional support of the offshore wind energy industry cluster and build out. However, the Harbor District's opaque and rushed processes, lack of commitment to zero emission port design, and reluctance to include community benefits in its agreements does not serve to accelerate the Project, and indeed it could slow it down, or forfeit it due to opposition created by these approaches. As two recent examples, at the public scoping meeting held by the Harbor District on July 12, 2023, the Tribe highly recommended a 30-day extension of the comment period for the NOP DEIR.

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<sup>1</sup> See: <https://www.maritimelegalaid.com/foia/crowley-officer-accused-of-sexually-assaulting-two-women-receives-12-month-suspension>, <https://www.firstcoastnews.com/article/news/crime/second-woman-files-federal-sex-trafficking-lawsuit-against-crowley-maritime/77-4f1850d6-ddcf-407f-82e7-11a9b39f1060>, <https://law.justia.com/cases/federal/district-courts/florida/flmdce/3:2022cv00174/398749/34/>, <https://gcaptain.com/judge-rules-sex-trafficking-lawsuit-against-crowley-can-move-forward/>, <https://www.justiceformariners.com/blog/crowley-sex-trafficking-lawsuit-complaint-pdfs> Accessed 8.23.2023

<sup>2</sup> See: <https://www.kinyradio.com/news/news-of-the-north/crowley-fuels-pays-1-3-million-for-environmental-public-safety-violations-in-alaska/>, Accessed 8.23.2023

<sup>3</sup> See: [https://www.joc.com/article/crowley-pleads-guilty-puerto-rico-price-fixing\\_20120802.html](https://www.joc.com/article/crowley-pleads-guilty-puerto-rico-price-fixing_20120802.html), <https://www.law.alaska.gov/pdf/press/yukon-crowley-consent-decree.pdf>, <https://casetext.com/case/franklin-balance-sheet-invest-fund-v-crowley> Accessed 8.23.2023

The Harbor District provided a 22-day extension. Also, at that public meeting there were multiple requests for at least one or two additional public meetings on NOP DEIR scoping due to the size and scale and multi-decade timeline of the Project, which have apparently been ignored by the Harbor District. In a region where Tribal Nations are at capacity, every day counts, and the Harbor District's choices to limit the extension and public input is viewed as uncooperative and worse, actively eroding equitable means of engagement in the NOP DEIR process.

Due to the Project's complexity, the Tribe recommends the DEIR process include at least two (2) additional public scoping meetings, with hybrid virtual and in-person attendance and on-the-record input capabilities, preceded by robust public notification of the meetings, at site(s) and time(s) accessible by public transportation, to enable equitable participation for all the region's constituencies.

The Harbor District could have created, and still might work to create, a network of strategic partners and allies including Tribal Nations to develop and fund a state-of-the-art zero emission Project that uses best available technology, constructed to enable existing (and robustly future proof for emerging) technologies for achieving zero-emission and decarbonization goals, negotiate and commit to community benefits, and to maximize climate benefits, as is happening in multiple ports in California and across the globe.<sup>4</sup> The Tribe understands the Harbor District's annual operating budget is approximately \$13 million, with cash flows of \$2-6 million.<sup>5</sup> The Heavy Lift Terminal project will be ~\$1 billion. As noted above, the Tribe is concerned about the Harbor District's relative lack of experience with large port projects and operations and recent lack of success in securing public funding for port infrastructure. Regional support resulted in the successful award of funding from the California Energy Commission for Project planning. The Harbor District should work closely with Tribal Nations to source additional capacity, expertise, and strategic partnerships to ensure the enormous growth and change to the shared regional port is conducted in a sustainable way, and to be highly competitive in obtaining public and private funding resources. The Tribe is confident the Harbor District can achieve the climate, equity, and regional benefit development goals of this Project and attract significant funding, but that is dependent on a Project that incorporates and publicly commits to human rights, climate, and equity goals.<sup>6</sup>

### Scoping Comments

Whether the Harbor District course-corrects to a more transparent, regionally engaged set of processes, it must at a minimum prevent degradation of Tribal cultural resources, climate and the environment, Tribal fisheries, and adjacent port communities, with enforceable safeguards for maximum pollution and emission controls, management of toxic substances (e.g., metals), and to the maximum extent possible, by using lowest-carbon construction (e.g., carbon-neutral cement) and operation methods (e.g., electric construction and terminal operation equipment such as cranes and cargo handling machines).

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<sup>4</sup> See: <https://www.offshore-energy.biz/port-of-san-diego-eyes-more-business-as-it-welcomes-all-electric-harbor-cranes/>, <https://energized.edison.com/stories/long-beach-port-operators-lead-the-way-to-zero-emissions-goal>, <https://polb.com/environment/our-zero-emissions-future/#program-details> Accessed 8.23.2023

<sup>5</sup> See: <https://humboldtby.org/sites/humboldtby.org/files/Agenda%20Packet%2007-27-2023.pdf> Accessed 8.23.2023

<sup>6</sup> See: <https://www.gov.ca.gov/2023/07/06/governor-newsom-announces-1-5-billion-in-port-infrastructure-upgrades-to-power-nation-leading-supply-chain/>, <https://polb.com/port-info/news-and-press/record-state-grant-will-go-to-rail-infrastructure-08-01-2023/> Accessed 8.23.2023

The Tribe had a ~40-year adjacency to a major stationary source of particulate matter pollution which created health hazards and environmental hazards due to permitted and non-compliant, and unenforced emission and pollution exceedances, including toxic leachates into the Mad River / Baduwa't. The Tribe cannot overstate how important it is to avoid up front those kinds of emissions, sources of pollution, and the health hazards they create, and the Project must incorporate hard lessons learned by other marginalized port-adjacent communities.<sup>7</sup> A comprehensive transparent CEQA process that incorporates community, human, cultural, and environmental needs, analyzes the full Project and incorporates input from Tribal Nations' rigorous scientific and ecological knowledges and data are all minimum requirements.

The Tribe's position is that the CEQA process, all Tribal government to government consultations, including AB 52, and the Harbor District's EIR must be complete prior to signing any option to lease, lease, and/or development agreements, to follow the law, and most importantly to ensure the findings and mitigations in the EIR can be incorporated into subsequent Project agreements.

The Tribe will provide detailed requirements and input into the DEIR scoping in its AB 52 government to government consultation process with the Harbor District, to include but not be limited to the following categories:

- Blue Lake Rancheria Tribal Cultural Resources
- Blue Lake Rancheria Tribal Fishery
- Cultural, endangered, threatened, and keystone species in the Mad River / Baduwa't that share ecosystems with Project site(s), e.g., anadromous species, and species that may be impacted by Project pollution, toxics, and/or emissions, etc. These include but are not limited to:
  - o Lamprey, Sturgeon, Salmonids, Eulachon
- Baseline studies and data sets needed (e.g., baseline salmon population studies)
- Tribal jurisdictional considerations (e.g., non-point source pollution)

In addition, the Tribe includes and reiterates the scoping input from the enclosed CORE Hub letter and technical attachments.

### **Conclusion**

It gives the Tribe no pleasure to voice these serious concerns about, and strong objections to, the processes the Harbor District has chosen to date. The Tribe joins other Tribes,<sup>8</sup> other entities in the

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<sup>7</sup> See: <https://www.epa.gov/community-port-collaboration/ports-primer-71-environmental-impacts>, <https://www.epa.gov/community-port-collaboration/environmental-justice-primer-ports-impacts-port-operations-and-goods>, <https://envhealthcenters.usc.edu/wp-content/uploads/2016/11/Impact-Project-Ports-issue-brief-2012-1.pdf>, <https://oceanconservancy.org/blog/2021/09/23/zero-carbon-ports/>, [https://ww2.arb.ca.gov/sites/default/files/2021-11/SPBP\\_Congestion\\_Anchorage\\_Emissions\\_Final.pdf](https://ww2.arb.ca.gov/sites/default/files/2021-11/SPBP_Congestion_Anchorage_Emissions_Final.pdf) Accessed 8.23.2023

<sup>8</sup> See: <https://www.times-standard.com/2023/08/20/my-word-harbor-district-should-reconisder-crowley-deal/> Accessed 8.24.2023

region,<sup>9</sup> and reporting<sup>10</sup> on these issues, and calls for improvements. These comments are provided to ensure that no further harms accrue, and that course corrections may work to accelerate the clean energy transition, wind energy industry cluster and related development here and elsewhere, and that equitable economic, social, and environmental benefits accrue within Tribal Nations and this region. For more information, please contact Heidi Moore-Guynup, the Tribe's Community Development and Strategic Partnerships Director at [hguynup@bluelakerancheria-nsn.gov](mailto:hguynup@bluelakerancheria-nsn.gov).

Sincerely,

*Claudia Brundin*

Claudia Brundin  
Tribal Chairperson  
Blue Lake Rancheria

Cc:

The Honorable Blue Lake Rancheria Tribal Council  
The Honorable Members of the Northern California Tribal Chairpersons Association  
The Honorable Aaron Newman, 1st Division Harbor Commissioner  
The Honorable Greg Dale, 2nd Division Harbor Commissioner  
The Honorable Stephen Kullmann, 3rd Division Harbor Commissioner  
The Honorable Craig Benson, 4th Division Harbor Commissioner  
The Honorable Patrick Higgins, 5th Division Harbor Commissioner  
The Honorable Steve Madrone, Humboldt County Supervisor  
The Honorable Mike Wilson, Humboldt County Supervisor  
Jennifer Luccesi, Executive Officer, California State Lands Commission  
Kate Huckelbridge, Executive Director, California Coastal Commission  
David Hochschild, Chair, California Energy Commission  
The Honorable Jared Huffman, U.S. Congressman, 2<sup>nd</sup> District, California  
The Honorable Mike McGuire, California Senator, District 2; Senate Majority Leader  
The Honorable Jim Wood, California Assemblymember, 2<sup>nd</sup> Assembly District  
Walter Musial, Principal Engineer, National Renewable Energy Laboratory

Attachment:

Redwood Region Climate and Community Resilience Hub Comment Letter and Enclosures

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<sup>9</sup> See: <https://lostcoastoutpost.com/2023/may/10/guest-opinion-responsible-offshore-wind-developmen/>  
Accessed 8.24.2023

<sup>10</sup> See: <https://www.times-standard.com/2023/07/26/crowley-the-offshore-wind-terminal-operator-accused-of-sex-trafficking/>, <https://lostcoastoutpost.com/2023/jul/14/humboldt-bay-port-development/> Accessed 8.24.2023



August 25, 2023

Rob Holmlund  
Development Director  
Humboldt Bay Harbor, Recreation and  
Conservation District  
P.O. Box 1030  
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[districtplanner@humboldtby.org](mailto:districtplanner@humboldtby.org)

Re: Notice of Preparation of a Draft Environmental Impact Report for the Humboldt Bay Offshore Wind Heavy Lift Multipurpose Marine Terminal Project.

Dear Director Holmlund:

On behalf of the Redwood Region Climate and Community Resilience Hub (CORE Hub)<sup>1</sup> and the following entities from the Offshore Wind Community Benefits Network: Bear River Band of the Rohnerville Rancheria, Blue Lake Rancheria, California Center for Rural Policy, Changing Tides Family Services, College of the Redwoods, Humboldt County Association of Governments, Hoopa Valley Tribe, Northern California Indian Development Council, Peninsula Community Collaborative, Peninsula Community Services District, Redwood

<sup>1</sup> The CORE Hub was established by regional leaders in climate resilience, mitigation, and adaptation and is based at Humboldt Area and Wild Rivers Community Foundation, serving California Counties of Humboldt, Del Norte, and Trinity, as well as Curry County in Oregon. The service area also includes 26 Tribal Nations and Indigenous Territories.

Community Action Agency, Selkie Land + Sea, Sierra Club North Group of the Redwood Chapter, Surfrider Foundation Humboldt Chapter, we submit these comments on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Humboldt Bay Offshore Wind Heavy Lift Multipurpose Marine Terminal Project (Project or Wind Terminal) released on June 26, 2023 by the Humboldt Bay Harbor, Recreation and Conservation District (Harbor District). We recognize the significant role the Project plays in meeting the State's climate goals and are committed to working with the Harbor District in partnership on this important effort.

## I. Introduction

As a community deeply connected to and reliant on the natural world, we are profoundly concerned about the impacts of climate change, both globally, regionally, and in Humboldt Bay. We support urgent and immediate action to decarbonize our energy systems and act on climate change and are committed to working in partnership with the Harbor District to develop a Wind Terminal that includes robust community benefits, addresses mitigation needs, and uses best available technology for achieving zero-emission goals to maximize climate benefits. Project development must protect against increased sex trafficking, sexualized violence, or Missing and Murdered Indigenous Persons (MMIP) risks, prevent degradation of fisheries and the environment, and deliver infrastructure and economic benefits to Tribal Nations and local communities. Key to achieving these goals is a thoughtful, transparent, public-facing CEQA process that incorporates community, human, cultural, and environmental needs, and analyzes the full Project (including the lease or option to lease agreement between the Harbor District and the future leaseholder/developer/operator of the Wind Terminal) and incorporates input, expertise and traditional knowledge from Tribal Nations, together with other rigorous science. We believe the development of this Wind Terminal and its ability to attract significant funding is dependent on achieving these goals and will be catalytic to securing additional investment and competitive public funding dollars for the region. We crafted the comments below with the intention to support the Harbor District to achieve a Project aligning with this vision and values. This comment letter includes (a) a high-level overview of our goals for this Project and recommendations for the CEQA process, (b) technical comments on the NOP prepared by Shute Mihaly & Weinberger, and (c) a memorandum prepared by Shute Mihaly & Weinberger dated, on the issue of lease timing and environmental review.

## I. Values and Goals

We see the Project as an opportunity to disrupt past cycles and foster a collaborative approach in ensuring that climate-combating actions are done right from the beginning. Our region has endured devastating boom-and-bust cycles associated with extractive industries like mining, logging, and dams. These industries exploited our natural resources and people to benefit those outside our region, resulting in significant environmental damage, a legacy of underinvestment, and unfulfilled promises of restoration. Local Tribal Nations experienced land theft and state-sanctioned genocide, and today, continue to face some of the highest rates of MMIP in the nation. Chronic underinvestment has further exacerbated the lack of basic infrastructure and services, including housing, electricity, healthcare, broadband, roads, public



transportation, and childcare. These needs are deeply visible across the region, especially on the Samoa Peninsula, the designated Project site.

In the last eighteen months, the CORE Hub brought together leaders across the region to discuss potential community benefits associated with offshore wind development. Over the course of this process, it became clear that the Wind Terminal on the Samoa Peninsula, the first “staging and integration” port serving California’s floating offshore industry, would profoundly transform our region. There are a number of potential benefits of the Project, including contributing to the State’s climate and energy resilience goals, regenerative economic and community development, resourcing the Harbor District’s important work, clean-up of the Wind Terminal site, strong Tribal leadership, and an innovative environmentally, socially and culturally terminal that could help to establish an offshore wind industry that is sustainable and responsive to the communities it is part of. This transformation also includes challenges from air and water quality issues and infrastructure impacts to surrounding Tribal Nations, communities, and fisheries as well as increased risk of MMIP and sex trafficking with the influx of new workers and maritime activity. Meaningful and ongoing public engagement and Tribal consultation are important on such an historic project. Our comments are informed by extensive conversations and engagement, as well as the oral comments that were made by members of the public at the public scoping meeting held by the Harbor District on July 12, 2023.

We believe that a state-of-the-art Wind Terminal begins with a firm commitment to protecting the human and natural environment and addressing climate change. By committing to building a zero-emission terminal from the start, we are better equipped to protect our communities<sup>2</sup> and the environment from air and noise pollution and water contamination from vehicles and ships. In addition, the Wind Terminal must be designed, built, and operated as sustainably and safely as possible to protect environmental and cultural resources, including Tribal cultural landscapes, and address significant community infrastructure needs,<sup>3</sup> particularly for portside communities. Preservation of local Tribal, commercial, and recreational fisheries is critical to our region's physical and economic health. We believe in ensuring the Project moves forward in strong relationship with the environment which can be championed by a community-led adaptive management committee. It is critical that the Project include strong measures to prevent MMIP, meaningful Tribal consultation and ongoing communication over the life of the

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<sup>2</sup> *California’s Coastal Commission has found that the District’s terminal expansion and future operations in support of offshore wind energy generation would cause additional pollution and impacts, including additional air pollution burdens that may occur from vehicle emissions on land and vessel emissions offshore and loss of lower-cost recreational boating opportunities. Burdens such as increased air, water, noise and light pollution would not only affects residents, but also workers and visitors who might recreate near port areas. Near the Port, there are several low-income communities and populations with additional sensitivities such as asthma and cardiovascular disease “that may be exacerbated with additional pollution impacts in the area that may occur from Humboldt Harbor District expansion and future operations to support offshore wind energy generation.” See Coastal Commission Consistency Determination Staff Report, page 117.*

<sup>3</sup> A legacy of underinvestment has left the region with significant needs. These range from an existential and growing housing shortage, severe healthcare and childcare gaps, acute electricity stability issues, aging water treatment systems and lack of broadband access. Many of these needs are felt particularly by portside communities, members of tribal nations, communities of color and low-income communities.

Wind Terminal, transparency, innovative governance structures, and community decision-making. Our values underscore the significance of ensuring that the Wind Terminal development leads to good careers and leadership opportunities for local residents, members of Tribal Nations, and underrepresented communities, as well as opportunities for Tribal ownership and meaningful Tribal economic benefits. Furthermore, we emphasize the need for a community needs agreement (CNA)<sup>4</sup> for the Wind Terminal prior to the Harbor District signing and approving the lease, and a lease that includes strong community commitment and benefit provisions.

## II. CEQA Specific Comments.

The purpose of an NOP is to solicit guidance from members of the public and reviewing agencies about the scope and content of environmental information that should be included in the environmental impact report (EIR).<sup>5</sup> However, to effectively solicit such guidance, the NOP must provide adequate and reliable information regarding the nature of the Project and its probable environmental impacts. Crucially, the Draft Environmental Impact Report (DEIR) must be released before the Wind Terminal lease or option to lease is signed, so the public and decision-makers can understand and address the Project's environmental impacts, consider a full range of mitigation measures and alternatives, and ensure the future Wind Terminal leaseholder/developer/operator is committed to implementing all measures or Project design changes/commitments before binding commitments are made. Notably, we are concerned that the current proposed sequencing has underlying legal vulnerabilities that could lead to Project delays and prevent us from meeting our climate goals in time.

As proven by many thoughtful oral comments at the July 12 Harbor District Scoping Meeting on the Project, our community is deeply invested in ensuring the best, long-term outcomes for the environment as the Project progresses under CEQA. We will rely on the DEIR for a thorough assessment of the environmental impacts of the proposed Project. Therefore, we have identified key issues that must be studied in the DEIR, as well as critical process actions to be taken by the District. These specific issues and actions include:

- Prepare and certify the EIR before leasing the Project site or entering into a binding option to lease the site.
- Carefully follow CEQA's procedural requirements and analyze the "whole of the action," which includes any and all actions associated with the Wind Terminal development.
- Include in the DEIR a thorough analysis of all potentially significant environmental impacts, specifically including: protecting Tribal cultural resources, preserving Tribal cultural landscapes, ensuring safety, protecting biological resources, minimizing infrastructure impacts, abating air quality and greenhouse gas emissions, alleviating

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<sup>4</sup> Co-Developed community Benefits packages to benefit communities of concern were a key expectation of the Coastal Commission. For many in local fisheries, Tribal Nations, and other constituents, it is unclear that an agreement around the Wind Terminal will bring benefits, rather than addressing impacts, so we use the term "Community Needs Agreements")

<sup>5</sup> CEQA Guidelines § 15375; *see also* CEQA Guidelines § 15082.

maritime congestion, addressing impacts of Project related traffic on surrounding communities, minimizing aesthetic impacts, protecting water quality, minimizing land use and operational impacts, minimizing impacts to fisheries and Bay industries, and protecting recreational opportunities in and around Humboldt Bay.

- Ensure safe multimodal travel and accessibility on the Peninsula including to recreation sites, and analyze transportation impacts to local Peninsula communities using present day-conditions, as a baseline.
- Develop a Project design that incorporates best available technology to achieve a zero-emission Wind Terminal.
- Conduct meaningful public engagement and ensure community involvement and leadership throughout the Project development and CEQA process early and often.
- Commit to MMIP prevention and worker safety in the future lease terms and Project approvals.
- Preserve Tuluwat Island, in consultation with the Wiyot Tribe from impacts (visual, noise, glare, air and water quality, and other potential environmental degradation).
- Update the Wind Terminal Project Objectives to include objectives of the larger community. Specific Objectives include:
  - Safeguard the community and workers from construction and operations-related sex trafficking and sexualized violence, in recognition of the devastating toll of Missing and Murdered Indigenous Persons and history of trafficking in this region, as well as documented sexual assault and harassment issues in the maritime industry.
  - Create workforce and economic opportunities for residents of the region that include high-road careers, training, educational and leadership opportunities for local residents, members of Tribal Nations, and underrepresented communities, as well as opportunities for Tribally owned enterprises.
  - Preserve local Tribal, commercial, and recreational fishing, and avoid and minimize impacts on fisheries and Bay aquaculture businesses.
  - Protect the natural environment, create, and preserve green space, and ensure equitable access and recreation for surrounding communities.
  - Provide maximum infrastructure benefits, such as transportation, electricity, and broadband, for local communities.
  - Engage Tribes meaningfully in all aspects of Project design, review, construction, and operations.
  - Use the best available technology to achieve a Zero-Emission Wind Terminal by 2030, including zero-emission operational equipment, berthing for vessels, and zero-emission engine requirements for drayage trucks accessing or calling at the Wind Terminal.
- Identify and analyze a wide range of alternatives in the DEIR, including options that incorporate community objectives.

We appreciate your attention to this letter and related attachments. The proposed Wind Terminal offers a chance to redefine climate-positive development for our region and prioritize community and environmental wellbeing. We are pleased to work in partnership with the Harbor District as we embark on the CEQA process.

Thank you for your dedication to the climate and our community's future.

Sincerely,

Josefina Frank, *Tribal Chairwoman*  
**Bear River Band of the  
Rohnerville Rancheria**

Claudia Brundin, *Chairperson*  
**Blue Lake Rancheria**

Dawn N. Arledge, *Executive  
Director*  
**California Center for Rural  
Policy**

Kerry Venegas, *Executive Director*  
**Changing Tides Family Services**

Keith Flamer, *President*  
**College of the Redwoods**

Katerina Oskarsson, *Executive in  
Residence*  
**CORE Hub**

Beth Burks, *Executive Director*  
**Humboldt County Association of  
Governments**

Joe Davis, *Chairman*  
**Hoopa Valley Tribe**

Madison Flynn, *Chief  
Administrative Officer,*  
**Northern California Indian  
Development Council**

Carol Vander Meer, *Facilitator*  
**Peninsula Community  
Collaborative**

Leroy Zerlang, *Director*  
**Peninsula Community Services  
District**

Val Martinez, *Executive Director*  
**Redwood Community Action  
Agency**

Mica O'Herlihy, *Owner/Operator*  
**Selkie Land and Sea**

Robin Gray-Stewart, *Marine  
Chair* North Group of the  
**Redwood Chapter Sierra Club**

Jessie Misha, *Chair*  
**Surfrider Foundation Humboldt  
Chapter**

Daniel Chandler, *Steering  
Committee Member*  
**350 Humboldt**

With copies to:

1st Division Commissioner Aaron Newman  
2nd Division Commissioner Greg Dale  
3rd Division Commissioner Steven Kullman  
4th Division Commissioner Craig Benson  
5th Division Commissioner Patrick Higgins  
Executive Director Larry Oetker

Attachments:

- A. Technical comments on the Notice of Preparation from Shute, Mihaly & Weinberger dated August 25, 2023
- B. Memorandum dated August 25, 2023 from Shute, Mihaly & Weinberger on CEQA and Option to Lease issue

## MEMORANDUM

TO: Redwood Region Climate and Community Resilience Hub (CORE Hub)<sup>1</sup>

FROM: Winter King

DATE: August 25, 2023

RE: Technical Comment on the Notice of Preparation of a Draft  
Environmental Impact Report for the Humboldt Bay Offshore Wind  
Heavy Lift Multipurpose Marine Terminal Project

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Shute, Mihaly & Weinberger LLP has prepared these technical comments on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Humboldt Bay Offshore Wind Heavy Lift Multipurpose Marine Terminal Project (Project or Wind Terminal), released on June 26, 2023 by the Humboldt Bay Harbor, Recreation and Conservation District (Harbor District). These comments identify issues that the Harbor District must address in designing the Project, engaging the community, and preparing the DEIR to comply with the California Environmental Quality Act (CEQA).

**I. The Harbor District must prepare and certify the EIR before leasing the Project site or entering into a binding option to lease the site.**

Per the District's website<sup>2</sup> and comments made at the Public Scoping meeting, the Harbor District and Crowley Wind Services, Inc. (Crowley) are currently negotiating an option agreement, by which the District would grant Crowley the right to lease Port land

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<sup>1</sup> The CORE Hub was established by regional leaders in climate resilience, mitigation, and adaptation and is based at Humboldt Area and Wild Rivers Community Foundation, serving California Counties of Humboldt, Del Norte, and Trinity, as well as Curry County in Oregon. Its service area also includes 26 Tribal Nations and Indigenous Territories.

<sup>2</sup>

[https://humboldtby.org/sites/humboldtby.org/files/HBHRCD\\_Crowley\\_PressRelease\\_v2%20oddc\\_2.pdf](https://humboldtby.org/sites/humboldtby.org/files/HBHRCD_Crowley_PressRelease_v2%20oddc_2.pdf)

for the development and operation of the Wind Terminal. According to the exclusive negotiating agreement recently posted on the District's website<sup>3</sup>, the lease will be an exhibit to the option agreement and must contain initial plans for development sufficient to obtain entitlements. Once the option agreement is approved by the Harbor District, Crowley will have the right to enter into the lease under the terms of the agreement.

Per statements from the District and the timeline contained in the NOP, the District is planning to execute the option agreement with Crowley before certifying the EIR for the Project. This would plainly violate CEQA, as described below and in Exhibit B to the Network's NOP comment letter.

CEQA applies to discretionary projects carried out or approved by public agencies, and specifically includes leases. *See* CEQA Guidelines § 21080(a). Under CEQA, a "Project" is defined as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment," which specifically includes "the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." *See* CEQA Guidelines § 21065; *see also* CEQA Guidelines §§ 15378(a)(3), 15377.

California case law is also clear that leases trigger CEQA. In *World Business Academy v. California State Lands Commission*, (2018) 24 Cal.App.5th 476, the court found there was "no dispute" that a replacement lease for continued operation of a nuclear powerplant was a "project" subject to CEQA. In *City of Orange v. Valenti*, (1974) 37 Cal.App.3d 240, the court stated that it was "inescapable" that leasing a building was a "project" under CEQA.

CEQA's environmental review process must occur *before* project approval. The CEQA Guidelines state that every lead agency "shall consider a final EIR or negative declaration" "[b]efore granting any approval of a project subject to CEQA." *See* CEQA Guidelines § 15004. The CEQA Guidelines also state that, for public projects, agencies may not undertake actions concerning the project "that would have a significant adverse effect or limit the choice of alternatives or mitigation measures before completion of CEQA compliance." *See* CEQA Guidelines § 15004(b)(2).

In 2008, the California Supreme Court addressed the issue of environmental review timing in the context of a joint "public-private" project proposed in the City of West Hollywood. *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116. In that case, the City had executed a property acquisition and development agreement with a private developer without conducting environmental review. The Court applied "the

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<sup>3</sup> [https://humboldtby.org/sites/humboldtby.org/files/Agenda%20Packet%2010-27-2022\\_0.pdf](https://humboldtby.org/sites/humboldtby.org/files/Agenda%20Packet%2010-27-2022_0.pdf)

general principle that, before conducting CEQA review, agencies must not ‘take any action’ that significantly furthers a project ‘in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.’” *Id.* at 138. Applying this test to the specific facts of that case, the Court held that the City had committed itself to a definite course of action regarding the project before conducting environmental review, and thus had violated CEQA.<sup>4</sup>

Here, the option agreement described in the exclusive negotiating agreement is similar to the agreement addressed in *Save Tara*. It will commit the Harbor District to leasing Port Property to Crowley for the express purpose of developing the Project, and the initial plans for that development will be part of the agreement. Thus, the option agreement and attached lease will certainly commit the District to a definite course of action and foreclose alternatives and mitigation measures. As a result, the District must complete its environmental review for the Project prior to entering the option agreement and authorizing the lease.

The CEQA memorandum prepared by SMW and included as Exhibit B to the Network letter further delineates the requirements of CEQA in relation to the lease between the Harbor District and Crowley, including the requirement to prepare and certify the EIR in advance of executing the lease.

## **II. The Harbor District must carefully follow CEQA’s procedural requirements and analyze the “whole of the action.”**

CEQA requires that an EIR provide a complete picture of the existing conditions of the Project in addition to providing a detailed Project description. According to the CEQA Guidelines, “project” means the whole of an action that has the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. In the case of this Project, the “whole of the action” clearly goes beyond just the construction of the Wind Terminal.

First and foremost, the Harbor District’s lease with the leaseholder/developer/operator is part of this Project, and the leaseholder/developer/operator will be responsible for implementing any mitigation measures identified in the DEIR. The NOP fails to

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<sup>4</sup> See also *California Farm Bureau Federation v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 191-82 (acquisition of conservation easement by Department of Fish and Game required CEQA review where easement required conversion of 235 acres of agricultural land to wetlands and other habitat); *McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District* (1988) (transfer of property to public agency required environmental review because property contained PCBs and, under federal law, remediation activities were mandatory).



mention that the Project will largely be undertaken by a private developer, Crowley Wind Services, Inc. The DEIR cannot omit this information. The leaseholder/developer/operator will also be responsible for designing and building the Project as described in the DEIR. Therefore, the DEIR's Project Description must include an explanation of the developer/operator/leaseholder's role, and the EIR's Mitigation Monitoring and Reporting Program (MMRP) must identify the leaseholder/developer/operator as the entity responsible for implementing all measures and ensuring installation of all design features identified in the DEIR.

In addition to recognizing the lease as part of the Project, the DEIR must also clearly and accurately describe all other actions associated with the Wind Terminal, including:

- Demolition of any existing buildings or facilities – both on land and in the water (docks, piers).
- Relocation or reconstruction of any existing facilities, whether those facilities are being relocated within the delineated Project Area or outside of it, including:
  - Seaweed farms/shellfish nursery/mariculture sites
  - Scientific and academic testing sites
  - Commercial fishermen storage area and small boat repair facility
  - Hagfish holding facility
- Improvements or modifications to any existing facilities remaining in the Project Area.
- New facilities outside of the Project Area that are directly related to the construction or operation of the Wind Terminal or are a result of the Project, including:
  - Upgrades to the existing electrical substation and/or construction of a new substation
  - Construction of the landfill solar array
  - Modernizing the existing dredge material dewatering area and/or construction of a new dewatering area
  - Creation of a new habitat restoration area
- Ongoing operations at the Wind Terminal and in Humboldt Bay that are related to offshore wind turbines: receipt of materials, manufacturing, fabrication, staging, storage, assembly, transportation, utilization of waterways and channels for ingress and egress of turbines, storage of turbines in Humboldt Bay Harbor, and

wind platform and turbine installation, platform/turbine repair and decommissioning, and use of heavy cargo vessels, among other activities.

- Ongoing operations at the Wind Terminal that are not related to offshore wind, but are related to other maritime activities that will be enabled by developing enhanced capabilities at the Wind Terminal. These activities include additional cargo handling, materials storage and processing, expansion of fishing facilities and processing, or other similar activities.

While the Harbor District has described the Wind Terminal as distinct and separate from the Humboldt Bay Offshore Wind Energy Development project and the development and operation of other wind energy areas, clearly a purpose of the Wind Terminal is to support the development and operation of offshore wind projects. As a result, the Harbor District must consider if CEQA requires that the DEIR for the Wind Terminal consider the potential environmental impacts of that offshore development, too. In addition, Crowley, the prospective leaseholder, will also be engaging in vessels operations and other maritime activities in connection with constructing and maintaining offshore wind projects, which is not discussed in the NOP. These activities include the assembly, installation, and operation of offshore wind floating platforms, use of large heavy cargo vessels and providing crewing and marshaling services in the Pacific waters. The EIR cannot ignore these impacts altogether.

Failure to analyze the whole of the Project would violate CEQA's prohibition on "piecemealing," which is when a lead agency divides a single project into distinct pieces, thereby "avoid[ing] the responsibility of considering the environmental impacts of the project as a whole." *Orinda Ass'n v. Bd. of Supervisors*, 182 Cal.App.3d 1156, 1171 (1985). This prohibition ensures that "environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences." *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 396.

Under CEQA, the term "project" means the whole of an action." *POET, LLC v. State Air Res. Bd.*, 12 Cal.App.5th 52, 73 (2017) ("*POET II*") (quoting CEQA Guidelines § 15378(a)). This "broad interpretation of 'project' . . . is designed to provide the fullest possible protection of the environment within the reasonable scope of CEQA's statutory language." *Id.* If an activity is part of the "whole of an action," the refusal to disclose and evaluate it in the EIR constitutes illegal piecemealing in violation of CEQA. *Id.* at 76.

Courts have developed a liberal test for evaluating when multiple “acts are part of the whole”: Activities are part of the same project when they are “related to each other.” *Id.* at 74. A sufficient relationship exists when activities are “among the ‘various steps which taken together obtain an objective’” or when they are “part of a coordinated endeavor.” *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora*, 155 Cal.App.4th 1214, 1226 (2007) (citing *Ass’n for a Cleaner Env’t v. Yosemite Cmty. Coll. Dist.*, 116 Cal.App.4th 629, 639 (2004)). It exists when one activity “legally compels or practically presumes” another. *Banning Ranch Conservancy v. City of Newport Beach*, 211 Cal.App.4th 1209, 1223 (2012). And it exists when activities are “related in 1) time, 2) physical location, and 3) the entity undertaking the action [sic].” *Tuolumne*, 155 Cal.App.4th at 1227.

Here, the Wind Terminal and offshore wind energy developments appear to be “among the ‘various steps which taken together obtain an objective’”—indeed, the primary purpose of the Project is to help construct and operate the offshore wind projects in Humboldt and elsewhere, and future offshore development in the Pacific. And the Wind Terminal, Crowley’s support operations, and offshore wind energy development are happening at the same time in the same physical location. The Harbor District must ensure the DEIR defines the Project adequately to include the “whole of action” to avoid future allegations of piecemealing.

### **III. The Wind Terminal Project Objectives must be updated to include objectives of the larger community.**

The Harbor District has repeatedly stated its belief that the Wind Terminal project will provide significant benefits to the larger community. To ensure that this belief becomes a reality, the desired benefits and outcomes must be formalized in the Project Objectives so that the Project, or any suitable alternative, will be designed to achieve them. To that end, the Harbor District must modify the project objectives to include:

- Safeguard the community from construction- operations-related sex-trafficking and sexualized violence, in recognition of the devastating toll of Missing and Murdered Indigenous Persons in this region.
- Create workforce and economic opportunities for residents of the region that include high-road careers, training, educational and leadership opportunities for local residents, members of tribal nations, and underrepresented communities, as well as opportunities for Tribally owned enterprises and ownership.
- Preserve local Tribal, commercial, and recreational fishing and avoid and minimize impacts on fisheries and Bay aquaculture businesses.

- Protect the natural environment and create and preserve green space, equitable access, and recreation for surrounding communities.
- Provide maximum infrastructure benefits, such as transportation, electricity and broadband, for local communities.
- Engage area Tribes meaningfully in all aspects of Project design, review, construction, and operations.
- Protect Tuluwat Island, in consultation with the Wiyot Tribe, from impacts (e.g., cultural landscape, visual, light, glare, noise, and air quality impacts) and degradation.
- Create a Zero-Emission Wind Terminal by 2030, including zero-emission operational equipment, berthing for vessels, and zero-emission engine requirements for drayage trucks accessing or calling at the Wind Terminal.

This last objective is especially critical for protecting nearby communities from air pollution from vehicles and preventing water contamination, while achieving maximum climate benefits. Notably, a commitment to developing a zero-emission facility will also be vital to be competitive for current State and Federal grants and eligibility for large scale public investments. A shared aspiration of a safe, zero-emission, state-of-the-art Wind Terminal that is a world-class model could generate investment, partnership, and accelerated support.

#### **IV. The DEIR must include a thorough analysis of all potentially significant environmental impacts.**

As identified in the NOP, this Project has the potential to impact every environmental category across the board. Even though the goal of the Project is to support the development of renewable energy, the analysis of its direct and indirect environmental impacts must be thorough and robust.

To begin this analysis, the DEIR must include a detailed description of the Project's environmental setting, which provides "the baseline physical conditions by which a lead agency determines whether an impact is significant." CEQA Guidelines § 15125(a). "Without a determination and description of the existing physical conditions on the property at the start of the environmental review process, the EIR cannot provide a meaningful assessment of the environmental impacts of the proposed project." *Save Our Peninsula Committee v. Monterey Cnty. Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 119. While the NOP did not contain any description of these "baseline" conditions, the DEIR must be sure to include current baseline environmental conditions, including for Tuluwat Island, at the time of NOP issuance (2023). This will be particularly important

for the transportation, water quality, and air quality analyses – the DEIR must examine existing conditions as of 2023 rather than relying on any historical environmental baseline for when the Samoa pulp mill was operational.

The DEIR must also analyze *all* of the potentially significant impacts of the entire Project. The NOP did not identify the probable environmental impacts of the Project, so this letter cannot provide detailed input on this content. Instead, we have identified several subject areas that are of concern. We will also be examining the DEIR closely to ensure that a proper baseline has been established, impacts are adequately assessed, and mitigation measures are robust and effective to reduce impacts to the greatest degree possible. The key issue areas are:

- **Tribal Cultural Resources.** The area that will be impacted by this Project includes the Tribal lands of the Bear River Band of the Rohnerville Rancheria, Big Lagoon Rancheria, Blue Lake Rancheria, Cher-Ae Heights Indian Community of the Trinidad Rancheria, Elk Valley Rancheria, Hoopa Valley Tribe, Karuk Tribe, Nor Rel Muk Wintu Nation, Resighini Rancheria, Tolowa Dee-ni' Nation, Tsnungwe Tribe, Wiyot Tribe, and Yurok Tribe. Tuluwat Island in Humboldt Bay is sacred to the Wiyot people because it is the center of their world. It is also the site of their World Renewal Ceremony. In 1860, a small group of white settlers interrupted the ceremony and murdered nearly 100 women, children and elders. Today, the site has been returned to the Wiyot Tribe and they are in the process of remediating it and preserving its cultural traditions.<sup>5</sup> The Blue Lake Rancheria has protected certain cultural resources on the Samoa Peninsula and in other areas around the Bay. There are specific places within Humboldt Bay that are inappropriate for future development to support offshore wind or otherwise, due to their cultural significance. The DEIR must incorporate consultation with Tribal governments,<sup>6</sup> elected leaders and staff, a complete assessment of Tribal cultural resources that could be potentially impacted by the Project and plans to avoid and minimize disturbance to the greatest degree possible. The DEIR must also disclose if the Project would impact water levels and mud composition in the Bay and, if so, what impact that could have on buried cultural resources and human remains.

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<sup>5</sup> chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://semspub.epa.gov/work/HQ/100001200.pdf f. “Environmental Stewardship and Cultural Preservation on California’s Coast, The Tuluwat Village Site on Indian Island in Humboldt Co., CA, EPA, March 2018.

<sup>6</sup> Pursuant to AB 52, public agencies are required to consult with California Native American Tribes that are on the Native American Heritage Commission’s (NAHC) consultation list that are traditionally and culturally affiliated with the geographic area of a proposed project subject to CEQA, when Tribes request formal consultation.

Either the Project or adopted mitigation must also create supports/methods for protection of Tuluwat Island (National Historic Landmark) from new and legacy industrial contaminants after significant cleanup efforts and land use goals by the Wiyot Tribe; protection from visual, air and water quality, noise and aesthetic impacts; and other significant impacts.

The Tribal Consultation processes followed by the California Coastal Commission, beginning on page 104 in their March 17, 2022 staff report related to BOEM's offshore lease, included consultation on potential cultural and ethnographic resources that could be unearthed during implementation of future offshore wind facilities and other potential impacts. These same issues and processes should be explored during consideration of the Wind Terminal. Inadvertent discovery protocols must be included at every instance of ground disturbance, and a protocol for communication directly with Tribes in the event of an unanticipated discovery, as well as post-discovery process for evaluation of a discovery, must be created. Tribal expertise and jurisdictional authorities must be meaningfully included in this, and other environmental analysis, to ensure that the Wind Terminal process incorporates Tribal science, traditional knowledge, and cultural practices so that this region's unique Tribal cultural resources can be protected.

- **Tribal Cultural Landscapes.** The Wind Terminal is a huge project located in a visually prominent area on a peninsula of land between Humboldt Bay and the Pacific Ocean. The Bay is an important cultural landscape and ecosystem for many Tribes, particularly the Wiyot peoples and Wiyot-area Tribes. The DEIR will need to assess the visual, noise, and other aesthetic impacts on Tribal cultural landscapes, considering new buildings, cranes, high mast light poles, and other heavy industrial equipment and facilities. In particular the DEIR must analyze visual and other aesthetic impacts to Tuluwat Island, an important cultural and environmental site for the Wiyot People and home to the Wiyot Tribe's annual World Renewal Ceremony.<sup>7</sup> Furthermore, the Yurok Tribe has indicated that changes in viewshed from high elevation sacred sites will impact their Tribal cultural landscapes. The DEIR must contain visual simulations of the Project (and Project Alternatives) from various vantage points, including from Tuluwat Island, the coast and from higher-elevation sites not on the coast, so that proper analysis and conclusions can be reached.
- **Safety.** Given the historical and present-day crisis of sex trafficking and Missing and Murdered Indigenous People (MMIP) in the region, California and the United States, and documented challenges with sexual assault and harassment in the

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<sup>7</sup> <http://www.wiyot.us/186/Tuluwat-Project>

maritime industry, special attention and strong protocols are needed to ensure the safety of Native and at-risk people in the region. California has the fifth largest MMIP caseload in the United States, and Northern California is the epicenter for these cases.<sup>8</sup> A 120-year survey of California MMIP cases found that one in five of the state's MMIP cases are from Humboldt County.<sup>9</sup> Since the Gold Rush, and continuing through the timber rush, land rush, water rush, and green/cannabis rush, Tribes in California have lost countless women, girls, and two-spirit individuals to violence, most frequently targeted by non-local individuals or contract workers. The Wind Terminal projects will bring hundreds of workers from outside the region to work on a range of projects. While this development is potentially good for the local economy and will contribute to addressing the climate and energy catastrophes, there is a great risk of harm to Native and other at-risk people, particularly women and girls. The Harbor District must work with regional Tribal governments and other constituencies to identify and mitigate MMIP impacts.

- **Biological Resources.** Impacts to biological resources on, and in the vicinity of, the Project site, and in the Bay must be studied. Humboldt Bay, California's second-largest estuary, is surrounded by an extraordinary dune ecosystem, and feeds into the freshwater streams and rivers which support production of anadromous salmonids. Construction activities, and notably Crowley's vessel support operations, will each impact marine mammals, fisheries and other resources. Increased dredging will cause additional impacts. Many of these resources—marine mammals such as whales, sea lions, seals and dolphins, a variety of seabirds, and fish such as salmon, steelhead, green sturgeon, smelt, eulachon, and eel—have been identified as culturally important in other processes. Due to current levels of low activity at the site and proximity to ever-evolving coastal conditions, portions of the site and site-adjacent areas may be in a natural or semi-natural state with a resurgence of flora/fauna, wetland habitat, and Environmentally-Sensitive Habitat Areas (ESHA). An accurate assessment of existing conditions and a thorough analysis of the Project's potential impacts to biological resources will be crucial to determining how best to minimize them. Mitigation measures based in sound science along with a clear implementation plan and strict accountability will be critical, as will an adaptive management plan with clear performance standards created and enforced by an adaptive management committee comprised of those with Tribal, scientific and local lived experience of the Bay. Specific biological resources that must be analyzed include: *Sulcaria spiralifera* (formerly *Bryoria spiralifera*, changed in 2021), eelgrass

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<sup>8</sup> <https://www.sovereign-bodies.org/tokeeskuysooney-wo-chek>

<sup>9</sup> <https://www.times-standard.com/2020/08/23/2588961/>

habitat, special status and other seabirds, Pacific Lamprey, marbled mullet, and marine mammals.<sup>10</sup> The DEIR must also analyze impacts to steelhead and cutthroat trout, coho and Chinook salmon, along with all salmonid species migrating to the rivers within indigenous and Tribal lands in the greater region.

- **Infrastructure Impacts.** Communities immediately surrounding the port, including Manila, Samoa, Fairhaven, and Eureka experience deteriorating road conditions, which will be worsened by traffic serving the Wind Terminal. In addition, communities and Tribal Nations along highways 101 and 299 will also be impacted by increased traffic and road closures due to traffic accidents by vehicles hauling heavy turbine equipment to the Wind Terminal. Conduct a full analysis of the local impacts that will be caused by the construction and operation of the Project using 2023 as the baseline conditions.
- **Truck, Vehicle, and Equipment Efficiency and Emissions.** Conduct a full assessment of the air quality and safety impacts caused by truck traffic that will be brought through the community en route to the Wind Terminal. Heavy-duty trucks are the largest source of diesel particulate matter, a toxic air contaminant that is directly linked to a number of adverse health impacts. The DEIR will need to cover the air quality and greenhouse gas emission impacts of transportation. As discussed above, the Project must either be designed or mitigated to ensure that the leaseholder/developer/operator utilizes a zero-emission fleet, in both deliveries to the site as well as on-site vehicles and equipment. This Wind Terminal will be used for manufacturing and assembling unique products, and it is likely that the procurement of materials will also be a strategic and deliberate process. The DEIR must also mitigate the Project's impacts by requiring the leaseholder/developer/operator to include provisions in its contracts with suppliers and contractors requiring the use of clean fleets, truck electrification, on-site charging, and other creative, innovative measures to create the least impactful transportation environment possible, together with opportunities for electrification for local communities. All transportation or greenhouse gas related mitigation

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<sup>10</sup> “Future development in the Humboldt Harbor District has the potential to affect eelgrass either directly through redevelopment of Redwood Marine Terminal 1, or indirectly due to the need for a wider navigation channel and increased need for dredging in Humboldt Bay. Depending on their siting, cable landings may also impact eelgrass habitat. Future development, will need to be sited, constructed and operated to ensure that these habitats are maintained, enhanced and where feasible, restored. Mitigation will be expected for any impacts to eelgrass in Humboldt Bay. Because of the biological significance of eelgrass and other nearshore and coastal habitats, these areas are afforded special protection under the Coastal Act.”

(<https://documents.coastal.ca.gov/assets/upcoming-projects/offshore-wind/Th8a-4-2022%20adopted%20findings.pdf>, p 50)



measures must be aggressive, measurable, effective, and benefit the communities immediately adjacent to the Wind Terminal to the greatest degree possible.

- **Maritime Transportation Emissions.** The maritime industry contributes measurably to state, national, and global greenhouse gas emissions. Even when ships are idling at berth, the vessels' smaller diesel auxiliary engines and boilers stay in operation and often run continuously during a vessel's stay at port. This particular source of pollution disproportionately affects people who live near freight hubs, such as ports. As discussed above, the Project must be designed or mitigated to use a zero-emission maritime fleet and provide adequate electric shore power. The California Air Resources Board (CARB) recently approved "Ocean-Going Vessels At Berth Regulations" (under review by US EPA) already requires much of this infrastructure, with terminal and port operators responsible for compliance.<sup>11</sup> The DEIR will need to cover the air quality and greenhouse gas impacts of increased maritime shipping and transportation.
- **Maritime Transportation Congestion.** In addition to the emissions and infrastructure impacts associated with Crowley's transportation vessels, the Project will impact the quantity and type of vessel traffic that is able to move through the Bay, creating impacts, congestion, and access issues for fisheries (including mariculture), Tribal Nations, seaweed farmers, and other Bay users. Maritime transportation routes in Humboldt Bay are already highly congested with a 'pinch point' and limitations on usage due to weather. There are certain "high use times" which are already congested, and these will likely be desirable times for both wind farm construction, staging, and shipping, impacting commercial fisheries, Tribal Nations, various bay industries, and recreational users. The Bay has a robust commercial fishing industry as well as prolific recreational opportunities that provide an economic engine for the community. Most critically, though, the Bay provides a relatively inexpensive, local and high-protein food source, and Tribal Nations rely on natural resources in Humboldt Bay and rivers fed by (and immediately to the north and south of) the Bay for commercial, cultural, and sustenance fishing. The EIR must include an analysis of impacts to the existing maritime and fishing industries, including Tribal fisheries in the Bay and rivers within Indigenous and Tribal lands in the greater region. There will be additional shipping and hauling in the transportation channel and the temporary storage of assembled turbines in Humboldt Bay that will impact the existing industries and Tribal uses. The DEIR must also analyze impacts to safety in the Bay for other users, including recreational, academic, and scientific users.

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<sup>11</sup> <https://ww2.arb.ca.gov/our-work/programs/ocean-going-vessels-berth-regulation>

- **Other Air Quality Impacts.** Page 122 of the Coastal Commission’s Conditional Concurrence staff report notes that “[M]any air emissions associated with turbine manufacturing and assembly have the potential to occur within Humboldt Bay. The town of Samoa is directly adjacent to the Redwood Marine Terminal 1 (now known as the Wind Terminal) site, and, as discussed in section L, the communities near the proposed terminal redevelopment have disproportionate vulnerability and will likely bear disproportionate impacts of air emissions as a result of manufacturing and transport of materials required for manufacturing.” In addition to the air quality impacts discussed above, the Project will have air quality impacts from construction equipment and vehicles, truck traffic, dredging, manufacturing processes, vessels and shipping, and ongoing industrial operations, among other sources. The DEIR will need to examine all sources of air pollutants and conduct a complete air quality and health risk assessment for both construction and ongoing operations, including from maritime operations. The DEIR must analyze and mitigate potential air quality impacts of the project’s vehicular traffic on the walkability and bikeability of Highway 255, New Navy Base Road, and the surrounding street network.
- **Greenhouse Gas Emissions.** Operational GHG impacts from utilization of onsite equipment, trucks, and vessels serving the Wind Terminal must be assessed. The Project must also be analyzed in relation to compliance with the California Air Resources Board 2022 Scoping Plan. The State’s roadmap to address climate change cuts greenhouse gas emissions by 85% and achieves carbon neutrality by 2045. To reach this goal, all development must be at least carbon neutral, if not carbon offsetting. The DEIR must address how the Project is contributing to achieving this goal.
- **Aesthetics (Views).** As discussed previously, the Wind Terminal is a large project located in a visually prominent area on a peninsula of land between Humboldt Bay and the Pacific Ocean. In addition to impacts to Tribal Cultural Landscapes, The DEIR will need to assess the visual and aesthetic impacts on coastal views and coastal resources from new buildings, cranes, high mast light poles, and other heavy industrial equipment and facilities.
- **Aesthetics (Light and Glare) and Noise.** In addition to the impacts to views, the anticipated light, noise, and glare impacts from 150’ tall “high mast terminal lighting” around the perimeter of the Project Area, and equipment operations, will be substantial. The coastside/harborside location of the Project Area means that there will be potentially detrimental nighttime impacts to humans, terrestrial wildlife, and ocean wildlife. Specifically, as discussed above, there are Tribal lands in the vicinity of the future Project that are used for ceremonial purposes, and round-the-clock lighting and noise is likely to impact this use. The DEIR must

contain photometric calculations and visual simulations of the night time conditions created by 150' tall light fixtures, and must address the impact to Tribal cultural practices and Tribal resources. The DEIR must model noise levels across the operational profile of Terminal activities (e.g., 24/7/365).

- **Water Quality.** With the level of development proposed for the Project Area and the type of industrial activities proposed to take place on the site, as well as increased dredging at new depths, the EIR will need to study water quality impacts in detail. In particular, the EIR will need to analyze the potential impacts resulting from dredging that will disturb legacy pollutants. It must also analyze how degraded water quality could impact the shellfish, seaweed, and fishery industries that currently operate in the bay. These industries produce food for human consumption and thus may not be able to operate if water quality is degraded. Project analysis and design must include mitigation measures that address how the District will assist with disposal of contaminated foods and provide resources for increased water quality testing that food-based industries and Tribal Nations will be required to conduct to ensure safety of their Bay-based activities. Further, the EIR must describe how the project will manage any increase in impervious surfaces and control polluted runoff from industrial processes. The DEIR must also assess the potential waterside impacts from construction of new docks and submersible platforms and the demolition of existing docks and piers. A robust analysis of the potential water quality impacts resulting from spills or other accidental releases of materials from the Wind Terminal into Humboldt Bay must be included as well.
- **Land Use.** The EIR must fully analyze the Project's consistency with land use policies and the Coastal Act, including any inconsistency that would result from the proposed amendments to the Humboldt Bay Area Plan (Local Coastal Plan) or any natural resource plans that relax standards associated with noise, dust, light, vibration, or outdoor uses, including impact to the Wiyot Tribe's land use goals for Tuluwat Island. Pursuant to SB 18, the Harbor District must consult with Tribes prior to making land use planning decisions and provide notice at key points in the planning process.
- **Operational Impacts.** In addition to the construction impacts of the Project, the DEIR must analyze the ongoing operational impacts of the Wind Terminal—which could be an active manufacturing and assembly facility serving the West Coast for 25 + years. Moreover, Crowley's wind project support operations will occur not just during construction of the Humboldt wind project, but will continue over the operational life of the wind leases, and any future repowering. Any traffic, air quality and water impacts analysis must include consideration of the role of the Project as a long-term construction and operations facility.

- **Recreation.** The Project has the potential to impact the quantity and type of vessel traffic moving through the bay and may impact recreational uses within Humboldt Bay, including non-motorized recreational boating (e.g., rowing, kayaking, sailing, surfing) and recreational fishing within Humboldt Bay. The site is adjacent to the low tide water trail in Samoa, and it is foreseeable that large, motorized vessel traffic in the vicinity of the water trail would increase, and operations to tow assembled turbines to and from the Wind Energy Areas may make the vicinity less suitable for recreation, and may therefore push recreational users to other areas. The DEIR must include an analysis of impacts to water-based recreation.

Broadly speaking, the EIR must provide sufficient analysis and detail about environmental impacts to enable decision makers to make intelligent judgments in light of the environmental consequences of their decisions. *See* CEQA Guidelines §15151; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. Both the public and decision makers need to fully understand the implications of the choices that are presented related to the project, mitigation measures, and alternatives. *Laurel Heights Improvement Ass'n v. Regents of University of California* (1988) 6 Cal.4th 1112, 1123. To the extent the DEIR identifies potentially significant impacts, it must also identify effective, enforceable mitigation measures to reduce those impacts to the greatest extent possible.

**V. The Project must incorporate energy-efficient, emissions-reducing, and demonstrably effective “green” features by design.**

In its Consistency Determination Report dated March 17, 2022, the California Coastal Commission found that the District’s terminal expansion and future operations in support of offshore wind energy generation would cause additional pollution and impacts, including additional air pollution burdens that may occur from vehicle emissions on land and vessel emissions offshore, in addition to a loss of lower-cost recreational boating opportunities. Burdens such as increased air, water, noise, and light pollution would not only affect residents and wildlife, but also workers and visitors who recreate in the area. Near the Port, there are several low-income communities and populations with additional sensitivities such as asthma and cardiovascular disease “that may be exacerbated with additional pollution impacts in the area that may occur from Humboldt Harbor District expansion and future operations to support offshore wind energy generation.” *See* Coastal Commission Conditional Concurrence Staff Report, page 117.

In fact, the Coastal Commission Staff Report contains an entire section on Environmental Justice and the potential impacts of the Wind Terminal on communities of concern living near the future Project site. Due to the potential impacts identified, the Project must do everything practicable to minimize further degradation of conditions in

these communities. This would include designing the Project with the most energy-efficient materials and facilities, with zero-emissions ships, vehicles and equipment, and the smallest climate impacts possible. These features and commitments must be described in detail in the Project Description.

The only way to achieve the climate goals set by the State is for the Harbor District and the future leaseholder/developer/operator to commit to a ‘zero-emission’ Project. Such a commitment would protect the surrounding communities from air pollution and prevent water contamination, while achieving maximum climate benefits.

**VI. The DEIR must identify a wide range of alternatives.**

CEQA requires that an EIR analyze a range of reasonable alternatives to the project. The alternatives must feasibly attain most of the basic project objectives while avoiding or substantially lessening the project’s environmental impacts. *See* Public Resources Code § 21100(b)(4); *see also* CEQA Guidelines § 15126.6(a). The CEQA Guidelines state that the selection and discussion of alternatives should foster informed decision-making and informed public participation. *See* CEQA Guidelines § 15126(d)(5).

To comply with these requirements, the DEIR must analyze a range of alternatives that meet the Project Objectives (enhanced as suggested in the previous section) and reduce significant impacts that are created by the Project. The NOP did not identify any possible Project Alternatives, and therefore we are not able to provide input on the suitability of what the Harbor District may be considering. Instead, potential alternatives include a zero-emissions/fully electric alternative; an alternative that minimizes dredging and preserves bay access for fisheries and their operations; a cultural resource preservation alternative that reduces or avoids visual, air and water quality, noise and aesthetic impacts and re-contamination impacts to Tuluwat Island and other important Tribal cultural sites; an alternative that maximizes on-site renewable energy and electricity benefits to surrounding communities; and an alternative that provides greenspace, public recreation and infrastructure benefits.

**VII. The Harbor District must seek public engagement and involvement early and often.**

The Wind Terminal offers a unique opportunity to create climate-friendly energy in a climate-positive way. Unlike other boom-and bust natural resource projects in the region such as dams, logging, mining, and drilling that have harmed indigenous communities and the environment without providing local benefits or investment, there is an opportunity here for the community to be an engaged interested party, and to engage

with the Harbor District in a partnership to create a project that is a source of international leadership and pride for this region.

While CEQA Guidelines establish the minimum thresholds for public outreach and engagement, the Harbor District should do more: Establish consultation and regular communication with Tribal representatives to advise on key project milestones and seek feedback. Hold additional informational meetings to educate the public on the project as it is being designed. Seek input from the Network and other community groups on alternatives that are being considered. Provide authentic and transparent design adjustments based on feedback. Begin consultations on Community Benefits Processes and Agreements. Design policies and practices that ensure community, industry, and environmental shared well-being for generations.

Transparency is critical to building trust and support for this Project. To date, the Harbor District's process has not met that crucial standard. Only recently was the Exclusive Negotiating Agreement with Crowley made available on the Port website after numerous requests. The Harbor District's proposal to enter into a lease with Crowley that will govern the development of the Project before the DEIR is released underscores the need for more robust community involvement and transparency. The Harbor District must ensure that community members and policy-makers know key terms that will affect the Project going forward. The community deserves to have opportunities to influence those terms through the CEQA and other robust public processes.

#### **VIII. Tribal safety concerns must be addressed in the future lease terms and Project approvals.**

The Coastal Commission Consistency Determination staff report detailed findings and concerns related to the safety of Native Tribes and local communities on p. 118 of their report. Specifically, the staff report states that “[T]he Commission expects future wind development to not only provide benefits to the community but also in a manner that does not continue to exacerbate harm in Native American communities and any additional vulnerable populations with limited resources to address these harms.”

Development projects on or near Tribal communities in the United States, Canada, and globally, have brought both economic opportunity and an increase in MMIP, violent crime, drug abuse, and sex trafficking of Native women and children. A recent article in the Harvard Journal of Law & Gender studying extraction projects near the Fort Berthold

Reservation in North Dakota demonstrates these impacts.<sup>12</sup> During the period of development near Fort Berthold, there were more murders, fatal accidents, sexual assaults, domestic disputes, drug busts, gun threats, and human trafficking cases than in any year before the project commenced.<sup>13</sup> And over a two-year period, the Tribe's court system saw its caseload grow by over 2,000%. In Canada, the National Inquiry on Missing and Murdered Indigenous Women and Girls found that “work camps, or ‘man camps,’” in Canada, associated with the resource extraction industry (were) implicated in higher rates of violence against Indigenous women at the camps and in the neighboring communities.”<sup>14</sup>

In addition to consulting with Tribes during the preparation of the EIR, the Harbor District must actively solicit Tribal participation during lease term negotiations and throughout the Project approval process to define the protections and protocols that should be in place to prevent damage to human life, Tribal culture, and exacerbation of MMIP. This should include MMIP prevention, education, organizational policy making, enforcement, and response.

## **IX. Conclusion.**

Given Humboldt Bay's unique physical characteristics and its location and proximity to future call areas for wind farm development, the Harbor District is sitting in a very strong position to negotiate a beneficial package with the future leaseholder/developer/operator of the Wind Terminal, which will be instrumental in establishing best practices for the offshore wind industry on the West Coast. The CEQA analysis must be completed, and all potential impacts and mitigation measures known, before those negotiations conclude. The EIR for the Project must analyze and mitigate all of the impact areas identified in this memorandum.

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<sup>12</sup> Kathleen Finn, Erica Gajda, Thomas Perin, and Carla Fredericks, “Responsible Resource Development and Prevention of Sex Trafficking: Safeguarding Native Women and Children on the Fort Berthold Reservation”. 40 Harv. J.L. & Gender 1: Colorado Law Scholarly Commons, 2017, [Responsible Resource Development and Prevention of Sex Trafficking: Safeguarding Native Women and Children on the Fort Berthold Reservation \(colorado.edu\)](https://colorado.edu)

<sup>13</sup> Kimberly N. Mitchell, “Man Camps, Oil Pipelines, and MMIW: How United States V. Cooley is a False Victory for Indigenous Tribes”. Vermont Journal of Environmental Law, [Man Camps, Oil Pipelines, and MMIW: How United States v. Cooley is a False Victory for Indigenous Tribes \(vermontlaw.edu\)](https://vermontlaw.edu)

<sup>14</sup> “Our Mandate, Our Vision, Our Mission”. National Inquiry into Missing and Murdered Indigenous Women and Girls, [Our Mandate, Our Vision, Our Mission | MMIWG \(mmiwg-ffada.ca\)](https://mmiwg-ffada.ca)

## MEMORANDUM

TO: Redwood Region Climate and Community Resilience Hub (CORE Hub)

FROM: Winter King

DATE: August 25, 2023

RE: Environmental Review for Proposed Humboldt Bay Offshore Wind and Heavy Lift Multipurpose Marine Terminal

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### Introduction

You have asked our firm to provide you with an overview of the California Environmental Quality Act's ("CEQA") requirements for environmental review of the proposed Humboldt Bay Offshore Wind and Heavy Lift Multipurpose Marine Terminal ("Project") currently under consideration by the Humboldt Bay Harbor Recreation and Conservation District ("District"). In particular, you have asked whether the District must complete its CEQA review prior to issuing a lease, or option agreement, authorizing development of the Project.

The answer is plainly "yes." Leases are specifically included in the definition of "projects" subject to CEQA. And it is a fundamental principle of CEQA that any required environmental review must be completed before a project is approved so that the decisionmakers can take into account the environmental consequences of the project in deciding whether to approve it, what mitigation measures to require, etc.

### Background

The United States and California have both established goals for the development of offshore wind energy projects to reduce carbon emissions and slow the impacts of climate change. To accomplish these goals, the federal Bureau of Ocean Energy Management ("BOEM") has initiated the process for leasing areas off the coast of Humboldt County ("Humboldt Wind Energy Area" or "WEA") to private developers of offshore wind projects. In 2022, BOEM prepared an environmental assessment ("EA") prior to initiating the first step in this process, which would allow potential offshore wind



developers to carry out site assessment and site characterization activities prior to seeking the right to develop a wind energy facility. The EA clearly states that, prior to BOEM conveying the rights to develop a wind energy facility in the WEA, BOEM will prepare and circulate for public review an environmental impact statement (“EIS”). The two bidders who obtained site assessment leases from BOEM were RWE Offshore Wind Holdings and California North Floating with leases issued in June 2023.

While these wind energy projects will be developed and operated offshore, onshore facilities will also be needed at the Port of Humboldt Bay (“Port”), both to support construction and operation and to assemble and maintain wind turbines. Indeed, obtaining deepwater port access is a prerequisite to developing wind offshore throughout the Pacific. The Port of Humboldt Bay has been identified in studies as the most promising opportunity to assemble offshore wind given its deep navigation channel, no bridges, and existing space. The District is the public agency that manages the Port and is authorized to lease Port land for these onshore facilities (referred to as “Humboldt Bay Offshore Wind and Heavy Lift Multipurpose Marine Terminal” or “the terminal”). In October 2022, Crowley Wind Services signed an agreement with the District to exclusively negotiate to be the developer and operator of the terminal. According to the Conceptual Master Plan available on the District’s website and the Notice of Preparation (“NOP”) recently issued by the District, this terminal would accommodate several buildings, wharf expansion, and two dredge areas.

The agreement being negotiated by Crowley and the District is an option agreement, by which the District would grant Crowley the right to lease Port land for the development and operation of the terminal. According to the exclusive negotiating agreement recently posted on the Port’s website, the lease will be an exhibit to the option agreement and must contain initial plans for development sufficient to obtain Project entitlements. Once the option agreement is approved by the Harbor District, Crowley will have the right to enter the lease; no further District approvals will be necessary. The option agreement recognizes, however, that additional approvals are required to develop the Project, including the modification of the District’s “Humboldt Bay Area Plan” (the Port’s Local Coastal Program under the California Coastal Act).

To date, the District has stated that it is planning to prepare an environmental impact report (“EIR”) for the Project, but that it will not complete this process until after it has entered the option agreement with Crowley.

## Analysis

### **I. The District must prepare and finalize the environmental analysis required under CEQA before considering approval of the lease.**

In general, CEQA requires public agencies to identify the potential environmental impacts of a project, as well as mitigation measures and project alternatives, *before* approving it. “Project” is defined as “an activity which [1] may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment” and [2] is either undertaken by a public agency or requires agency approval. Guidelines § 15378(a). If a project could have significant, adverse impacts, the agency must prepare an “environmental impact report” or “EIR.” If a project will have no significant, unmitigable impacts, the agency may prepare an initial study and negative declaration. The purpose of conducting this environmental review is to provide the public and decision-makers with information about the project’s environmental effects and ways to minimize them before the project is approved.

In this instance, California’s Coastal Commission has found that the District’s terminal expansion and future operations in support of offshore wind energy generation would cause additional pollution and impacts, including additional air pollution burdens that may occur from vehicle emissions on land and vessel emissions offshore and loss of lower-cost recreational boating opportunities. Burdens such as increased air, water, noise and light pollution would not only affects residents, but also workers and visitors who might recreate near port areas. Near the Port, there are several low-income communities and populations with additional sensitivities such as asthma and cardiovascular disease “that may be exacerbated with additional pollution impacts in the area that may occur from Humboldt Harbor District expansion and future operations to support offshore wind energy generation.” See Coastal Commission Consistency Determination Staff Report, page 117.

You have asked us to advise whether the District is required to complete its environmental review of the project before entering the option agreement authorizing the lease between the District and Crowley for the development of an “Offshore Wind and Heavy Lift Multipurpose Marine Terminal,” or whether the District may authorize the lease first but prepare environmental review before taking other steps toward Project development, including amending its Area Plan. Because authorizing the lease commits the District to a definite course of action that forecloses consideration of alternatives and mitigation measures, the District must complete its environmental analysis of the Project prior to authorizing the lease.

**A. A lease between the District and Crowley for the development of an “Offshore Wind and Heavy Lift Multipurpose Marine Terminal” is a project subject to CEQA.**

A lease that would allow the development of an “Offshore Wind and Heavy Lift Multipurpose Marine Terminal” is a project subject to CEQA. CEQA applies to discretionary projects carried out or approved by public agencies. CEQA § 21080(a). “Project” is defined as “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment,” which includes “the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.” CEQA § 21065 (emphasis added); *see also* Guidelines §§ 15378(a)(3), 15377. In determining whether an activity is a project subject to CEQA, the question is “whether the activity’s potential for causing environmental change is sufficient to justify the further inquiry into its actual effects,” without considering whether the potential environmental effects will actually occur. *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1197. The California Supreme Court has stated that when determining whether an activity is a project, CEQA must be interpreted broadly, “to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 (disapproved of on other grounds).

Caselaw supports this conclusion as well. In *World Business Academy v. California State Lands Commission*, (2018) 24 Cal.App.5th 476, the court found there was “no dispute” that a replacement lease for continued operation of a nuclear powerplant was a “project” subject to CEQA. In *City of Orange v. Valenti*, (1974) 37 Cal.App.3d 240, the court stated that it was “inescapable” that leasing a building was a “project” under CEQA.

Lastly, in *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, the project at issue was a lease agreement entered between the City of Los Angeles and a railway company for development of a new railyard at the Port of Los Angeles. The harbor department conducted environmental review of the project, preparing and certifying an EIR before approving the lease. Several parties successfully challenged the sufficiency of the EIR. The City did not even attempt to argue that the lease was not a “project” for the purposes of CEQA.

Similarly, here, a lease for development and operation of the Offshore Wind and Heavy Lift Multipurpose Marine Terminal is a “project” subject to CEQA: It is a discretionary action taken by a public agency that would result in both direct and indirect physical changes to the environment. The Conceptual Master Plan for the terminal

currently includes plans for several buildings, wharf expansion, and two dredge areas. The exclusive negotiating agreement further requires Crowley and the District to include initial plans for development in the lease terms. Thus, the option agreement and lease will describe the planned development, and this planned development will result in physical changes to the environment. Because the definition of “project” explicitly includes an activity involving the issuance of a lease and the proposed lease agreement “is capable of causing direct or reasonably foreseeable indirect effects on the environment” through its proposed development, it is a project under CEQA. *Union of Medical Marijuana Patients, Inc.*, 7 Cal.5th at 1198.

**B. The District must complete its environmental review of the lease before approving it.**

The District is required to complete its environmental review of the Project before approving the option agreement described in the exclusive agreement to negotiate. The Guidelines state that every lead agency “shall consider a final EIR or negative declaration” “[b]efore granting any approval of a project subject to CEQA.” Guidelines § 15004. Similarly, CEQA’s definition of “environmental impact report” provides that, when preparation of an EIR is required, it “shall be considered by every public agency *prior to its approval* or disapproval of a project.” CEQA § 21061 (emphasis added). Any environmental review “should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design.” Guidelines § 15004(b). And, “public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance.” Guidelines § 15004(b).

California courts, including the Supreme Court, have consistently held that CEQA requires environmental review *before* an agency approves a project. The California Supreme Court has stated that preparation of an EIR “is the key to environmental protection under CEQA.” *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 70. The basic purposes of CEQA, including informing decision-makers and the public about potential environmental effects of a proposed activity and identifying alternatives and mitigation measures, are best served when environmental review provides information to be used in deciding whether to approve a project, not to inform of environmental effects after a project has already been approved. *POET, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681, 714-15. When environmental review occurs after a project has been approved, “it is likely to become nothing more than a post hoc rationalization to support action already taken.” *Id.*

In *No Oil, Inc.*, the California Supreme Court stated: “CEQA requires that an agency determine whether a project may have a significant environmental impact, and thus whether an EIR is required, [b]efore it approves that project.” 13 Cal.3d at 79. Many other cases reach the same conclusion. *See, e.g., Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 394 (“A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If postapproval environmental review were allowed, EIR’s would likely become nothing more than post hoc rationalizations to support action already taken.”); *Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 286 (If the agency determines the project may have a significant effect on the environment, “the agency must proceed to the third step, which entails preparation of an [EIR] before approval of the project.”); *POET, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681, 715 (“the policy declaration [of CEQA] implies that an evaluation of environmental issues. . . should occur *before* an agency approves a project. This implication is borne out by CEQA’s explicit requirements for EIRs. . . which. . . ‘shall be considered by every public agency *prior to its approval* or disapproval of a project.”); *Friends, Artists & Neighbors of Elkhorn Slough v. California Coastal Commission* (2021) 72 Cal.App.5th 666, 678 (“the Coastal Commission was required to consider project alternatives, mitigation measures, and conditions for the project *before* approving the coastal development permit application”); *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1315 (“Central to CEQA is the EIR, which has as its purpose informing the public and government officials of the environmental consequences of decisions before they are made.”).

**C. The District may not wait to conduct environmental review of the Project simply because other, later approvals are also required.**

Where a “project” involves a lengthy planning process or several government approvals, lead agencies must determine when during that planning process environmental review must be done. The CEQA Guidelines state that “EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program design and yet late enough to provide meaningful information for environmental assessment.” Guidelines § 15004(b). For public projects, agencies may not undertake actions concerning the project “that would have a significant adverse effect or limit the choice of alternatives or mitigation measures before completion of CEQA compliance.” Guidelines § 15004(b)(2).

In 2008, the California Supreme Court addressed this timing issue in the context of a joint “public-private” project proposed in the City of West Hollywood. *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116. There, the City was working with several

non-profit community housing developers to build low-income, senior housing on land owned by the City. In pursuit of that goal, the City approved a “Conditional Agreement for Conveyance and Development of Property,” which provided that the City would convey the property to the developers and provide a project loan if the developers satisfied certain conditions, including compliance with CEQA. *Id.* at 124-25. The agreement also provided a predevelopment loan of \$475,000 that was not subject to prior CEQA review. *Id.* at 124. A group of neighbors and citizens objected, arguing that the City was required to conduct CEQA review before approving the agreement. *Id.* at 124.

In reviewing this challenge, the Supreme Court identified two policy considerations that are “important to the timing of [environmental review]: (1) that CEQA not be interpreted to require an EIR before the project is well enough defined to allow for meaningful environmental evaluation; and (2) that CEQA not be interpreted as allowing an EIR to be delayed beyond the time when it can, as a practical matter serve its intended function of informing and guiding decision makers.” *Id.* at 130. The Court then applied “the general principle that before conducting CEQA review, agencies must not ‘take any action’ that significantly furthers a project ‘in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.’” *Id.* at 138 (quoting Guidelines § 15004(b)(2)(B)); *see also id.* at 139 (“If, as a practical matter, the agency has foreclosed any meaningful options to going forward with the project, then for purposes of CEQA the agency has ‘approved’ the project.” [internal quotations omitted]).

Applying this test to the specific facts of that case, the Court held that the City had committed itself to a definite course of action regarding the project before conducting environmental review, and thus had violated CEQA. In particular, the Court noted that the development agreement stated its purpose was to “facilitate development of the project.” *Id.* at 140. Moreover, if the City did not ultimately approve the development, the developer would not have to repay the predevelopment loan. *Id.* And the City began relocation proceedings for current tenants. *Id.* All of these circumstances, the Court found, indicated that the City had committed itself to a definite course of action in approving the agreement, and thus violated CEQA by failing to conduct environmental review first. *Id.*<sup>1</sup>

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<sup>1</sup> See also *California Farm Bureau Federation v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 191-82 (acquisition of conservation easement by Department of Fish and Game required CEQA review where easement required conversion of 235 acres of agricultural land to wetlands and other habitat); *McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District* (1988) (transfer

Here, the option agreement described in the exclusive negotiating agreement is indistinguishable from the “Conditional Agreement for Conveyance and Development of Property” addressed in *Save Tara*. It will commit the Harbor District to leasing Port Property to Crowley for the express purpose of developing the Project, and the initial plans for that development will be part of the agreement. Thus, the option agreement and attached lease will certainly commit the District to a definite course of action and foreclose alternatives and mitigation measures. As a result, the District must complete its environmental review for the Project prior to entering the option agreement and authorizing the lease.<sup>2</sup>

Recently, the District notified the public that it is preparing an environmental impact report (EIR) for the Project. However, this notice did not mention the District’s intention to lease the terminal to Crowley, did not suggest the EIR would be complete before the option agreement is executed, and in fact suggests that the Project would be a public project carried out by the District. We recommend that the District clarify Crowley’s role in the Project. If Crowley will, in fact, be developing and operating the Project, the District should process the lease together with the Area Plan amendments, and complete the EIR prior to approving either step in the process.

### **Conclusion**

The District’s approval of an option agreement to lease Port property to Crowley for the purpose of developing an onshore terminal to support the development and operation of anticipated offshore wind energy projects is a “project” subject to CEQA. Therefore, any environmental review for that project must be completed before the District enters the option agreement authorizing the lease. This remains the case even though the District must issue other approvals (e.g., amending its Area Plan) in order to carry out the Project.

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of property to public agency required environmental review because property contained PCBs and, under federal law, remediation activities were mandatory).

<sup>2</sup> Section 8.14 of the exclusive negotiating agreement provides that “Crowley’s exercise of the Option will expressly be conditioned upon compliance with CEQA and/or NEPA.” As discussed above, however, compliance with CEQA requires preparing an EIR *before* the option agreement is executed and the Project is set in motion; as in *Save Tara*, it is not sufficient to condition approval of the agreement on environmental review happening after-the-fact.