

November 14, 2019

**Via E-Mail**

Robert Morris, Chair  
Members of the Planning Commission  
c/o Planning Clerk  
County of Humboldt  
825 5th Street, Room 11  
Eureka, CA 95501  
planningclerk@co.humboldt.ca.us


**Re: Humboldt Wind LLC, Conditional Use Permit and Special Permit; Case Number: PLN-13999-CUP**

Dear Chair Morris and Members of the Planning Commission:

On behalf of Monument Mountain Vineyards and Carol Hoopes, we respectfully request that the Planning Commission decline to certify the Final EIR and deny land use entitlements for the wind farm project proposed by Terra Gen and Humboldt Wind, LLC (“Project”).

**I. Introduction**

The sheer volume of new technical information presented for the first time in the Final EIR establishes, virtually ipso facto, that the impact analysis in the Draft EIR was so fundamentally inadequate that meaningful public review and comment during the statutory comment period were precluded. Under such circumstances, CEQA requires the County to recirculate all the new information in the form of a revised Draft EIR for a new 45-day public comment period.

Furthermore, the EIR preparers’ responses to our and others’ comments on the Draft EIR in numerous cases fall far short of CEQA’s requirements for good faith, reasoned analysis in response to material public comments. As a result, there is insufficient evidence in the Final EIR to support any finding that the Project will not have significant impacts on most environmental topic areas, or that mitigation or avoidance measures are infeasible for those impacts identified as significant and unavoidable. We elaborate on these concerns below. 

018-1

## II. Substantial New Information Requires Recirculation For Additional Public Comment.

The Final EIR includes an overwhelming volume of new, often highly technical information that neither the public nor responsible agencies with jurisdiction over impacted natural resources have ever before seen. The figure below comprises just the list of the studies, memos, supplemental analyses, survey data, and other critically relevant materials that the public has been given only 10 days to review before the Planning Commission's approval hearing.

Fig. 1 List of new studies contained in the Final EIR.

### Appendix B Updated Technical Information

- [2019 Botanical Resources Survey Results Memo \(PDF\)](#)
- [Adjustments to Turbine Siting and Revised Take Estimate for Murrelets \(PDF\)](#)
- [Bat Acoustic Monitoring Report Addendum \(PDF\)](#)
- [Compensatory Mitigation Strategy for Marbled Murrelets \(PDF\)](#)
- [Credit Agricole Letter \(PDF\)](#)
- [Disposal Field Suitability Investigation Results \(PDF\)](#)
- [Eagle and Raptor Nest Survey Report - Year 2 \(PDF\)](#)
- [Eagle Use Count Survey Results Memo November 2018 - August 2019 \(PDF\)](#)
- [Eelgrass Avoidance Recommendations \(PDF\)](#)
- [Marbled Murrelet Collision Risk Assessment Two Year Report \(PDF\)](#)
- [Marbled Murrelet Radar Survey Report Year 2 \(PDF\)](#)
- [Non-technical Summary of Marbled Murrelet Mitigation Strategy \(PDF\)](#)
- [Northern Spotted Owl Activity Center Occurrences Memo \(PDF\)](#)
- [Northern Spotted Owl Off-Site Mitigation Sites \(PDF\)](#)
- [Northern Spotted Owl Survey Results 2019 \(PDF\)](#)
- [Operational Impacts to Eagles \(PDF\)](#)
- [Operational Impacts to Raptors \(PDF\)](#)
- [Reclamation Revegetation Weed Control Plan \(PDF\)](#)
- [Summary of Collision Risk Modeling for a General Audience \(PDF\)](#)
- [Supplement to Compensatory Mitigation for Marbled Murrelet \(PDF\)](#)
- [Supplement to Marbled Murrelet Habitat Assessment, Auditory and Visual \(PDF\)](#)
- [Updated Criteria Air Pollutant and GHG Emissions Calculations \(October 2019\) \(PDF\)](#)
- [Updated Vegetation and Aquatic Resources Survey of Supplemental Project Areas \(PDF\)](#)
- [Willow Flycatcher Status and Risk Evaluation \(PDF\)](#)
- [Wind Availability Analysis and Location of Project \(PDF\)](#)




Notably, the list includes an entirely new, never before seen Northern Spotted Owl survey (which identified previously undisclosed activity centers). This constitutes new information of substantial importance that was absolutely required to be included in the Draft EIR but was not. It also includes a new Mitigation Strategy for Marbled Murrelets, new second-year results of a Marbled Murrelet survey and collision risk report, new or second-year studies of the wind turbines' operational impacts to eagles and other raptors, and surveys of new areas for impacts to botanical resources. CEQA plainly requires that all these materials be circulated for a 45-day public comment period so that the public and responsible agencies, including the California Department of Fish & Wildlife and U.S. Fish and Wildlife Service, would have a meaningful opportunity to review and comment upon their adequacy. By publishing them for the first time in a Final EIR released just days before the approval hearing, the County has simply not complied with CEQA.

The requirements of CEQA in this context are clear. An agency must recirculate a revised draft EIR for public comment whenever “significant new information” is added after public notice is given of the availability of the draft EIR for public review but before certification. Guidelines, § 15088.5(a). “Significant new information” requiring recirculation includes information showing a new or more severe significant impact than the draft EIR disclosed, or information showing that the draft EIR was “so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” Guidelines, § 15088.5(a)(4); *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1052. The new information triggering recirculation may appear in the Final EIR or in post-Final EIR material. *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95; *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 89, 131.

The fact that the County now claims that nothing in the new information discloses a new significant impact is immaterial. The purpose of recirculation is to subject the new information “to the same critical evaluation that occurs in the draft stage,” so that “the public is not denied an opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom.” *Save Our Peninsula, supra*, 87 Cal.App.4th at 131; *Sutter Sensible Planning v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 822.” *Laurel Heights Improvement Association v. U.C. Regents* (1993) 6 Cal.4th 1112, 1132. Based on this reasoning, and under *Mountain Lion, supra*, the wholesale omission of relevant information from a draft EIR triggers a duty to recirculate such information when first provided in a final EIR regardless of whether it discloses a new or more significant impact. 214 Cal.App.3d at 1052.

O18-3



We submit that the vast amount of substantive technical information contained in the Final EIR establishes per se that the Draft EIR omitted relevant information wholesale, thereby precluding meaningful public review and comment. The County is therefore obligated to recirculate this new information in a revised Draft EIR before it may lawfully certify any Final EIR and approve the Project 

018-3  
(Cont.)

### III. Comment Responses in the Final EIR Are Inadequate Under CEQA.

We submitted detailed, specific comments on the Draft EIR in a letter dated June 14, 2019. While the EIR preparers have responded to some of our concerns, there are numerous other issues that remain wholly unaddressed. As detailed below, the Final EIR's comment responses in most cases simply do not satisfy CEQA's standards for good faith, reasoned analysis in response to substantive public comment. We accordingly stand by and reassert the concerns raised in our June 14 comments on the draft EIR, and incorporate them by reference into this letter.

The County's obligations under CEQA again are clear. The statute imposes a clear duty on the County to respond to public comments raising substantive concerns on the analysis and conclusions in the Draft EIR in good faith, with fact-based, reasoned analysis, not conclusory statements. *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842; Guidelines, § 15088(c). Failure to address comments "in detail," providing "specific factual information" requested by the commenter, violates CEQA. *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 359. Importantly, where comments seek omitted facts or analysis essential to an EIR's conclusions, the failure to correct those omissions "renders the EIR defective as an informational document." *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1236 [response must "directly address" the concern in the comment].

018-4

Our Draft EIR comments in several instances requested precisely this category of omitted facts and analysis essential to the EIRs conclusions concerning impacts and mitigation. As explained in our June letter, the Draft EIR simply failed to identify, evaluate, and disclose the Project's potential impacts in numerous resource categories. Following are examples of instances where the Final EIR fails to provide "good faith, reasoned" analysis in response to our comments on the Draft.<sup>1</sup>

With regard to the gen-tie, we asked the County to discuss the activities that will be conducted within the transmission line corridor, including the type, frequency, and extent of vegetation management activities that will be implemented to maintain


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<sup>1</sup> Again, the County has published a vast quantity of new, highly technical information just days before the final Planning Commission hearing. It is simply not possible to review all these materials in the time provided. We accordingly reserve the right to supplement the concerns in this letter at a later date in the event the matter is heard by the Board of Supervisors.

shrub/scrub habitat within the corridor. Response O7-2 does not address our request for this information. Instead, it simply states:

As described in the project description, the width of the gen-tie would be approximately 80 feet. The 80-foot corridor would be subject to periodic vegetation management, on an as-needed basis, to achieve the necessary fire safety standards.

O18-4  
(Cont.)

A later response explains that vegetation management activities would be conducted in a manner consistent with NERC Standard FAC-003 and CPUC General Order 95. Regardless, this discussion fails to describe the actual activities that would be conducted within the miles-long corridor, and is therefore patently non-responsive. 

With regard to Vegetation and Habitat Mapping (comments O7-8 and -9), we observed that the Draft EIR did not conform to the CWHR classification system. Specifically, it failed to provide any information on the seral stage (based on a combination of size and cover class) of the forests in the Project area. Instead, the habitat information was limited to an extremely coarse level for both habitat type (e.g., Forest/woodland) and vegetation community (e.g., “redwood forest”). Furthermore, the description of each habitat type was vague (e.g., “[m]uch of the forest is logged and the canopy varies from closed to open”). Accordingly, we asked the County to: (1) apply the CWHR system to provide a description of habitats in and adjacent to the Project area; (2) quantify each CWHR habitat type, by stage, in and adjacent to the Project area; (3) clarify whether the Project would directly impact any residual old-growth trees; (4) quantify and map stands of mature second-growth that occur in and adjacent to the Project area; and (5) assess Project impacts to mature second-growth forests.

O18-5

This information is critically necessary to understand whether there is potential habitat for each of the special-status wildlife species addressed in the Draft EIR (e.g., marbled murrelet, fisher, etc.), and the extent of the Project’s impacts to each. Yet in response, the Final EIR simply fails to provide any of this information. Instead, it simply argues:

The applicant’s consultant used industry-standard methods to map vegetation communities...Please note that the use of CWHR types is not necessary for an assessment of vegetation communities as habitat for wildlife species. Particularly for special-status species, the analysis in Appendix M of the DEIR included independent descriptions and assessment of the habitat for special-status species.

Please note that while the Applicant’s consultant may have used the industry-standard methods to map vegetation communities, that is not the industry standard for mapping wildlife habitat. The standard in the State of California is the CWHR. Indeed, HRC includes CWHR habitat information in its THPs. The information in Appendix M does not resolve the issue because it also fails to provide information on the vegetation characteristics in the Project area. For example, for the Pacific Fisher it states:

Dens and forages in intermediate to large stands of old-growth conifer/mixed hardwood conifer forests or mixed stands of old-growth and mature trees with greater than 50% canopy closure.

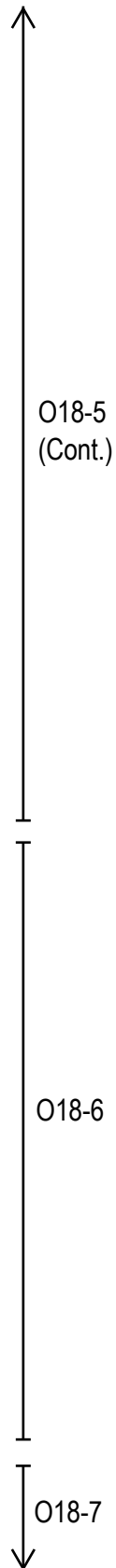
The Appendix thus acknowledges that fisher populations are supported by forests that contain specific size and canopy closure characteristics; however, nowhere does the Draft EIR provide the characteristics associated with the various forest stands in the Project area. This precludes the ability to evaluate whether the Project would impact fisher habitat, how much habitat would be impacted, and where those impacts would occur. To the contrary, the Draft EIR simply offers the conclusory statement that there is no old growth in the Project area. However, Stantec detected fishers on two separate occasions during their surveys. Therefore, if fishers are associated with old-growth (as reported in Appendix M), there must a presumption that old-growth occurs in the Project area.

Additionally, with particularly regard to impacts on Pacific Fisher (comment O7-15), the Final EIR’s response states that:

All temporary impacts to Pacific fisher habitat would be restored, and the maximum permanent impacts would total approximately 35 acres, which is de minimis when compared to the 210,000 acres of forest owned by HRC in Humboldt County, as well as other available forest in the area.

This response, too, is misleading. As reported in Appendix M to the Draft EIR, habitat associated with fisher consists of: “[d]ens and forages in intermediate to large stands of old-growth conifer/mixed hardwood conifer forests, or mixed stands of old-growth and mature trees with greater than 50% canopy closure. ....May use riparian corridors for movement.” Underline added. It should go without saying that it takes 200 years or more to restore old-growth conifer and mixed hardwood conifer forest. There therefore is no rational basis for the comment response to classify some fisher impacts as “temporary.”

With regard to our comments concerning the adequacy of bird and wildlife surveys (comment O7-7), the Final EIR’s response confirms that “the specific areas





surveyed differed depending on the resource.” This suggests that the Draft EIR’s claims regarding the extent of surveys was misleading. There are still portions of the Project area that have had no surveys for special-status plants because the surveyors had “no access” (see 2019 botanical report in Final EIR Appendix B). If the EIR preparers had no access for special-status plant surveys (which extended through July 2019), they must also have had no access for other bird, wildlife, and plant surveys. Regardless, the failure to conduct two years of surveys for spotted owls, as required in the survey protocol, remains a substantive deficiency in both the Draft and Final EIR. At the very least, the new one-year owl survey should be recirculated (together with the qualifications of the surveyors, which the Final EIR omits) so that the public may gauge its accuracy.

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O18-7  
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With regard to comments concerning analysis of impacts to yellow-breasted Chat (comment O7-14), we noted that the chat is a California Species of Special Concern, and asked the County to explain why Table 3.5-5 in the Draft EIR finds a low potential for this species to occur in the Project area, even though the table acknowledges that the eBird database has records of it in the Project area. We also requested that the County actually assess Project’s impacts to the yellow-breasted chat. The County provided the following response:

While eBird is not an entirely reliable source of information, occurrences of yellow breasted chat by eBird users have been documented within the County, but in lower elevation areas within suitable habitat (riparian stands)...the yellow breasted chat has a low potential to occur because no suitable habitat is present onsite.

O18-8

This response is disingenuous and misleading. The eBird records cited are for Bear River Ridge. They were submitted by a professional biologist and were vetted by eBird staff biologists. Thus, they should be considered reliable. The comment response simply fails to provide the information sought with no defensible justification.


Furthermore, with regard to Spotted Owl habitat mapping (comment O7-17), we specifically requested provide copies of HRC’s existing NSO habitat maps and occurrence records; the specific methods that were used to “develop habitat spatial data using ESRI ArcGIS/Arcinfo;” the spatial data used to develop NSO habitat maps and identify the date and source of that data. The Final EIR does not contain any of the GIS files or other mapping data requested, nor does it explain why the information is being withheld. It simply ignores the request.

O18-9

With regard to marbled murrelet habitat assessment (comment O7-20), our comments on the Draft EIR sought evidence to substantiate the conclusions


O18-10  
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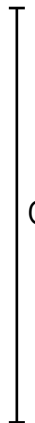
regarding potential nesting habitat in the Project area. Specifically, we asked the County to clarify the number of stands that provide potential nesting habitat for the murrelet, and to clarify what data that were collected for each stand and the rationale for concluding a stand did not provide potential nesting habitat.

The Final EIR’s response cavalierly asserts that the assessment was based on “professional judgment and scientifically accepted measures and metrics.” This response is patently inadequate under CEQA which, as explained, requires actual data and analysis in response to substantive public comment. The variables that determine habitat for marbled murrelet are quantitative (i.e., tree that is at least X tall and with branches at least 4 inches in diameter). Therefore, subjective judgment has no value in assessing habitat value. This is aggravated by the Draft EIR’s initial failure to provide an adequate description of how the professional judgments were accomplished. Professional judgment is not an accepted substitute for data collection. We expressly requested data that would support the assertion that scientifically accepted measures and metrics were used, but none were provided with the Final EIR. We expressly requested the specific dates (between August 13 and 31) of the on-the-ground evaluations and the person-hours associated with those evaluations. The Final EIR provides no response. Indeed, we asked the County to provide data or other documentary support for several other of the Draft EIR’s conclusions regarding murrelet habitat suitability, but the Final EIR remains entirely silent 



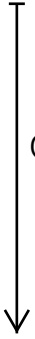
O18-10

With regard to our comments concerning documentation of bird use at other wind projects (comment O7-22), we asked for the estimated fatality rates that were calculated for each project listed; the data that establishes the meteorological conditions at the 21 wind project sites in relation to the meteorological conditions at the Terra Gen Project site; information about the location, type, and bird fatality rates for the other projects; and the copies of the fatality studies cited. In response, Final EIR claims that we have simply “stated an opinion but do not provide any evidence that wind projects are creating population-level impacts on common non-raptor birds. No revisions are necessary.” Once again, this response to a comment seeking information expressly cited or otherwise referenced in the Draft EIR is patently inadequate under CEQA. 



O18-11

With regard to comments concerning noise impacts on murrelet habitat (comment O7-26), the Final EIR’s response explains that the EIR preparers placed three noise meters along the highway where there is no habitat. *See* Supplement to Humboldt Wind Energy Project Marbled Murrelet Habitat Assessment and Auditory and Visual Disturbance Analysis Report in Appendix B. The noise measurements were then used to justify the Draft EIR’s conclusions related to Project noise on habitat that is not next to the highway. The response fails to explain or justify how



O18-12



noise meters placed along the highway will generate data relevant the Project's noise impacts on habitat located elsewhere.

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With regard to our comment seeking information on how the 17 miles of new roads would affect the implementation of the HRC HCP (comment O7-31), specifically whether such new roads were anticipated in the HCP EIS/EIR analysis and whether other new roads have been constructed in the HCP area, the Final EIR simply declined to provide any responsive information.

018-13

With regard to mitigation of impacts to special-status mammal migration (comment O7-39 and -40), our Draft EIR comments asked for specific information needed to gauge the efficacy of the proposed mitigation measures, including the 50-foot buffer. The Final EIR responds by simply declaring that “the adequacy of the 50-foot buffer is based on the professional opinion and experience of qualified biologists. The commenter has not provided any evidence that a 50-foot exclusion buffer is inadequate.” The County has provided no evidence to support the assertion that 50-foot buffers are effective, so there is no way for the public to assess the accuracy of the statement.

018-14

Indeed, there is no evidence that the biologist that provided this opinion has any expertise in this topic area. We suspect that he or she has little if any, as all of the species listed in the mitigation measure in question have home ranges that extend well beyond 50 feet. They may thus be subject to being run over by construction equipment, falling into trenches, and habitat disturbance that alters normal breeding, sheltering, and feeding activities, while noise levels at 50 feet will be enough to cause the animals to abandon nest sites, resulting in mortality of young. Regardless, the comment response remains inadequate under CEQA. It is the County, not the public, that bears the burden of information gathering and disclosure under CEQA. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 724.

With regard to CDFW's comment that the Project site is a “Category 4” area inappropriate for wind farm development due to species and habitat impacts, though this was not our own comment, we would observe that the Final EIR's conclusory, dismissive statement that it “does not concur” is patently inadequate under CEQA. As with the responses to our own comments, it simply fails to provide facts, data, or analysis in good faith. This omission is aggravated by the fact that the comments come from a responsible state agency with jurisdiction and particular expertise over the impacted resources.

018-15

With regard to our comment that the Draft EIR had omitted disclosure and analysis of impacts associated with the Van Duzen Battery Storage Project, which appeared to be a necessary component of the Wind Farm Project, the Final EIR

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simply declares that the Van Duzen Project is “separate” with “independent utility” that would serve a “separate purpose.” It claims that because the Wind Farm would be constructed regardless of the battery storage project, there is no duty under CEQA to evaluate the impacts of the latter project in the current EIR. This misconstrues CEQA’s requirements. Whether battery storage is a “necessary component” or not, the fact remains that the battery storage facility will store electricity generated by the Wind Farm and would almost certainly not be built but for the Wind Farm. The two projects are plainly related to one another. The Final EIR fails to justify the Draft EIR’s failure to evaluate impacts from the battery storage project, and perpetuates the unlawful piecemealing described in our earlier comment.

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O18-16  
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We underscore that the foregoing are just some examples of instances where the Final EIR has failed to respond substantively and in good faith to public comments raising significant and material concerns about the information inadequacies of the Draft EIR. We reserve the right to supplement these concerns at a later date in an appropriate forum.

Finally, we would observe that the Final EIR’s substantive inadequacy appears to be the result of undue haste to obtain Project approvals before December 31, 2019, the date that the federal Production Tax Credit (PTC) is set to lapse. The PTC would likely confer a significant financial benefit to the applicant, but only if actual construction starts before then. The County should not forego the level of diligent, meaningful investigation, disclosure, and analysis of environmental impacts that the Project – a massive construction and operational undertaking on a truly unprecedented scale in Humboldt County, in an ecologically rich and delicate ecosystem – for the sake of financial expediency.

O18-17

#### **IV. Conclusion**

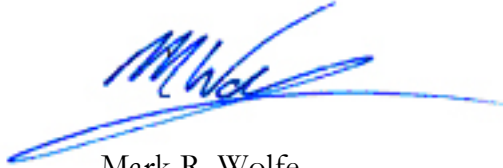
For all the foregoing reasons, we respectfully request that the County take no action to certify the Final EIR or approve land use entitlements for the Project at this time. Instead, the Planning Commission should direct staff to circulate the new studies contained in the Final EIR and its appendices for a full 45-day public comment period, while at the same time updating/amending the new analysis to address the information deficiencies identified above and in our June 14, 2019 comment letter on the Draft EIR.

O18-18

Thank you very much for your attention and consideration.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

A handwritten signature in blue ink, appearing to read 'MR Wolfe', with a long, sweeping underline that extends to the right.

Mark R. Wolfe  
On behalf of Carol Hoopes and  
Monument Mountain Vineyards

MRW:sa

**Letter  
O18  
Response**

**Mark R. Wolfe & Associates, PC  
On behalf of Carol Hoopes and Monument Mountain Vineyards  
November 14, 2019**

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*O18-1 The commenter requests that the Planning Commission decline to certify the Final EIR (FEIR) and deny land use entitlements for the project. The commenter asserts that the volume of new information presented in the FEIR shows that the impact analysis presented in the DEIR was inadequate and precluded meaningful public review and comment. The commenter states that per CEQA, this requires the County to prepare and circulate a new DEIR. The commenter states that responses to comments on the initial DEIR did not reflect good faith and reasoned analysis, and that the FEIR contains insufficient evidence to show there will not be significant environmental impacts or that mitigation or avoidance measures for significant, unavoidable impacts are infeasible. The commenter elaborates on these specific comments in the remainder of the letter.*

This commenter expresses opinions that the additional information provided in the FEIR reflects the inadequacy of the DEIR, and that the FEIR provides insufficient evidence to conclude no significant environmental impacts will occur or that mitigation and avoidance for significant impacts are infeasible. This comment does not raise specific questions or request information that pertains to the adequacy of the DEIR for addressing adverse physical impacts associated with the project, nor does it contain an argument raising significant environmental issues. This comment is published in this document for public disclosure and for decision maker consideration. Responses to specific comments about the adequacy of the FEIR in the remainder of the commenter's letters are provided below.

*O18-2 The commenter repeats that the FEIR includes a significant volume of new information that was not previously presented for public review. The commenter includes an image of the contents list of FEIR Appendix B, Updated Technical Information, and states that the public was given only 10 days to review the materials in the appendix before the Planning Commission's approval hearing.*

The Final EIR provides updated technical data that corroborates the technical data provided in the draft and confirms the significance conclusions drawn in the DEIR. The data consist of the results of studies that were on-going at the time of the release of the Draft and which, in all cases, confirm the conclusions of the studies attached to the Draft EIR and confirm the accuracy and soundness of the analysis in the draft EIR. In no case did the updated data show evidence of new impacts not already disclosed. In several cases, the additional data showed reduced impacts from that projected in the Draft, such as in the case of impacts to raptors, marbled murrelets and acres of impact to northern spotted owl habitat. In other cases, analysis was provided to explain technical data for a lay audience in response to requests to do so. (See for example "Summary of Collision Risk Modelling for a General Audience," Appendix B, Updated Technical Information.) Confirmatory data that amplifies and clarifies the significance conclusions and analysis in the Draft EIR does not qualify as "new significant information" for purposes of recirculation. The Draft EIR was neither conclusory nor so fundamentally inadequate as to preclude meaningful public comments.

Most of the technical studies listed in the letter and included in Appendix B and other new material offered in the FEIR were provided to satisfy specific requests for this information from stakeholders and other members of the public made in their comments on the DEIR. Those studies, many of which were

continuation of surveys described in the DEIR, provided affirmation of the analysis and discussion in the DEIR and did not change any of the impact conclusions reached in the DEIR. The information contained in Appendix B was summarized in the updated biological resources section provided in Section 9 of the FEIR, in the same way as prior technical studies were summarized in the various resource chapters of the DEIR. Therefore, reviewers may be interested to read these documents because of their specific interest in the subject matter, but they are not required to have read the studies to understand and evaluate the impact conclusions in the FEIR.

Information presented in staff reports and in supplemental information packages offered at the three Humboldt County Planning Commission public hearings on November 7, 14, 21, 2019 also provided summaries of these technical studies and a review of the issues raised by the public after the FEIR was released and how they were addressed. By the time the Planning Commission took a vote on the project, the FEIR had been available for public review for 17 days. Many commenters on the DEIR and at the planning commission hearings expressed strong opinions regarding the project. However, there is no indication that any impact conclusions would have been different or in fact would change, if additional time was afforded to review technical information presented in Appendix B.

*O18-3 The commenter notes the new surveys, studies, and reports regarding northern spotted owls, marbled murrelets, eagles and other raptors, and botanical resources, and states that with this significant new information, CEQA requires a new 45-day public comment period. The commenter claims that the County has not complied with CEQA by publishing these materials for the first time in the FEIR rather than in the DEIR. The commenter cites State CEQA Guidelines and case law supporting the argument that such new information, even if it does not present new or greater impacts, requires recirculation. The commenter states that the County must circulate the new information in a revised DEIR before it can lawfully certify the FEIR and approve the project.*

The updated technical studies provided in Appendix B or the FEIR were included to satisfy requests from stakeholders and the public in their comments on the DEIR. For example, commenters requested another year of data on special-status plants, vegetation communities and aquatic resources, bats, eagles, murrelets, and northern spotted owl, all which are provided in Appendix B. The information in those studies is consistent with the analysis and discussion in the DEIR and did not change the analysis or significance conclusions of the DEIR. Commenters requested more detail and analysis on the marbled murrelet collision risk model and compensatory mitigation strategy for marbled murrelets, both of which were supplied in Appendix B. Commenters asked for more detail on the location of eelgrass in Humboldt Bay, and for more specifics on criteria air pollution and GHG emission's calculations, both of which were provided in Appendix B. This information did not change any of the significance conclusions in the DEIR, or any mitigation or avoidance and minimization measures, but rather satisfied commenter's requests for this information. Commenters requested that the project be refined to minimize impacts on sensitive biological resources, and that applicant responded to that request with a reduction in the number of turbines and in the project footprint.

Commenters have claimed that recirculation is required based on a fundamentally inadequate EIR but do not explain what analysis is allegedly missing from the Draft EIR such that public comment on it was "meaningless." Hundreds of pages of meaningful public comments were received on the Draft EIR. Second, the cases cited by commenter are not on point. In those cases, the court found that the Draft EIRs

were missing entire sections such as a cumulative impacts analysis. Commenters here have not identified any section or analysis of any impact that is missing from the Draft EIR.

According to CEQA Guidelines section 15088.5, recirculation is not required unless:

- the new information shows a new, substantial environmental impact resulting either from the project or from a mitigation;
- the new information shows a substantial increase in the severity of an environmental impact, except that recirculation would not be required if mitigation that reduces the impact to insignificance is adopted;
- the new information shows a feasible alternative or mitigation measure, considerably different from those considered in the EIR, that clearly would lessen the significant environmental impacts of a project and the project proponent declines to adopt it; or
- the draft EIR was "so fundamentally and basically inadequate and conclusory in nature" that public comment on the draft EIR was essentially meaningless.

None of these circumstances apply to the Humboldt Wind DEIR, and therefore recirculation is not required.

*O18-4 The commenter incorporates by reference the concerns expressed in the commenter's June 14 comments on the DEIR. The commenter cites State CEQA Guidelines and case law that require agencies to address public comments in good faith and with factual analysis. The commenter states that the FEIR fails to provide the required responses and argues that (for example) Response O7-2 is non-responsive because it did not answer the commenter's request for information about vegetation management activities in the gen-tie.*

Typical measures for vegetation maintenance are discussed at p. 2-39 and 2-40 of the DEIR, and construction of the gen-tie corridor is discussed at p. 2-29 of the DEIR. Rules governing maintenance of transmission corridors are discussed at pp. 3.13-8 and 3.13-9 and 3.13-13 of the DEIR. Additional detail, explanation and tests requested by the commenter are not required for the public and decision makers to understand the environmental consequences of the project. The information provided about the vegetation management activities in the gen-tie corridor, the mapping of habitat for special status species and the EIR's forecasts about bird fatalities at this project in comparison to other projects is sufficient for the public and the decision makers to understand the project's environmental impacts.

A lead agency need not conduct every recommended test or perform all requested research. An EIR's evaluation need not be exhaustive or perfect. Indeed, to be adequate, an EIR need not respond to every comment at all. See *California Oak Found. v Regents of Univ. of Cal.* (2010) 188 CA4th 227, 265 (rejecting claim that EIR was inadequate for not discussing specific geologists' letters that suggested further study was appropriate). Most importantly, commenters have not identified any resource category they believe the EIR failed to address although they suggest they would have approached certain topics differently.



All comments received on the DEIR were addressed in good faith and with factual analysis. Because of the volume of comments received in the DEIR, the FEIR used a series of Master Responses to present more in-depth analysis on certain topics of interest to many commenters. In some instances, such as the one cited by the commenter, the request for specific information goes far beyond information required in an EIR to analyze impacts and reach impact conclusion and mitigation recommendations. For example, the DEIR states that vegetation management in the gen-tie corridor would maintain the vegetation free of trees. The resulting impacts were quantified, and the needed mitigation was provided. Exactly how the vegetation will be managed (i.e. how and how often management activities would occur) would be up to the project operator to determine. The DEIR is not intended to be prescriptive with regards to how resources need to be managed beyond what is required by law to ensure the intent of the mitigation measures is met. O18-5 The commenter states that the DEIR did not conform to the California Wildlife Habitat Relationships (CWHR) classification system, specifically by not providing information on the seral stage of the forests in the project area. The commenter refers to their June 14 comment letter in which the commenter asked the County to apply the CWHR system in the project area and provide additional information about potential impacts to trees, stating that the information is essential for determining whether there is potential habitat for special-status wildlife species and what the project's related impacts would be. The commenter states that the FEIR fails to provide this information and that CWHR is the standard in California. The commenter argues that the DEIR fails to provide the characteristics of the forest stands in the project area, which precludes the ability to determine whether the project would impact Pacific fisher habitat and how.

The commenter asserts that the CWHR classification system, which is one of several classification systems available for mapping habitats, is the industry stand for California but provides no evidence to support that assertion. The County stands by its original response to Comment O7-8 in the commenter's June 14 comment letter, which is that the applicant's consultant used industry-standard methods to map vegetation communities by using the methods as described in *A Manual of California Vegetation, 2<sup>nd</sup> Edition* (Sawyer et al, 2009). The analysis then correlated the *Manual of California Vegetation* alliances to the CWHR. Please see *Humboldt Wind Energy Project Wildlife Assessment* prepared by Stantec Consulting Services, Inc. in Appendix M of the DEIR. The discussion in this Appendix provides an independent and adequate descriptions and assessments of habitat for special-status species, including habitat for Pacific fishers. The use of CWHR requested by the commenter is not required to provide an accurate assessment of habitat for determining project impacts under CEQA. Furthermore, such analysis was not requested by any of the regulatory agencies presented with the technical studies during preparation of the DEIR during project specific consultation.

*O18-6 The commenter states that the FEIR is misleading with regard to impacts on Pacific fishers because it concludes that all impacts would be temporary. The commenter states that Appendix M of the DEIR reports that fisher habitat includes old-growth conifer forests. The commenter adds that it takes "200 years or more" to restore such habitat, so there is "no rational basis" for the FEIR response to comment O7-15 that some impacts to fishers would be temporary.*

As described in the DEIR, the project will not remove any old-growth habitat. All forest habitat that would be removed as a result of project implementation is currently managed as active timber land, and the trees are generally in early seral stages and could be harvested by the landowners at any time. The *Reclamation, Revegetation, and Weed Control Plan* included in Appendix B of the FEIR describes the

plans to restore habitat temporarily disturbed by construction activities. The FEIR also contains mitigation for the loss of forest habitat for northern spotted owl.

*O18-7 The commenter states that the FEIR response to Comment O7-7 on the adequacy of bird and wildlife surveys suggests that the DEIR was misleading regarding the surveys and excerpted the following quote from that response “The specific areas surveyed differed depending on the resource.” The commenter states that if surveyors of special-status plants had no access to parts of the project area, then they had no access for other bird, wildlife, and plant surveys. The commenter states that the lack of two years of surveys for spotted owls remains a deficiency in the EIRs and that the new one-year owl survey and the qualifications of the surveyors should be circulated for public review.*

The commenters excerpt from response to Comment O7 was taken out of context and incorrectly implies that the DEIR made misleading claims about the extent of the surveys. The full quote from the response to Comment O7-7 is as follows and clarifies the meaning of the one sentence excerpted by the commenter: “Survey areas were selected for each resource, as appropriate for the resource studied. The specific areas surveyed differed depending on the resource. For example, Stantec mapped vegetation throughout the entire project site, wherever the footprint of the project had the potential to result in temporary or permanent disturbance. Aerial eagle surveys, on the other hand, were conducted within a 10-mile survey buffer mapped around the turbine-related footprint.”

With respect to the survey effort for northern spotted owl, HRC’s habitat data for northern spotted owl was used as a preliminary desktop-level background research tool, and the applicant’s consultant conducted a more thorough habitat assessment using standard field survey methods. HRC’s northern spotted owl habitat assessment data were supplemented with the current survey results (see *Northern Spotted Owl Survey Results 2019: Humboldt Wind Energy Project, Humboldt County, California* prepared by ICF, dated September 2019 in Appendix B of the FEIR). The specific methods used were industry-standard for developing habitat spatial data as described in the USFWS *Protocol for Surveying Proposed Management Activities That May Affect Northern Spotted Owls* (USFWS 2012). Stantec’s characterization and mapping of habitat rules followed the definitions provided in the California Forest Practice Rules (2017).

Please also note that the DEIR stated why small areas at the time remained un-surveyed for special-status plant, namely due to lack of safe access. As stated in the FEIR’s Master Response 7, “*Special-status Plants and Sensitive Communities*,” all areas potentially impacted by the proposed project have now been surveyed for special-status plants.

*O18-8 The commenter states that the FEIR response to comment O7-14 on impacts to yellow-breasted chat is “disingenuous and misleading” because it questions the reliability of eBird and concludes that there is no suitable habitat for yellow-breasted chat in lower elevation areas of the County. The commenter states that the eBird records are for Bear River Ridge and were submitted by a professional biologist.*

Overall, the likelihood for occurrence of yellow-breasted chat in the project area is low because the majority of the project area is comprised of non-suitable habitat (coniferous forest and grasslands) for the species. The commenter is correct in noting that along the Eel and Van Duzen Rivers and associated lowlands yellow-breasted are more likely to occur, albeit in low densities (McAllister pers. comm.). No

suitable habitat for this species is present anywhere near the turbines, and the DEIR appropriately characterizes the potential for this species to occur in the project area as low.

*O18-9 The commenter states that in comment O7-17 they requested copies of HRC's existing northern spotted owl habitat maps and occurrence records, and the methods and spatial data used to develop habitat maps. The commenter states that the FEIR did not provide any of the information requested and did not explain why.*

HRC's NSO occurrence records are provided in the Northern Spotted Owl Activity Center Occurrences Memo (Northern Spotted Owl Activity Center Occurrences Discussion and Figures by Stantec Consulting Services, Inc., dated September 30, 2019), which is included in Appendix B of the FEIR.

The remaining GIS data requested by the commenter (HRC's NSO habitat mapping) was not the source data used for NSO habitat mapping in the EIR. Rather, the NSO habitat maps included in the EIR were based on the data collected by Stantec as reported in the report, included as Appendix I in the DEIR titled: *Biological Resources: Humboldt Wind Energy Project Northern Spotted Owl Habitat Assessment and Auditory and Visual Disturbance Analysis Report, Humboldt County, California, Summer 2018*. The GIS data requested by the commenter was used as one of multiple sources of desktop-level information during Stantec's initial review, but Stantec ultimately relied on its own surveys for the habitat mapping included in the EIR. The data used in the EIR were based on Stantec's own further analysis, which included field surveys. These data are presented in the report and in the EIR.

*O18-10 The commenter refers to their request in comment O7-20 for the County to clarify the number of stands that provide potential nesting habitat for the marbled murrelet, explain the data that was collected for each stand, and provide the rationale for concluding that a stand did not provide potential habitat. The commenter states that the FEIR response was inadequate because it did not provide data and analysis as required by CEQA. The commenter states that they had asked for evidence that scientifically accepted measures and metrics were used as well as the specific dates of the on-the-ground evaluations and the person-hours required, but this information was not in the FEIR.*

This information is provided in the *Supplement to Humboldt Wind Energy Project Marbled Murrelet Habitat Assessment and Auditory and Visual Disturbance Analysis Report* by H.T. Harvey & Associates, dated September 30, 2019, included in Appendix B in the FEIR and *Biological Resources: Humboldt Wind Energy Project Marbled Murrelet Habitat Assessment and Auditory and Visual Disturbance Analysis Report, Humboldt County, California, Summer and Fall 2018*, included as Appendix K in the DEIR. Site assessments and analysis for northern spotted owl used methods required by USFWS published protocols and were conducted by some of the leading marbled murrelet experts, both on the applicant team and on the County's consultant team.

*O18-11 The commenter states that in comment O7-22 they had requested estimated bird fatality rates at other wind projects, data establishing meteorological conditions at those sites and the proposed project site, and data on location, type, and bird fatality rates at those sites as well as copies of the fatality reports cited. The commenter refers to the FEIR response that the commenter had stated an opinion but did not provide evidence of population-level impacts on non-raptor birds. The commenter states that this response is "patently inadequate under CEQA."*

The estimated fatality rates that were calculated for each project listed were already included in Table 12 of the Bird Use Count Report cited by the commenter. The meteorological conditions at the 21 sites were not reported in the summaries of the fatality data used, nor were any conclusions or comparisons made based on meteorological conditions at other sites. The location, survey design, and fatality analysis for each of the 21 other wind project sites are provided in the fatality studies cited in the Bird Use County Report (Table 12, Graph 5). Copies of the fatality studies have been provided.

The DEIR provides a summary of bird fatality rates from other wind projects for context. It is very clear in stating that conditions at these sites are different and that the data is provided for general comparison only. To project these data out further by analyzing meteorological conditions at these sites would be speculative and beyond the scope of the EIR. However, reports cited in the DEIR have been provided (as available) to the commenter in response to their information request, so should the commenter choose to undertake further analysis, they can do so.

*O18-12 The commenter refers to the FEIR response to comment O7-26 regarding noise impacts on marbled murrelet habitat. The commenter questions how data gathered from noise meters placed along a highway where there is no marbled murrelet habitat can support the FEIR's conclusions about the impact of project noise on habitat that is not next to a highway.*

*All stands suitable for marbled murrelet located within 0.25-mile of project disturbance happen to be located along the highway. The noise measurements reported in the EIR were only used to generate data relevant to the Project's noise impacts on habitat located adjacent to the highway for implementation of USFWS guidelines on noise disturbance.18-13 The commenter states that the FEIR is not responsive to comment O7-31, which requested information on how the new roads would affect the implementation of the HRC HCP.*

The question of “whether other new roads have been constructed in the HCP area” by other entities for other projects is not addressed in the EIR because this analysis is beyond of the scope of analysis required for CEQA or this Project. The DEIR analyzes whether the proposed project will interfere with implementation of the HRC HCP and reaches the conclusion that it will not. Additional detailed information about the HRC HCP as it related to the project is included in Master Response 8, “Conflict with Adopted HCP.” An analysis of how the roads specifically would affect implementation of the HRC HCP is beyond the scope of the EIR. Such details would be documented in any land use agreements between HRC and the project applicant.

*O18-14 The commenter refers to their request in DEIR comments O7-39 and O7-40 for information regarding the mitigation of impacts to special-status species mammal migration, specifically information that would allow for an evaluation of the effectiveness of proposed mitigation measures such as the 50-foot buffer. The commenter questions the FEIR response, which refers to the professional opinion of qualified biologists and the commenter's lack of evidence that a 50-foot buffer would be inadequate. The commenter states that all species listed in the mitigation measure have home ranges longer than 50 feet, and that the DEIR response is inadequate.*

Unlike for northern spotted owls and marbled murrelets, there are no standardized, agency-approved buffer distances for the special-status mammal species discussed in the DEIR (Sonoma tree vole, ringtail, Pacific fisher and American badger) nor are any studies available in the scientific literature documenting

the efficacy of buffers of various sizes in protecting special-status mammals. The commenter correctly notes that the home range for these species are much greater than 50 feet, but the size of non-disturbance construction buffers have no connection to home range size. Mitigation Measure 3.5-19c: (Develop and Implement a Preconstruction Survey Plan for Special-Status Mammals) requires preconstruction surveys with methods such as those described in *Sonoma Tree Vole Habitat on Managed Redwood and Douglas-fir Forestlands in North Coastal California* (Chinnici et al. 2011) and the *Fisher and Marten Survey Techniques on the Tahoe National Forest* (Fowler and Golightly 1994). In the unlikely event that these surveys detect an active nest or den of these relatively rare mammals within the project footprint, this mitigation measure requires that dens or nests be avoided with the 50-foot non-disturbance buffer if construction activities occur when dens or nests are active. The commenter has not provided evidence that the 50-foot buffer would be insufficient to avoid impacts during construction or suggested a different buffer they believe would be more suitable and why.

*O18-15 The commenter refers to CDFW's comment that the project site is in a Category 4 area inappropriate for wind farm development due to species and habitat impacts. The commenter states that the FEIR response is inadequate under CEQA and does not provide facts, data, or analysis in good faith.*

The California Energy Commission (CEC) and CDFW *California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development* (Guidelines) provide voluntary guidance to use as a framework for screening potential wind development sites and to implement protocols for gathering background data for analyzing impacts. Implementation of the Guidelines requires discretion and decision-making by local permitting agencies because the criteria for deciding if a project is a Category 4 site includes subjective and undefined terms such as “unacceptable risk.” As discussed in detail in the response to CDFW comment S4-4 it is not possible for an EIR to determine whether the risks are “acceptable” or “unacceptable” for purposes of consistency with the Guidelines. To the extent that the Guidelines rely on whether there are feasible avoidance or mitigation measures to reduce impacts in determining what is an acceptable risk, the EIR has identified a comprehensive suite of siting and project design considerations that avoid or reduce impacts to wildlife and habitat. Adaptive management strategies to lessen or avoid impacts and compensatory mitigation to compensate for unavoidable impacts have also been thoroughly discussed in the DEIR and have been further refined in the FEIR. Although in some cases the DEIR has conservatively concluded that certain impacts could be significant and unavoidable, this does not mean that the impacts to birds and bats are “unacceptable” and that the project site should be classified as Category 4.

*O18-16 The commenter refers to their comment that the DEIR did not provide an analysis of impacts associated with the Van Duzen Battery Storage Project. The commenter disputes the FEIR statement that the battery storage project is separate and independent of the wind farm project, and therefore there is no duty to evaluate its impacts. The commenter states that the FEIR does not justify the DEIR's omission of impacts from the battery storage project and that such omission is further evidence of piecemealing.*

The Van Duzen battery storage project was proposed as a stand-alone project and was never part of Humboldt Wind's CUP application for the project. Therefore, the project was not analyzed in the DEIR except under the cumulative impact analysis. A separate CUP application for the battery storage project had been received by the County, and a separate draft CEQA document was prepared. However, the application for the Van Duzen battery storage project was withdrawn prior to circulation of the associated

CEQA document, but after publication of the Humboldt Wind Draft EIR. The project is no longer proposed.

*O18-17 The commenter states that the aforementioned examples are just some of the ways in which the FEIR fails to respond substantively and in good faith. The commenter believes that the FEIR's inadequacy is the result of a rush to get the project approved before the federal tax credit will expire on December 31. The commenter asks the County to not forego diligent, meaningful investigation and disclosure just for financial expediency.*

The commenter's opinion about the adequacy of the FEIR is noted. The County has endeavored in good faith to provide complete and thorough responses to every comment letter received on the DEIR. Comment letters on the DEIR were received from 2 federal agencies, 5 State agencies, 4 regional and local agencies, 2 tribes, 16 organizations, and 244 individuals. In addition, 109 form letters were received. Since circulation of the FEIR, many more letters and form letters have been received. All comments received to date have been added to the record for the project. County staff have also provided summary presentations, informative staff reports, and addressed comments from the public and Planning Commissioners at the three Planning Commission hearings offered for this project and have diligently and with full disclosure addressed questions and comments from all parties and continue to do so.

Furthermore, the commenter incorrectly characterizes the Project's dependence on further activities with respect to the lapsing of the federal Production Tax Credit. The IRS test for start of construction includes meeting a safe harbor test by incurring five percent or more of the total costs of the project before certain milestone dates. The Project's prior acquisition of wind turbine components can satisfy the safe harbor test. Thus, Humboldt Wind, LLC, does not have to commence physical work at the Project site prior to December 31, 2019, to qualify the Project for federal Production Tax Credits as commenter implies.

*O18-18 The commenter repeats the request that the County not certify the FEIR or approve land use entitlements for the project. The commenter asks that the Planning Commission circulate the new information in the FEIR and update/amend the new analysis to address the information deficiencies identified by the commenter in both this set of comments and in their June 14 comments.*

The comment is noted. The DEIR comment period closed in June 2019, and the FEIR was released in November 1, 2019. During this four-month period, the County and its consultants carefully and adequately responded to each comment submitted. The FEIR and the studies in Appendix B have been available on the County website since November 1, 2019. The studies provided in Appendix B did not change the conclusions in the DEIR. Staff have investigated additional comments brought up during the hearing and received in subsequent correspondence. However, it is important to note that while massive amounts of information have been added to the project's record during the hearing process and subsequently to the FEIR, none of the conclusions of the DEIR have been found to be inadequate or have changed in any way that would influence the presentation of the issues. The County does not agree that recirculation is required.