

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

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SENT VIA ELECTRONIC MAIL ONLY (districtplanner@humboldtby.org)

Subject: Notice of Preparation (NOP) for the Humboldt Bay Offshore Wind Heavy Lift Multipurpose Marine Terminal Project, Humboldt County

Dear Rob Holmlund:

The California State Lands Commission (Commission) staff has reviewed the Notice of Preparation (NOP) for the Humboldt Bay Offshore Wind Heavy Lift Multipurpose Marine Terminal Project (Project) prepared by the Humboldt Bay Harbor, Recreation and Conservation District (District). The District, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). Staff submits these comments and suggestions in its capacity as a trustee agency, pursuant to State CEQA Guidelines section 15386, for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses. Staff also provides these comments in keeping with its responsibility to provide oversight of the State's granted tidelands and submerged lands pursuant to Public Resources Code section 6009.1, subdivision (b).

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the ordinary high water mark which is generally marked by the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

The California Legislature is vested with the authority to enact laws involving the State's sovereign Public Trust lands. Since 1851, the Legislature has periodically transferred portions of the State's Public Trust lands to over 80 local governmental entities for management purposes, including California's five major ports. These granted lands are held in trust for the people of California and must be used for Public Trust purposes, including water-related commerce, navigation, and fishing. The granting language conveys the State's legal title to the sovereign lands subject to certain terms and conditions and subject to the common law Public Trust Doctrine.

Based upon the information provided in the NOP and a preliminary review of our records, the proposed Project is located partly on tide and submerged lands in Humboldt Bay which are granted to the District pursuant to Chapter 1283, Statutes 1970, as amended (Chapter 1283). Another portion of the Project site is located within lands the State patented as Tideland Survey 75. In 1984, a Boundary Line and Settlement Agreement (BLA 227) involving the State, the District, and Louisiana Pacific Corporation fixed the boundaries of the last natural mean high and mean low water marks at some or all of the Project site, thus defining the upland and waterward boundaries of Tideland Survey 75. The Agreement confirmed that lands below mean low water were owned by the District, as trustee, pursuant to Chapter 1283. Lands above mean low water and below mean high water were confirmed to Louisiana Pacific Corporation, subject to a Public Trust easement held by the District, and lands above mean high water were confirmed to Louisiana Pacific, free of the Public Trust.

Commission staff requests details of the District's acquisition of the upland parcels previously owned by Louisiana Pacific Corporation. If not prohibited by its granting statute, a trustee may purchase property with trust revenue, when pursuing trust consistent goals, but such property acquires the legal character of tidelands and the trustee is required to hold the lands as an asset of the trust. Or if the District acquired the uplands with non-trust resources, expenditures of trust resources on non-trust lands for management or improvement may also result in the lands taking on the legal character of trust lands.

For these reasons, Commission staff recommends that the District overlay the boundary lines fixed by BLA 227 on Project planning documents. All areas waterward of the fixed mean high water line are subject to the Public Trust. The proposed Project

is generally consistent with the Public Trust Doctrine, being primarily related to waterborne commerce. But staff wishes to highlight that consolidated development of trust lands and nontrust lands requires special consideration to prevent commingling or inadvertent results. Staff understands the District owns other properties managed outside of the trust, and we encourage the District to carefully track and separate all funds and accounts from the District's Public Trust lands.

Project Description

The Project would redevelop an area of approximately 180 acres on the Samoa Peninsula adjacent to Humboldt Bay to provide a new multipurpose, heavy-lift marine terminal facility to support the offshore wind energy industry and other coastal-dependent industries. The Project includes demolition of existing structures, site preparation, marine terminal construction, dredging, establishment of wet storage sites, habitat restoration, relocation of existing tenants currently in the Project area, and Project operations. The NOP describes 12 objectives of the Project.

Environmental Review

Commission staff requests that the District consider the following comments on the NOP.

General Comments

1. **Project Description**: A thorough and complete Project Description should be included in the Draft Environmental Impact Report (DEIR) in order to facilitate meaningful environmental review of potential impacts, mitigation measures, and alternatives. The Project Description should be as precise as possible in describing the details of all proposed activities (e.g., types of equipment or methods that may be used, maximum area of impact or volume of sediment removed or disturbed, seasonal work windows, locations for material disposal, construction schedule and staging areas, etc.), defining the Project area, as well as the details of the timing and length of activities.

Aesthetics

2. The DEIR should address aesthetic issues including, but not limited to, changes to the visual setting due to the increased industrialization of this area.

Air Quality

3. The DEIR should thoroughly describe the impact of the Project on air quality and the efforts to avoid, minimize, and mitigate those impacts.

Biological Resources

4. **Sensitive Species and Habitats**: The DEIR should disclose and analyze all potentially significant effects on sensitive species and habitats in and around the

Project area, including special-status wildlife, fish, and plants, and if appropriate, identify feasible mitigation measures to reduce those impacts. The District should conduct queries of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database and U.S. Fish and Wildlife Service's (USFWS) Special Status Species Database to identify any special-status plant or wildlife species that may occur in the Project area. The DEIR should also include a discussion of consultation with the CDFW, USFWS, and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS), including any recommended mitigation measures and potentially required permits identified by these agencies.

5. Invasive Species: One of the major stressors in California waterways is introduced species. Therefore, the Draft EIR should consider the Project's potential to introduce and encourage the establishment or proliferation of aquatic invasive species (AIS), including aquatic and terrestrial plants. For example, construction boats and barges brought in from long stays at distant projects may transport new species to the Project area via vessel biofouling, wherein marine and aquatic organisms attach to and accumulate on the hull and other wetted parts of a vessel. If the analysis in the Draft EIR finds potentially significant AIS impacts, possible mitigation could include contracting vessels and barges from nearby or requiring contractors to perform vessel cleaning prior to arrival. The CDFW's Invasive Species Program and the Commission's Marine Invasive Species Program could assist with this analysis as well as with the development of appropriate mitigation (information at <https://www.wildlife.ca.gov/Conservation/Invasives> and <https://www.slc.ca.gov/misp/>).
6. Construction Noise: The DEIR should evaluate noise and vibration impacts on fish, birds, and marine mammals from all Project activities. Mitigation measures could include species-specific work windows as defined by CDFW, USFWS, and NMFS. Again, staff recommends early consultation with these agencies to minimize the impacts of the Project on sensitive species.

Commercial Fishing

7. The DEIR should provide details about the Project's impacts on commercial fishing including, but not limited to, user conflicts for the mouth of the federal channel and displacement of commercial fishing uses due to the relocation of the mariculture facility, the hagfish holding facility, the small boat repair area, and the fishing equipment storage site.

Cultural Resources

8. Submerged Resources: The DEIR should evaluate potential impacts to submerged cultural resources in the Project area. The Commission maintains a shipwrecks database that can assist with this analysis. Please contact Commission staff to obtain shipwrecks data from the database and Commission records for the Project

site (see contact information at end of letter for Environmental Review information). The database includes known and potential vessels located on the State's tide and submerged lands; however, the locations of many shipwrecks remain unknown. Please note that any submerged archaeological site or submerged historic resource that has remained in state waters for more than 50 years is presumed to be significant. Because of this possibility, please add a mitigation measure requiring that in the event cultural resources are discovered during any construction activities, Project personnel shall halt all activities in the immediate area and notify a qualified archaeologist to determine the appropriate course of action.

9. Title to Resources: The DEIR should also mention that the title to all archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the California State Lands Commission, except where transferred by appropriate legal conveyance (Pub. Resources Code, § 6313). Staff understands that the boundary lines in the Project area are complicated, and the mapping requested above will be helpful to determine title to such resources in the event archaeological sites or historic or cultural resources are discovered during the Project. Commission staff requests that the District consult with Commission staff should any cultural resources on state lands be discovered during construction of the proposed Project. In addition, staff requests that the following statement be included in the DEIR's Mitigation and Monitoring Plan: "The final disposition of archaeological, historical, and paleontological resources recovered on State sovereign land under the jurisdiction of the California State Lands Commission must be approved by the Commission."

Environmental Justice

10. Environmental Justice Analysis: Environmental justice is defined by California law as "the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." (Gov. Code, § 65040.12.) This definition is consistent with the Public Trust Doctrine's principle that management of trust lands is for the benefit of all people.

Through its [2018 Environmental Justice Policy](#), the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations. Among other goals, the policy commits the Commission to strive to minimize additional burdens on and increase benefits to marginalized and disadvantaged communities resulting from a proposed project or lease. Furthermore, the Commission's Environmental Justice Policy aligns with that of its sister agency, the California Coastal Commission.

Industrial facilities and transportation projects have historically been built among traditionally marginalized communities who do not have access to resources to address the environmental and public health impacts that come with these developments, causing an environmental justice issue. Based on the information

from [CalEnviroScreen 4.0](#), the Project is located within an area¹ with more groundwater threats, hazardous waste sites, impaired waters, and solid waste sites relative to the rest of the state. Additionally, the population for this census tract has a CalEnviroScreen 4.0 percentile score of 80 for asthma and 95 for cardiovascular disease. Finally, the population experiences higher than average rates of poverty (71) and unemployment (85).

Commission staff suggests that the District include a section describing the environmental justice community outreach and engagement undertaken in developing the DEIR and the results of such outreach. Environmental justice communities often lack access to the decision-making process and experience barriers to becoming involved in that process. It is crucial that these communities are consulted as early as possible in the project planning process. In this manner, the CEQA public comment process can improve and provide an opportunity for more members of the public to provide input related to environmental justice. Commission staff also recommends incorporating or addressing opportunities for community engagement in mitigation measures.

Greenhouse Gas Emissions

11. Greenhouse Gas (GHG): A GHG emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill [AB] 32) and required by the State CEQA Guidelines should be included in the Draft EIR. The NOP notes that GHG emissions will be evaluated in the Draft EIR. This analysis should identify a threshold of significance for GHG emissions, calculate the level of GHGs that will be emitted as a result of Project construction activities, determine the significance of the impacts of those emissions, and, if impacts are significant, identify mitigation measures that would reduce them to the extent feasible. In particular, Commission staff recommends that the District identify a quantitative threshold if the regional air quality management district has not done so.

Hazards/Hazardous Materials

12. The DEIR should describe the District's response plan for the accidental release of hazardous materials and plans for disposal of any hazardous materials generated during Project activities.

Hydrology/Water Quality

13. The DEIR should identify any potential discharges and describe how erosion control measures or other best management practices will be used during construction and operation.

¹ Census tract number 6023001300.

Land Use and Planning

14. The increased industrialization of this area resulting from the Project may displace existing port users. The DEIR should address land use changes that will occur during both construction and operation.

Recreation/Public Access

15. Please provide a comprehensive description of existing recreational uses and public access to waterways and coastal resources within the Project area and vicinity. Describe any restrictions or limitations on public access to the Project area, navigation within Humboldt Bay, and use of New Navy Base Road and access to adjacent beaches during construction, and methods to provide notice to the public prior to construction.

Sea Level Rise

16. In the Environmental Setting section of the DEIR, please provide detail regarding the Project area's surface hydrology features and characteristics, groundwater characteristics and any known information on groundwater table elevation and emergence trends, history of flood events and any known land uses and structures subject to flood hazards, and the most recent flood zone designations for the Project area.

Please also provide a detailed description of the sea level rise projections for the site and any analysis relevant to the site's vulnerability. Please describe how the Project will plan for sea level rise through the lifespan of the Project. Please use the State's best available science for sea level rise projections; currently this is the Ocean Protection Council's 2018 [State of California Sea-Level Rise Guidance](#). This Project should consider the Medium-High Risk Aversion Scenario for planning purposes because [Humboldt Bay](#) is experiencing the greatest amount of relative sea level rise in the State, the Project is connected to critical energy infrastructure, and has low adaptive capacity. Consider flood control and shoreline protection options for the Project that prioritize nature-based strategies, or hybrid green-grey strategies, to increase the site's resiliency to sea level rise and minimize harmful impacts of conventional shoreline protection strategies that disproportionately affect Public Trust tidelands, resources, uses, and values.

Tribal Cultural Resources

17. AB 52 amended CEQA to require a lead agency to consult with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed of proposed projects in that area. However, it is the Commission's broader policy to conduct outreach and consultation with all tribes culturally affiliated with a project area, as determined by the Native American Heritage Commission, for a proposed project that may have significant effects on tribal cultural resources. The

Commission strongly encourages early and meaningful engagement with all culturally affiliated tribes that may be affected by this Project.

Alternatives

18. In addition to describing mitigation measures that would avoid or reduce the potentially significant impacts of the Project, the District should identify and analyze a range of reasonable alternatives to the proposed Project that would attain most of the Project objectives while avoiding or reducing one or more of the potentially significant impacts (see State CEQA Guidelines § 15126.6).

Thank you for the opportunity to comment on the NOP for the Project. Staff requests that you consider these trustee agency comments as you develop the DEIR. Please send copies of future Project-related documents, including electronic copies of the Draft EIR, Mitigation Monitoring and Reporting Program, Notice of Determination, CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available, and refer questions concerning environmental review to Amy Vierra, Senior Environmental Scientist, at amy.vierra@slc.ca.gov. For questions about Commission jurisdiction, please contact Reid Boggiano, Public Land Management Specialist, at reid.boggiano@slc.ca.gov. For questions relating to the Commission's Environmental Justice Policy and outreach, please contact Yessica Ramirez, Environmental Justice Liaison, at yessica.ramirez@slc.ca.gov. Please send inquiries regarding the Commission's shipwrecks database to Shipwre@slc.ca.gov.

Sincerely,



Nicole Dobroski, Chief
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cc: Office of Planning and Research
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