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CALIFORNIA ENERGY COMMISSION



California Energy Commission December 19, 2025, Business Meeting Backup Materials for Agenda Item No #7: Opt-In Certification: Fountain Wind Project (23-OPT-01)

The following backup materials for the above-referenced agenda item are available as described below:

1. Proposed Order, attached below.
2. Staff Assessment (including Draft EIR), available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=262350&DocumentContentId=98875>.
3. Fountain Wind Response to Comments <https://efiling.energy.ca.gov/GetDocument.aspx?tn=267648&DocumentContentId=104674>.
4. Executive Director Recommendation <https://efiling.energy.ca.gov/GetDocument.aspx?tn=267647&DocumentContentId=104676>.
5. Opt-In application, available at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-OPT-01>.
6. For the complete record, visit: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-OPT-01>.

To stay informed about this project and receive documents as they are filed, please subscribe to the proceeding topic, which is at <https://www.energy.ca.gov/powerplant/wind/fountain-wind-project>. The topic sends out email notifications and direct links when documents are filed in the proceeding docket.

ORDER NO: [insert order no]

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

Fountain Wind Project

Docket No.: 23-OPT-01

**ORDER DENYING THE OPT-IN
CERTIFICATION APPLICATION**

ORDER:

I. BACKGROUND

Fountain Wind LLC filed an application on January 11, 2023, seeking certification for the proposed Fountain Wind Project (23-OPT-01) under the California Energy Commission's (CEC) Opt-In Certification Program. The Fountain Wind Project is a proposed 205 megawatt (MW) wind energy generation facility on approximately 2,855 acres of private, leased working forest land in unincorporated Shasta County, California, near the town of Burney.

The CEC's jurisdiction over the Fountain Wind Project application is authorized under Public Resources Code section 25545.1, which provides that a person proposing an eligible facility, which includes a terrestrial wind project with a generating capacity of 50 MW or more, may file an application on or before June 30, 2030, for certification with the CEC.

On March 25, 2025, after reviewing the Fountain Wind Project application and supplemental information, CEC staff filed its Staff Assessment, which includes a Draft Environmental Impact Report (DEIR). Staff evaluated the potential environmental effects of the construction and operation of the Fountain Wind Project in compliance with the California Environmental Quality Act (Public Resources Code section 21000 et seq.) (CEQA), the CEQA Guidelines (California Code of Regulations, title 14, section 15000 et seq.), the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code section 25545 et seq.) (Warren-Alquist Act), and California Code of Regulations, title 20, chapter 5, article 4.1 (Opt-In Certification Program).

After having thoroughly evaluated the Fountain Wind Project's benefits and the environmental impacts that could result from it, staff made a recommendation in the Staff Assessment that the CEC deny this project. As described more fully in the Staff Assessment and Response to Comments, staff's recommendation to deny the Fountain Wind Project is due to the following factors: (1) the numerous significant and unavoidable environmental impacts specifically associated with the Fountain Wind Project, and (2) findings that the particular circumstances of the Fountain Wind Project do not support a statement of overriding considerations for the environmental impacts.

On December 5, 2025, the County of Shasta (County) filed a Request for Dispute Resolution regarding invoice reimbursements. The request seeks formal dispute resolution pursuant to California Code of Regulations, title 20, section 1878.1 concerning reimbursement of the County's eligible costs incurred for services performed in reviewing the application for the Fountain Wind Project. Specifically, the County requests immediate resolution of the reimbursement dispute and an order directing the applicant to reimburse the County for its review and comment on the application and any necessary enforcement thereof.

Under Public Resources Code section 25538 local agencies may request reimbursement for the actual costs for reviewing the application and the CEC is authorized to request the fee from the project applicant. California Code of Regulations, title 20, section 1878.1 provides that the CEC's Executive Director shall resolve the dispute by filing a written decision based on good cause as demonstrated by any information provided by the applicant and local agency on the merits of reimbursement. The Request for Dispute Resolution process is independent of the CEC's consideration to approve or deny a project.

II. EXECUTIVE DIRECTOR'S RECOMMENDATION

Public Resources Code section 25545.6 and California Code of Regulations, title 20, section 1879(c) require the CEC's Executive Director to file a recommendation on whether the CEC should certify an environmental impact report (EIR) and issue a certificate for the construction and operation of the facility.

Based on the entire record of this proceeding, the Executive Director recommends that the CEC deny the Fountain Wind Project application for certification to construct and operate the facility and not certify an EIR.

III. CEC FINDINGS

Based on the exercise of independent judgment and review, and considering the record as a whole, including the Opt-In Application, public comments, Staff Assessment, and Response to Comments, we concur with the Executive Director's Recommendation to deny the Fountain Wind Project's application for certification to construct and operate the facility and not certify an EIR. The CEC adopts the following findings under CEQA,

the CEQA Guidelines, the Warren-Alquist Act, and California Code of Regulations, title 20, chapter 5, article 4.1:

1. The Fountain Wind Project is an eligible facility under Public Resources Code Chapter 6.2.
2. The project applicant filed an application for certification of the facility with the CEC before January 1, 2030.
3. The CEC issued a notice of preparation on November 2, 2023, within three days after the application was deemed complete as required under Public Resources Code section 25545.7.2(a).
4. Consistent with Public Resources Code section 25545.7.4, within five days after the application was deemed complete, the CEC submitted the application to all California Native American tribes that are culturally and traditionally associated with the area and initiated consultation.
5. The CEC held a public information and scoping meeting on November 28, 2023, to solicit input on the application, and identify a range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an environmental impact report.
6. Consistent with Public Resources Code section 25545.7.2(b)(1) and (c), the November 28, 2023, combined informational and scoping meeting provided the public with information on the proposed site and related facility, information on how to participate in the commission's review of the application, and a reasonable opportunity for the public to comment on the application.
7. On March 25, 2025, the Staff Assessment including a draft EIR was published and subject to a 60-day public comment period.
8. Consistent with Public Resources Code sections 25545.7.2(b)(2) and 25545.7.6(a), on May 20, 2025, staff held a public meeting on the staff assessment, which included a draft EIR.
9. Staff reviewed all written and oral comments received in response to the Staff Assessment of the proposed project and determined the information received in the comments did not change the conclusions of the Staff Assessment.
10. On November 19, 2025, the Executive Director filed a recommendation that the CEC deny the Fountain Wind Project's application for certification to construct and operate the facility and not certify an EIR.
11. In accordance with Public Resources Code section 25901, the CEC's findings are based on substantial evidence and come after an independent analysis of project information contained in the docketed record, consultation with experts in the field, and independent research as described in each of the technical sections in the Staff Assessment as well as information from public events held pursuant to Public Resources Code sections 25545.7.2 and 25545.7.6.
12. A final EIR, certification of the EIR, complete response to comments, and a concurrent record of proceedings are not required to support denial of the project

application. The existing docketed record, including a detailed staff analysis and studies by the applicant, contains ample facts and expert opinion supported by facts, for the CEC to render a decision to deny the project consistent with Public Resources Code section 25901.

13. Based on substantial evidence in the record, the project would result in significant unmitigable impacts described below in sub sections (a) through (h), and is in non-conformance with the Shasta County Municipal Code described below in subsection (f).

- a. The project may result in the mortality of monarch butterflies and threatened or endangered species, such as greater sandhill crane and California spotted owl, that are present or have the potential to occur at the Fountain Wind Project site through turbine collisions and may enhance wildfire spread impacting offsite habitat.
- b. The proposed wind turbines would be visually intrusive and cannot be camouflaged or screened given their size, color, and motion in comparison to the existing landscape.
- c. Important tribal cultural landscapes coalesce in the drainages of Hatchet and Montgomery creeks. Modern tribal members retain their lengthy and intimate connection to this place for cultural identity. At least twenty discrete tribal cultural resources are in the proposed project site or within its viewshed.
- d. The layout of the 48 turbines, each up to 610 feet tall, scattered throughout the project site represent aerial hazards and reduce the zones within the project site that aircraft can fly to deploy fire retardant.
- e. The Fountain Wind Project site and surrounding area are entirely located within an area designated by the California Department of Forestry and Fire Protection as a very high Fire Hazard Severity Zone.
- f. The construction and operation of the proposed Fountain Wind Project would not conform with the Shasta County Municipal Code, which specifically prohibits large wind energy systems in all zone districts due to the County's concerns regarding impacts to aesthetics, potential increased fire danger; impediments to firefighting efforts; damage to wildlife; damage to natural resources; and damage to cultural and tribal resources. Under CEQA, a project that is inconsistent with established zoning laws may be considered as having a significant impact to land use and planning if the conflict results in significant environmental effects that the zoning laws were intended to avoid or mitigate. This project would have a significant impact to land use.
- g. The project is zoned as a timber harvest district limiting the project site for timber harvesting and related activities. The project would result in the permanent conversion of 518 acres of forest land to non-forest use. Forests within the project site have high to intermediate productivity

potential based on site class (primarily Site Class I, with some Site Class II).

- h. The California Independent System Operator determined that the Fountain Wind Project is not situated in a local reliability area, which is a transmission-constrained area without enough local generation, and therefore is not needed to support local reliability.
- 14. The proposed contribution of the Fountain Wind Project's 205 MW toward the SB 100 goals and potentially contributing 35 to 100 MW during peak demand to support wider grid reliability, in addition to its other benefits, including the economic benefits to the community such as jobs and property tax revenue, do not outweigh the unmitigable significant impacts to the environment in the areas of biological resources, wildfire, cultural and tribal cultural resources, visual resources, land use, and forestry resources, the financial costs to Shasta County, and the potential loss of some natural working lands to sequester carbon.
- 15. On December 5, 2025, the County of Shasta filed a Request for Dispute Resolution regarding invoice reimbursements. That request will be processed by the Executive Director under his authority to adjudicate disputes regarding local jurisdiction reimbursement for reviewing applications.

These findings are based entirely on facts specific to the Fountain Wind Project and are not applicable to other wind projects, or any other energy project.

IV. LEGAL AUTHORITY

Under Public Resources Code sections 21080(b)(5) and 21100(a) and California Code of Regulations, title 14, section 15270, the provisions of CEQA do not apply to projects that a public agency rejects or disapproves. See *Las Lomas Land Company, LLC v. City of Los Angeles*, which states, "To require a public agency to prepare and circulate a draft EIR, and prepare a final EIR including responses to comments, before rejecting a project would impose a substantial burden on the agency, other agencies, organizations, and individuals commenting on the proposal, and the project applicant. Such a requirement would not produce any discernible environmental benefit and would not further the goal of environmental protection...we conclude that if an agency at any time decides not to proceed with a project CEQA is inapplicable from that time forward" (*Las Lomas Land Company, LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 849. Here, a robust record exists for this proceeding, and a decision can be issued without completing CEQA.

If CEQA continued to apply, to approve a project with significant and unavoidable environmental impacts, the CEC would have to make findings under California Code of Regulations, title 14, sections 15091 and 15093, that the project's economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, outweigh its significant and unavoidable environmental impacts. For the reasons stated, the record does not support such a finding.

V. CONCLUSION AND ORDER

The CEC hereby adopts the Executive Director's recommendation to

- (a) not certify an environmental impact report because (1) the CEC is denying the project and (2) the CEC cannot make the required findings to override the project's significant and unavoidable environmental impacts, and
- (b) deny the Fountain Wind Project's Opt-In application for certification to construct and operate the facility.

The CEC retains jurisdiction over the project for purposes of the Executive Director adjudicating the reimbursement dispute submitted to the CEC by the County of Shasta.

This Order is adopted, issued, effective, and final on December 19, 2025.

IT IS SO ORDERED.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the CEC held on December 19, 2025.

AYE:

NAY:

ABSENT:

ABSTAIN:

Dated:

Kim Todd
Secretariat