Evenson, Tasheena

From: Geneva Thompson <gthompson@yuroktribe.nsn.us>
Sent: Thursday, November 21, 2019 2:37 PM
To: CEQAResponses
Cc: Chris West; Rosie Clayburn
Subject: Yurok Tribe's Comments on the Humboldt Wind Energy Project
Attachments: 2014.11.14_Yurok Tribe Comment_Humboldt Wind Energy Project_Signed.pdf; 2019.11.21_Yurok Comments Humboldt Wind Energy Project_Signed.pdf

Dear Ms. Burks,

Please see attached for the Yurok Tribe's comments on the FEIR and Staff Report for the Humboldt Wind Energy Project.

Best,
Geneva

Geneva E.B. Thompson | Associate General Counsel | she/her/hers
Yurok Tribe Office of the Tribal Attorney
PO Box 1027
Klamath, CA 95548
Tel: (707) 482-1350 ext. 1426
Cell: (707) 732-8187
Email: gthompson@yuroktribe.nsn.us
Licensed in California and Yurok

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YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548

County of Humboldt Planning Department
Attn: Elizabeth Burks, Humboldt Wind Energy Project Planner
3015 H Street
Eureka, CA 95501
CEQAResponses@co.humboldt.ca.us

November 14, 2019

RE: Yurok Tribe's Comments on the Humboldt Wind Energy Project Final Environmental Impact Report.

Dear Elizabeth Burks:

The Yurok Tribe is writing in support of our neighbors, the Wiyot Tribe, and in opposition to the Humboldt Wind Energy Project ("the Project") as it will have a significant impact on Wiyot cultural resources, cultural landscapes, and impact the endangered California condor, a natural cultural resource of the Yurok, Wiyot, and many other Native nations and peoples. Further, the Final Environmental Impact Report ("FEIR") for the Project fails to provide adequate mitigation measures to avoid the significant harms to Wiyot cultural resources, cultural landscapes, and the California condor, in violation of the California Environmental Quality Act ("CEQA"). The Yurok Tribe urges the Humboldt County Planning Commission ("the County") to not approve the Project because of these significant and unavoidable harms.

As discussed in detail by the Wiyot Tribe and the Yurok Tribe's previous comments, the Project will allow for the placement of wind turbine generators along the *Tsakiyuwit* (Bear River Ridge) and will destroy the Wiyot's view of the landscape, which is a scared high prayer spot and serves as a connection to traditional and cultural lifeways. Building fewer wind turbines or selecting a different location would avoid this significant impact to the Wiyot cultural landscape. In response to the Yurok Tribe's comments, the County and Project applicants have stated "[n]o feasible mitigation is available to reduce this significant impact; therefore, this impact would remain significant and unavoidable." (TL-1.) If so, the Yurok Tribe request Humboldt County Planning Commission to not approve this Project because in balance this Project will cause more harm than benefit to the Wiyot people and Humboldt County residents.

The Wiyot and Yurok Tribes have also informed the Humboldt County Planning Commission of the Project's impacts to Wiyot culturally significant plants and access to those culturally significant plants in previous comments. While Mitigation Measure 3.6-3c and the *Reclamation, Revegetation, and Weed*

Phone: (707) 482-1350 • Fax: (707) 482-1377

Control Plan attempts to address the loss of Wiyot culturally significant plants, the measures fail to address the heart of the issue. First, the mitigation measures allow for 100 – 200 plants to be salvaged and moved to a different location. This is not enough plants to ensure the needs of the Wiyot people are met and requires the removal of these plants from their ecosystem.

Second, these mitigation measures do not allow for access to *Tsakiyuwit* for plant harvesting purposes. As noted in the responses to the Yurok Tribe's first comments, the Project applicant does not own the property and has a lease to use the land for construction and operation of the Project. As an example to help mitigate the concerns of Wiyot access to culturally significant plants, the Project applicant could have negotiated terms in the lease to allow for Wiyot people to have safe access to designated places on the property for plant harvesting, or even seed harvesting for several seasons prior to project implementation for seed-banking purposes. Adequate information on the genetics of these plant communities is unavailable and retention of the gene-lines from these specific locations would be ideal. Further, the Project applicant could have found other properties suitable for the cultivation and harvest of culturally significant plants and purchased those properties for the Wiyot Tribe as a mitigation measure. These mitigation measures or variations of these measures were not addressed or implemented in the FEIR, thus the Project will still have a significant impact on the Wiyot Tribe's access to culturally significant plants.

As also discussed in the Yurok Tribe's previous comment, the Wiyot and Yurok people consider the California condor (*prey-go-neesh*) a sacred animal. The condor has been spiritually tied to Yurok ceremonies since the beginning of the world. Its feathers are used and its songs are sung in World Renewal ceremonies, in which the Yurok people pray and fast to balance the world. The condor features very prominent in Yurok stories and dances, particularly the White Deerskin Dance.

Because of the cultural significance of the condor, the Yurok Tribe Wildlife Program has been working tirelessly for over a decade to develop and implement a program to reintroduce California condors to the North Coast region. The current Northern California Condor Reintroduction Program is a joint program co-run by the Yurok Tribe and the National Park Service. This proposed, reintroduced population of California condors would contribute to the overall recovery of the species and act as a stepping stone to initiate recovery throughout the Pacific Northwest. The Humboldt Wind Project and its risk of killing newly reintroduced California condors would be a violation of the Endangered Species Act ("ESA"), and would significantly hinder recovery of this culturally and ecologically significant species to the historical northern portion of its range. Thus, the Yurok Tribe has concerns with this proposed Project generally and specifically has concerns the Mitigation Measure 3.6-4 (Detect Presence of and

Curtail Operations for Condors) will not be an effective means to reduce the likelihood of collision risks for condors in the foreseeable future.

First, there has been no official finding related to the Yurok Tribe's condor reintroduction program's National Environmental Policy Act ("NEPA") process. The Humboldt Wind Energy Project FEIR indicates that condors released under this project will be designated as "nonessential experimental" under Section 10(j) of the ESA. Since one of the options available via the NEPA process is the reintroduction of condors without any federal ESA 10(j) designation – and hence would have full protection under the ESA – it seems inappropriate for the Humboldt Wind Energy Project's FEIR to indicate that conservation action would be unnecessary due to such a designation. The Project has no alternative actions proposed in case a condor reintroduction moves forward without a 10(j) designation and the birds having full protection under the ESA.

Second, while the proposed geofence protection zone may benefit condors in some respects, it also restricts management flexibility. If mortality rates were much lower in the proposed reintroduction population than have been observed in other areas that condors have been reintroduced, changes to management protocols may be desirable. For instance, eliminating the need to put satellite, GPS tags on all birds may alleviate some trapping need, saving costs and reducing stress on reintroduced or wild-bred condors. The need to tag birds to meet the needs of the geofence protection zone would restrict the ability to implement such a relaxation of more rigorous and onerous management methods. Additionally, the Yurok Tribe's condor reintroduction program is proposed as a 20-year project while the Project is proposed to operate for at least 30 years. This discrepancy of 10 years is sizeable. If the Yurok Tribe's condor reintroduction program goes well, the Tribe will need to have the flexibility to go "hands off" to allow the condors to live and breed without human involvement. A thriving and successful condor population would be a success for the Yurok Tribe, but it will also make it difficult to implement Mitigation Measure 3.6-4 and tag all of the condors. It is unclear if Terra Gen would be taking on the responsibility to manage and tag the condors after the co-managing partners, the Yurok Tribe and National Park Service, consider the reintroduction project as complete. Monitoring, trapping, and tagging a population of 60 released plus all wild-bred offspring will require a sizeable investment of equipment, staff, and staff related infrastructure.

Lastly, while a geofence may be effective to eliminate threat from turbines, the 60+ foot tall, 22-mile-long gen-tie transmission lines proposed for the Project (much of which runs along ridge-tops, ideal condor soaring areas) cannot be "shut-down" via geofence connection if a condor soars into the area. The Yurok Tribe is concerned the condors will collide with power lines and become seriously injured or die. The lack of adequate mitigation measures to ensure the protection of these sacred and endangered

species is of huge concern and is likely to negatively impact the Northern California Condor Reintroduction Program. This would hamper the return of a species that is not only significant to the Yurok and Wiyot peoples, but also to the vast majority of tribes throughout northern California, Oregon, and Washington.

The Yurok Tribe understands the importance of finding green renewable energy as a step to decarbonizing Humboldt and addressing the causes of today's climate crisis. But new projects and programs addressing the climate crisis must be achieved in a way that is inclusive and addresses environmental justice concerns. Projects destroying Wiyot and Yurok cultural resources and landscapes perpetuate colonization, and therefore are not an environmentally just solution. We request that the Humboldt County Planning Commission consider localized and community-based energy production and storage, such as roof-top solar and micro-grids, and move away from large-scale energy production projects that benefit large corporations and end-users outside our region, and puts Native cultural resources and environments at risk.

The Yurok Tribe knows the Humboldt County Planning Commission understands the importance of cultural resources and cultural landscapes to Native people. We have worked together in the past to ensure cultural resources, sacred spaces, and culturally important plants and animals are protected. It is our hope, that the Humboldt County Planning Commission will consider the significant impacts the Humboldt Wind Energy Project will have on Wiyot cultural resources, cultural landscapes, and the sacred California condors and will find that -- in balance -- that the protection of Wiyot and Yurok cultural resources and the plants and wildlife in the Project area is more important than the minimal economic, legal, social, and technological benefits realized beyond our county's borders.

The Yurok Tribe urges the County to not approve the Project because of the significant and unavoidable harms the Project will have on the Wiyot cultural resources, cultural landscapes, and the California condor.

Sincerely,

Joseph L. James
Chairperson
Yurok Tribe

Y U R O K T R I B E
Office of Tribal Heritage Preservation
190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548
Phone: (707) 482-1350 • Fax: (707) 482-1377

County of Humboldt Planning Department
Attn: Elizabeth Burks, Humboldt Wind Energy Project Planner
3015 H Street
Eureka, CA 95501
CEQAResponses@co.humboldt.ca.us

November 21, 2019

RE: Yurok Tribe's Comments on the Humboldt Wind Energy Project Final Environmental Impact Report.

Dear Elizabeth Burks:

The Yurok Tribe is writing in support of our neighbors, the Wiyot Tribe, and in opposition to the Humboldt Wind Energy Project ("the Project") as it will have a significant impact on Wiyot cultural resources, cultural landscapes, and impact the endangered California condor, a natural cultural resource of the Yurok, Wiyot, and many other Native nations and peoples. The Yurok Tribe has considerable concerns related to the recently released Humboldt Planning Commission 11.21.19 Staff Report ("the Staff Report"). This report purports to address comments raised at the public hearings. We find that responses are either woefully inadequate, or missing altogether. Further, the Final Environmental Impact Report ("FEIR") for the Project fails to provide adequate mitigation measures to avoid the significant harms to Wiyot cultural resources, cultural landscapes, and the California condor, in violation of the California Environmental Quality Act ("CEQA"). The Yurok Tribe urges the Humboldt County Planning Commission ("the County") to reject the Project because of these significant and unavoidable harms.

The Staff Report provides a long list of environmental impacts not mitigated to less than significant level, including impacts to:

(1) aesthetic resources on Bear River and Monument Ridges;
(2) exceeding the daily threshold of NOx in violation of the standards set by the North Coast Unified Air Quality Management District;
(3) the threatened marbled murrelet;
(4) raptors;

(5) the Bear River Ridge and Valley Historic Landscape;
(6) Tribal Cultural Resources of the Bear River Ridge area;
(7) ethnobotanical Tribal Cultural Resources of the Bear River Ridge area; and
(8) the Tribal Cultural Resources of the California condor.

The Commission must determine if the benefits of the Project outweigh the unavoidable, adverse environmental impacts. For this Project, the significant environmental harms clearly outweigh any benefits offered by the Project. The benefits listed in the Staff Report can all be achieved by less harmful projects, including localized roof-top solar projects, which would not destroy Wiyot cultural resources and landscapes, harm large numbers of wildlife, or violate air quality standards.

The Staff Report also incorrectly asserts that the Bear River Ridge is "understood *to have been* a sacred high prayer spot…." The use of the past tense "have been" is incorrect because <u>this site is currently and will always be a sacred high prayer spot and significant cultural resource and landscape to the Wiyot Tribe and people</u>. Seeking to diminish its value because Wiyot tribal membership were unjustly excluded from the site due to laws imposed by a colonial government is disingenuous. The site is of continuing high sacred value to the Wiyot people and should be referred to as such out of the respect that the proponents of this project claim to have for Wiyot culture.

Further, the Staff Report identifies significant modification to the Project that trigger the necessity to recirculate the Draft Environmental Impact Report ("DEIR") for public comment and review. These significant modifications include:

(1) the creation of the Technical Advisory Committee ("TAC");
(2) the realignment of the gen-tie;
(3) the changes in the modeling for marbled murrelet collisions with a significant change in outcomes from 20.86 to 7.7 marbled murrelets colliding with the wind turbines;
(4) changes in the bat TAC formation, operation, and requirements propose additional mitigations;
(5) the reduction in the estimated raptor fatality rate;
(6) new information regarding eelgrass protection;
(7) no longer avoiding ground disturbance of the Bridgeville archaeological site;
(8) the revised mitigation measures of: 3.5-1b, 3.5-2a, 3.5-2b, 3.5-2c, 3.5-3, 3.5-5a, 3.5-5b, 3.5-5c, 3.5-7, 3.5-11, 3.5-12, 3.5-13, 3.5-14, 3.5-18a, 3.5-19e, 3.5-21e, 3.5-22c, 3.5-23a, 3.5-23d, 3.5-22e, 3.5-25a, 3.6-1a, 3.6-1b, 3.6-4, and 3.13-2a;
(9) the added stepwise adaptive management strategy of the Bat TAC;

(10) the implementation of the American Wind Energy Association best management practices for feathering; and,

(11) The Project's refinements in ground disturbance, gen-tie alignment, reduction of turbines, gen-ti crossing of the Eel River, realignment of the access roads, and project substation footprint.

Only through the recirculation of the DEIR, can the public have the full opportunity to review the changes to the project and provide comments. The changes made to the Project are significant modifications and require a recirculation of the DEIR.

Further, the Staff Report ignores and fails to address three specific comments submitted by the Yurok Tribe related to the Northern California Condor Reintroduction Project. These comments are summarized in the following section of this letter. First, although there is publicly released Environmental Assessment related to the condor reintroduction project, three potential alternatives were proposed. 1) The no action alternative, 2) reintroduction under a 10(j) non-essential designation, and 3) reintroduction with full protection under the Endangered Species Act ("ESA"). No final finding has been reached related to this proposal, hence the alternative to be selected is at this time unknown. It seems appropriate to present a proposed mitigation or other actions that will occur should this condor proposal find for alternative 3 and additional ESA protections are required.

Second, the project proponent has suggested use of a geo-fence linked to birds' satellite transmitters to facilitate warnings and grid shut-downs if necessary. While this may reduce some harms, it locks managers into satellite tag usage for the lifespan of the condor program, reducing management flexibility should managers find lower than expected condor mortality within the reintroduction region. Further, the condor project is proposed with a 20-year lifespan. The Wind Farm Project is proposed with a 30-year lifespan. Does the energy company in question, or Humboldt County propose to provide the additional 10 years of condor monitoring, trapping, and tracking required to maintain geo-fence effectiveness for the extra 10-year time-frame? The proponent suggested in previous discussions the application of IdentiFlight for use later during the project period, but now indicates that this tool will not be used. Clarification on this point is required.

Third, the 22-mile gen-tie line proposed by the project proponent is a collision risk in-and-of-itself. There is no way to "shut off" the risk associated with this infrastructure. Further, the newly proposed overhead crossing of the Eel River is supposed to pose minimal risk to murrelets, but there is no evidence in the record showing if this gen-tie line was assessed for risk to condors using the river valley winds for soaring.

This brings our discussion to the unsound assumptions made in the development of this proposal. In some cases, assumptions are made to indicate a dismissal of potential issues, risks, or concerns. In other cases, the assumptions made in the creation of the case supporting this project seem to over reach reality. One example is the Collision Risk Assessment dependent on avoidance in murrelets that is placed at 0.98. This is really nothing more than a guess. Perhaps an educated guess, but a guess nonetheless. The primary basis seems to be that some other species of birds that live at sea seem to avoid collisions at certain levels, so murrelets probably do also. The best information presented in the Assessment seems to be that murrelets avoid trees while flying, which demonstrates that they can avoid obstacles. This is the case for all flighted birds, yet many experience high mortality in the presence of wind turbines. The Collision Risk Assessment also posits that other birds, such as kestrels, exhibit various behaviors that distract them and put them at higher risk of collision while murrelets do not. We would argue that murrelets are extremely social while in flight, joining as pairs and trios; communicating through vocalization during both breeding and non-breeding seasons; and, while travelling at 50 miles per hour, executing survey flights over vast areas in search of potential nesting and resting platforms. Because observation of the birds is difficult to impossible during such activities, we have no information on how "distracted" they may be, which would be an anthropogenic projection at best anyway. The problem is that such assumptions are being given numerical values in statistical models, an attempt to launder unfounded assumptions into statistical facts. These models will spit out numerical answers regardless of what is input. Garbage in/garbage out is a very real possibility in this case. There is no meaningful peer review, other than public comment, and many of the murrelet specialists regionally are on the Projects' pay-role and may feel conflicted about speaking out against this Project. The Yurok Tribe harbors strong doubts that this write-up for this collision risk analysis would pass muster if submitted to a peer reviewed publication.

This, finally, brings us to the question of: what if the projections, predictions, and plans related to this project fail or are found to be incorrect? There needs to be adequate contingency plans in place if the projections, predications, and plans fail and the Project is more harmful than expected. There are no contingency plans in place if there is a turbine failure and subsequent fire. The Staff Report section suggesting that the TAC will suggest adaptive mitigation measures if a special-status species population drops below self-sustaining levels is not a mitigation measure that will ensure special-status species will not be significantly harmed. Simply accepting mortalities of special status species until the population is in dire condition at a little understood and extremely low biological threshold is certainly not a best management practice.

The Yurok Tribe understands the importance of finding green renewable energy as a step to decarbonizing Humboldt and addressing the causes of today's climate crisis. But, new projects and programs addressing the climate crisis must be achieved in a way that is inclusive and addresses environmental justice concerns. Projects destroying Wiyot and Yurok cultural resources and landscapes perpetuate colonization, and therefore are not an environmentally just solution. We request that the Humboldt County Planning Commission consider localized and community-based energy production and storage, such as roof-top solar and micro-grids, and move away from large-scale energy production projects that benefit large corporations and end-users outside our region, will placing Native cultural resources and environments at risk.

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The Yurok Tribe urges the Humboldt County Planning Commission to not approve the Project because of the significant and unavoidable harms the Project will have on the Wiyot cultural resources, cultural landscapes, and the California condor.

Wok-hlew'

Rosie M. Clayburn, M.A.
Tribal Heritage Preservation Officer, Yurok Tribe
PO Box 1027
Klamath, CA 95548
rclayburn@yuroktribe.nsn.us