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Objection to Fountain Wind Project

Additional submitted attachment is included below.

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October 17, 2023

California Energy Commission
715 P Street
Sacramento, CA 95814

RE: Pit River Tribe Opposition to Fountain Wind Project

Dear Commissioners,

On behalf of the Pit River Tribe (the "Tribe"), a federally recognized Indian tribe, I am writing to submit the following comments in opposition to the Fountain Wind Project ("Project"). The Project proposes a development by ConnectGen ("Developer") of a wind energy generation facility composed of wind turbines and associated infrastructure in unincorporated Shasta County ("Project Site").

The Tribe is a federally-recognized Indian tribe consisting of the original eleven (11) autonomous bands who are aboriginal to the "100-mile square" ancestral boundary of the Pit River Tribe, which is located in Shasta, Siskiyou, Modoc, and Lassen Counties, as stated in the Constitution of the Pit River Tribe and adopted by the Tribe on August 16, 1987 as well as the Secretary of the Department of the Interior on December 3, 1987. The Constitution describes the Tribe's inherent sovereign governmental powers to protect and promote the health, safety, and/or general welfare of the people of the Pit River Tribe.

The aboriginal territory of the Tribe consists of all ancestral lands recognized by the Indian Claims Commission in its July 29, 1959¹ findings of fact and opinion in Docket No. 347, i.e., the 100-mile square as described in Docket No. 347, including, but not limited to, the XL Ranch, Montgomery Creek, Roaring Creek, Big Bend, Burney, Lookout, and Likely Rancherias, the 13 acres deeded to the United States by the State of California in trust for the Pit River Home and Agricultural Cooperative Association as trustee for the Tribe, Modoc County Assessor's parcels 013-172-07 and 013-191-01, and any other property that hereafter may be acquired by or for the Tribe. The Tribe's cultural ties to its aboriginal lands are essential to the Tribe's identity and the continued existence of the Tribe as a Tribal entity. The Secretary of the Interior has affirmed our jurisdiction over our lands, the 100-mile square.

¹ 7 Indian Claims Commission, 815-863 Appendices A & B pages 1-49.

MADESI

ATWAMSINI

ATSUGEWI

ASTARAWI

APORIGE

AJUMAWI

HAMMAW

HEWISEDAW

ILLMAW

ITSATAW

KOSEALEKTE

I. PIT RIVER TRIBE COMMENTS

The California Environmental Quality Act ("CEQA") "was enacted to advance four related purposes: to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, environmental damage; (3) prevent environmental damage by requiring project changes via alternatives or mitigation measures when feasible; and (4) disclose to the public the rationale for governmental approval of a project that may significantly impact the environment."²

This Project, if approved, would result in significant adverse impacts to the viewshed, aesthetics, water quality, biological environment, economic base, as well as Tribal cultural resources. These significant impacts would be more detrimental than beneficial to both tribe and community. The Developer, ConnectGen, based in Houston, Texas, will ultimately be the primary user of the power generated by this Project, and will likely be distributed to other western states via the Western Area Power Administration ("WAPA"). The Project will create very few permanent employment opportunities; however, the significant adverse impacts from this project will be felt by all who live, and travel through, the area, forever.

II. HISTORY/CONTEMPORARY USE OF SITE AS SACRED FOR TRIBE

The project area is located within the ancestral lands of the Itsatawi, Madesi, and Atsugewi Bands of the Pit River Tribe. The Territory of the Tribe consists of all ancestral lands recognized by the Indian Claims Commission in its July 29, 1959 findings of fact and opinion,³ i.e., the 100-mile square as described in Docket No. 347, including, but not limited to, the XL Ranch, Montgomery Creek, Roaring Creek, Big Bend, Burney, Lookout, and Likely Rancherias, the 13 acres deeded to the United States by the State of California in trust for the Pit River Home and Agricultural Cooperative Association as trustee for the Tribe, Modoc County Assessor's parcels 013-172-07 and 013-191-0 I, and any other property that hereafter may be acquired by or for the Tribe.

The project area is located in close proximity to tribal trust lands located in Montgomery Creek (the Montgomery Creek Rancheria, Big Bend Rancheria, and Roaring Creek Rancheria), which have been held in trust for the benefit of the Tribe since 1915.

In 2016, the Tribe purchased an additional 40.06 acres of fee land in Montgomery Creek, using funds from the Bureau of Indian Affairs Tribal Transportation Program, for the purpose of improving road safety for tribal members that live on the Montgomery Creek Rancheria. The Tribe has developed a plan for constructing a new road to the Rancheria that is safe for travel during all seasons of the year. The Tribe also seeks to improve tribal member housing options with the construction of additional homes. The Tribe has invested time and planning, using its limited resources, to address the need for tribal member homes in this area. The Project not only endangers our current residents, but also the future development of new homes in this area.

² *Governor's Office of Planning and Research*, (Sept. 1, 2023), <https://opr.ca.gov/ceqa/>.

³ 7 Indian Claims Commission, 815-863 Appendices A & B pages 1-49.

The Tribe's current land holdings encompass an area of approximately 9,567.32 acres, most of which is held in trust. Of these 9,567.32 acres, 5,026.41 acres are tribally owned, and the remaining 4,540.91 acres are individual allotments. Tribal lands are widely scattered across Shasta and Modoc Counties within seven different Rancherias, each located in one of the eleven bands' of ancestral territories as follows:

Likely: 1.32 acres (Hammawi)
Lookout: 40 acres (Atwamsini)
XL Ranch: 8,463.62 acres (Kosealekte & Hewisedawi)
XL Ranch (Goose Lake): 790.38 acres (Kosealekte & Hewisedawi)
Big Bend: 40 acres (Madesi)
Burney: 80 acres (Itsatawi & Atsugewi)
Montgomery Creek: 72 acres (Itsatawi & Madesi)
Roaring Creek: 80 acres (Madesi)

These lands have been occupied by the Tribe since long before the first western intrusion of Pit River territory, and remained under tribal control until various battles, forced removal, genocidal acts by state instituted laws, and gradual encroachment by incoming settlers forced most tribal members out of their ancestral villages and into homelessness. Most of the above acreage was purchased for "landless California Indians" by Congressional Appropriation Acts and/or executive orders during the early part of the 20th century after a 1904 report indicated the deplorable state of California Indians in the late 1800's, many having been left homeless and starving on the fringes of society.

The Tribe is currently composed of approximately 3,000 members, many of whom remain within, or near, the Tribe's territory. Unemployment rates in both Shasta, Modoc, Siskiyou, and Lassen Counties are very high in comparison with other counties in California, and residents of Modoc County maintain the lowest median household income of any county in California. Environmental factors and land theft has degraded the traditional subsistence way of life for tribal members living within Pit River territory. Moreover, the rural nature of the area offers few employment opportunities, and therefore the economic needs of tribal members who remain within the Tribe's territory are highly dependent on the economic opportunities developed by the Tribe itself.

The Tribe has continually progressed in its economic development to fill these needs. However, the depressed state of the economies of Shasta, Siskiyou, Lassen, and Modoc Counties are due in large part to a lack of economic development opportunities, and these Counties rely heavily on tourism and recreation at those scenic areas. The extremely rural nature of the Tribe's lands, and surrounding lands, greatly limits the economic opportunities available to those generated by tourism.

The tribal trust land base in Montgomery Creek provides housing for approximately twenty-six (26) tribal families who live in overcrowded conditions. The new trust land in Montgomery Creek will potentially increase tribal member housing for thirty-two (32) additional tribal families. In addition, individually owned Indian allotments are located close to the Project Site, and tribal members reside on fee lands in the Project area. Tribal members will be

immediately adversely impacted by the construction of this project in many ways including, but not limited to, mental and physical health, land health, watershed health, ground instability which triggers landslides, limited access to sacred waters and springs, impacts to cultural resources, and permanent damage and destruction to traditional historical areas integral to the identity of the Pit River People that cannot be mitigated. These adverse impacts would continue long after decommissioning of the project on the land.

We are withholding comments about specific cultural places in the Project site and vicinity to ensure that confidentiality of those places is protected, however, we will provide that information under separate cover to protect the confidentiality of that information.

III. GOVERNMENT RECOGNITION OF HISTORICAL HARMS

In July 2019, Governor Gavin Newsom issued Executive Order N-15-19 ("Apology") stating that an apology was necessary to begin to address the wrongs done to California Native Americans. It further stated that the relationship between the state of California and California tribes has been "fraught with violence, exploitation, dispossession and the attempted destruction of tribal communities, as summed up by California's first Governor, Peter Burnett, in his 1851 address to the Legislature: [t]hat a war of extermination will continue to be waged between the two races until the Indian race becomes extinct"⁴.

The Tribe's aboriginal territory has been exploited since colonization for its energy resources, and as recognized by the Apology, dispossession of our homelands has occurred for far too long. Hydroelectric projects have harmed the natural environment, contributing to a decline in fish populations and the emergence of toxic algae in drinking water is putting all tribal and general community members at risk. Our aboriginal territory has also been exploited for its geothermal and timber resources. The extraction of our tribal territorial resources has never benefited the Tribe and the Fountain Wind Project is no different.

The existing wind turbines on Hatchet Ridge already mark the landscape and the installation of up to forty-eight (48) more in an extremely complex geographical area will further disrupt the way of life for all who live in the area. The topography of the Project Site is central to the Tribe's identity, oral traditions, and history. Changing the landscape so drastically is another state-sanctioned action (under AB 205) that leads to dispossession of homelands and is yet another attempt to erase our people from history.⁵ A recent USFS Cultural Report outlines the historic dispossession of the Tribe's homelands especially at the hands of increasing number of land development projects, vandalism, and even archaeological investigations that have destroyed or

⁴ JESSALYNN MARIE EERNISSE, *DECOLONIZING SUTTER COUNTY: REINTERPRETING NISENAN CULTURE IN A LOCAL HISTORY MUSEUM* p. 20 (2019) available at https://scholarworks.cal_state.edu/download/st74cw549.

⁵ See Crystal Echo Hawk, *The false narratives, invisibility, and the erasure of Native peoples must end*, INDIAN COUNTRY TODAY (Aug. 07, 2018) (stating that for too long the argument against doing more to include Native Americans... in policies-has always been undercut by arguments that the Native population is too small, and not a significant enough demographic that the American public will be interested in and such small population argument for decades has been used to rationalize and justify the erasure of Native peoples, the lack of resources, services and even discrimination).

disturbed many Native American cemetery areas in the past three decades. We can submit that report to the CEC under confidential cover.

The tribal community will carry too much of the burden of this Project with no benefit. Like others before it, this Project is purposefully sited in a socio-economically disadvantaged area with little political capital to push back.⁶ Even in the midst of a global pandemic, and while fires were raging across Northern California, we were given just forty-five (45) days to respond to the original, 610-page DEIR on the Project that would have admittedly resulted in significant impacts to the viewshed, aesthetics, water quality, biological environment, economic base, as well as Tribal Cultural Resources of the Tribe's aboriginal territory.⁷ The Project will no doubt reduce property values and drive people away, reducing our political power further and the County's tax base, in contravention of one of the "basic objectives" of the Project.⁸ Finally, as highlighted by a February 2023 article in *The New York Times*, there remain serious questions to whether or not all this electricity can be approved for use in the near future or if the grid can structurally handle the capacity.⁹

The United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP" or "Declaration") recognizes that Tribes have both the right "to the conservation and protection of the environment and the productive capacity of their lands or territories and resources," as well as "to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard."¹⁰ Approval of the Project will undoubtedly violate these rights and, accordingly, the CEC should not certify the Project.

IV. ECOTOURISM

The Project will undoubtedly affect the ecotourism industry around the Project Site. The area is rich in recreational resources including opportunities for swimming, hunting, fishing, hiking, biking, cross-country skiing, snowmobiling, plant identification, and bird watching. Being that the Project Site is located on private property does not fully mitigate the impacts on these resources. As discussed below, the construction, operation, and the eventual decommissioning of the Project will have unacceptable impacts on the viewshed, air and water quality, and biological resources found in the area. The impacts to these resources are not limited just to the location of

⁶ U.S. Department of Energy, Office of Legacy Management, *Environmental Justice History*, available at: <https://www.energy.gov/lm/services/environmental-justice/environmental-justice-history> (identifying and addressing the significance of high and adverse human health environmental effects of programs, policies, and activities on minority, low-income and tribal communities).

⁷ The deadline to respond to the DEIR was extended to October 21, 2020 after significant public pushback to the limited window to respond in light of the unusual circumstances presented by the Covid-19 pandemic.

⁸ See Sherri Lange, *Wind Turbines in Court: What are the Issues?*, MASTER RESOURCE A FREE-MARKETENERGY BLOG (October 03, 2019) (discussing a Syracuse, NY lawsuit where residential property owners real property values were significantly compromised as a result of a wind farm project).

⁹ *The New York Times* [Wind and Solar Energy Projects Risk Overwhelming America's Antiquated Electrical Grids - The New York Times \(nytimes.com\)](https://www.nytimes.com/2023/02/02/us/politics/wind-solar-energy-projects-risk-overwhelming-america-s-antiquated-electrical-grids.html) (February, 2023) (emphasizing the problem in the U.S. concerning lengthy approvals, cancelled projects, and energy that cannot be connected to any grid, and therefore useless).

¹⁰ United Nations Declaration on the Rights of Indigenous Peoples, Art. 25, 29(I) (Sept. 13, 2007).

where the turbines would be placed, but will be seen, and felt, by the surrounding Tribal Bands from all of the surrounding Counties.

The CEC cannot deny that the impacts to the viewshed, air and water quality, and plants and animals surrounding the Project Site will negatively impact the ecotourism industry. These impacts, as well as construction traffic and noise will not only hurt the industry as it exists in the area today but will also foreclose current and future economic development goals of the Tribe.

V. TRIBAL CULTURAL RESOURCES

The Tribe's comments regarding specific impacts to tribal cultural resources will be submitted directly to the CEC under confidential cover. However, we can summarize that the Project will have direct significant impacts on tribal cultural resources that cannot be mitigated.

VI. ZONING

On July 12, 2022, the Shasta County Board of Supervisors ("the "Board") adopted Ordinance Number SCC 2022-04 regulating small and large wind energy systems.¹¹ The Board found the "adverse impacts of large wind energy systems ... with respect to wildfire, air quality, firefighting, aesthetics ... are a significant concern to many of the residents of Shasta County ..".¹⁵ The Board determined that it was in the best interest of the County to adopt an ordinance prohibiting large wind systems because of the unacceptable impact from such development. Due to the numerous comments received between 2019 and 2021, the Board heeded the voices of the residents, attempting to safeguard them from these very effects. In those comments, many residents testified that projects such as these run contrary to the very reasons they moved to, or remain, in the area.

The action by the Board to prohibit large wind energy systems from the County shows that not only does the Tribe object to the Project, but that the governing body of the area has done all it can to protect the interests of its residents as well. We call on the CEC to respect not only the lands governed by the Tribe by right, but to also respect the inhabitants governed therein, by their elected officials, by denying this Project.

VII. DECOMMISSIONING

The Tribe notes for the record that although we make recommendations and suggestions regarding decommissioning below, we in no way support this project. Our purpose in addressing this section is to point out the continued flaws in the project. We firmly disagree with any attempts to use the following discussion as a stamp of support.

Before the adoption of AB 205, the DEIR stated that prior to "operation of the Project, the Developer would be required to prepare a Draft Decommissioning Plan that details a restoration plan and how Project facilities and infrastructure would be removed. The Draft Decommissioning

¹¹ Shasta County California, REPORT TO THE SHASTA COUNTY PLANNING COMMISSION available at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-OPT-01>

Plan would be revised and finalized prior to Project operations, not prior to construction. The Developer or its contractor would then implement the Final Decommissioning Plan, which the County would also have to approve upon cessation of Project operations. The Final Decommissioning Plan would include plans and procedures for facility dismantling and removal, site restoration, and habitat restoration and monitoring and would be developed in compliance with standards and requirements at the time of site decommissioning."¹² Since the approval process has now been placed in the hands of the CEC, the Tribe requests clarification on the CEC's decommissioning guidelines.

Most importantly, the Tribe requests that the Developer be required to prepare the Draft Decommissioning Plan prior to approval of the Project, not after the Project has commenced. Furthermore, the Tribe requests that the CEC require a Decommissioning Fund be created and fully funded for the decommissioning costs prior to the certification of the project. The Tribe requests the CEC to determine the total decommissioning costs related to items noted above, plus projected inflation, to be fully funded to the Decommissioning Fund. Finally, the Tribe requests tribal consultation with the Developer in drafting whatever decommissioning plan the CEC deems necessary for Project approval.

VIII. LACKS COMMUNITY BENEFIT

Fountain Wind, LLC has recently forged, or is in the process of forging, a financial agreement with Shasta Regional Community Foundation, Inc. dba Community Foundation of the North State ("CFNS"), to meet the requirements of Public Resource Code section 25545.10. We vehemently object to the misleading claims found in the Response To Community Benefits Data Request¹³ suggesting that the Pit River Tribe has consented to receive financial benefits from this collaboration. The entire document, as it relates to the Tribe, is unequivocally false and misleading.

For instance, the Applicant's docket submission number TN-25286, states "Paragraph 2 of the agreement explains the purpose of the agreement and... directs that fifty percent (50%) of the funds be distributed for the benefit of the Pit River Tribe."¹⁴ We must clarify that the Tribe vehemently opposes any association with this financial arrangement. Furthermore, we have no intention whatsoever of accepting any financial support from Fountain Wind or CFNS as part of their independently agreed-upon deal.

The misrepresentations by ConnectGen raise serious ethical and transparency concerns that demand immediate attention. It is evident that the Applicant has not, and as far as we are aware, will not be able to secure a signed agreement from a community-based organization that satisfies the Community Benefits requirement. Instead, they have found an entity willing to accept its funds and establish grant programs for the Tribe, that the Tribe has no intention of applying for.

¹²California Energy Commission, Docket Log, FOUNTAIN WIND PROJECT, Description of Project and Alternatives, download available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=248288-2&DocumentContentId=82587>

¹³ California Energy Commission, Docket Log, FOUNTAIN WIND PROJECT, FWP Response To Community Benefits Data Request, download available at [TN252586_20231012T1_15738_FWP_Response_To_Community_Benefits_Data_Request_\(1\).pdf](#)

¹⁴ *Ibid*

Moreover, the professed agreement is not even signed or effective and therefore does not satisfy the requirements of AB 205.

The Tribe has reasons to distrust the Applicant. Our distrust of the Applicant is rooted in a history of egregious misconduct, including their repeated misrepresentation of the Tribe's position on the Project, the intentional extraction of statements out of context, and outright falsehoods. We deem any "funding agreement"¹⁵ entered into by ConnectGen with any other parties, particularly those in the form like the unsigned draft agreement we have before us, as not only highly suspicious but bordering on utterly worthless. We boldly state for the record that we do not believe the "funding agreement" is real. Our past experiences with this company have left us with no choice but to exercise the utmost caution and skepticism in all dealings with them. The proposed Project is of no benefit to the Pit River Tribe or the community, and no amount of money can mitigate the harm that it would cause to the Tribe's homeland and tribal membership.

IX. ADDITIONAL COMMENTS

The Tribe agrees with and joins in Shasta County, Save Our Rural Town, and San Bernardino County opposition to the Fountain Wind Project.

A. SHASTA COUNTY

The County of Shasta ("County") vehemently opposes Fountain Wind LLC's opt-in applicati_on submitted to the CEC for the Fountain Wind Project. Its opposition is grounded in the belief that the Commission lacks jurisdiction to consider the Application under AB 205. The legislation, while designed to streamline renewable energy project approvals, should not serve as a loophole to bypass local government decisions. The County's position, highlighting the importance of preserving local authority in land use decisions, respecting prior denials, and maintaining the integrity of legislative processes can be outlined as follows:¹⁶

Shasta County's Prior Review and Denial of the Fountain Wind Project

The Fountain Wind Project faced a comprehensive and exhaustive review process within Shasta County. Over four years, the County conducted public meetings, hearings, environmental assessments, and engaged with local tribes and community members. The denial of the Project by the County Planning Commission, which was upheld on appeal by the Shasta County Board of Supervisors, was based on a multitude of concerns, including environmental impacts, cultural and tribal resource preservation, and public welfare.

The denial of the permit came after a 2,000+ page Final Environmental Impact Report ("EIR") attempted to address all concerns raised during the CEQA review of the Project. The Planning Commission unanimously denied the application, citing detrimental impacts to

¹⁵ California Energy Commission, Docket Log, FOUNTAIN WIND PROJECT, FWP Community Benefits DRAFT Fund Agreement, download available at [TN252585_20231012TI15734_FWP_Community_Benefits_DRAFT_Fund_Agreement\(2\).pdf](https://efiling.energy.ca.gov/GetDocument.aspx?tn=251601&DocumentContentId=86490)

¹⁶ County of Shasta Opposition to Commission Jurisdiction. Fountain Wind Project. Docket 23-OPT-01 <https://efiling.energy.ca.gov/GetDocument.aspx?tn=251601&DocumentContentId=86490>

aesthetics, increased fire danger, wildlife damage, and harm to cultural and tribal resources. This decision was upheld by the Board of Supervisors, emphasizing that the impacts were detrimental to the general welfare of the County and its residents. The finding by the local government agencies with jurisdiction over the project should be given deference by the CEC in its evaluation of the Project application.

Assembly Bill 205

AB 205, signed into law in June 2022, extended the Commission's siting authority over specific renewable energy facilities. It allowed eligible projects to opt-in to the Commission's certification process instead of undergoing local permitting. However, it was intended to be an exclusive choice between the two processes, not an opportunity for applicants to have a "second bite at the apple."

The legislation clearly states that the Commission's certification would be "in lieu of" any local permits or certificates, signifying a deliberate choice between the two pathways. This interpretation is reinforced by the use of "opt-in," indicating that applicants should make a choice between Commission and local approval, not both. The legislative intent was to offer an alternative, not an opportunity to circumvent prior denials. The Tribe agrees that the Project should not be given new life via the opt-in process.

Importantly, AB 205 was likely an improper allocation of authority subject to review by the California courts. Although the bill had significant policy implications, there was not a hearing on AB 205, because it was passed at the end of the legislative session as a budget trailer bill. We believe that legislation as important as AB 205, which shifts the power away from the local community in such decisions, required a full legislative process with hearings in the appropriate committee in both houses of the Legislature, and with an opportunity to comment on the proposal.

The County raises a critical concern related to the constitutional separation of powers if the Commission were to assert jurisdiction over the Project after the County's prior review and denial. We echo this concern and believe that such an assertion of jurisdiction could be viewed as retroactive legislation, thereby violating the separation of powers doctrine. We are concerned that there has not been an appropriate legal analysis of AB 205 or judicial review to ensure that the CEC has jurisdiction under the AB 205 to process the Fountain Wind Project application.

The Commission Lacks Jurisdiction to Certify the Project

In the material submitted to the CEC by the County, a comprehensive argument is presented, outlining its objections and opposition to Fountain Wind LLC's request to deem the project application complete, filed on August 3, 2023. The County asserts that the Commission lacks jurisdiction over the Fountain Wind Project due to the prior review and denial of the Project by a local agency, exercised under discretionary authority and in accordance with the California Environmental Quality Act (CEQA). The Tribe concurs with the County's position.

We agree with the County that AB 205, which forms the basis for the Commission's asserted jurisdiction, was not intended to extend to projects that had undergone previous reviews and

denials by local agencies. As the County rightly points out, the Commission's jurisdiction should be limited to what is provided for by the California Constitution and statutes. Any attempt to independently assert jurisdiction beyond these boundaries would have profound implications for the local communities affected, including the Pit River Tribe. We agree with the County that the Commission has a legal obligation to formally address its jurisdiction rather than relying solely on a technical determination by Commission staff, in order to assure due process to all parties.

Furthermore, the County addresses procedural matters and timely opposition, asserting that challenges to agency jurisdiction can generally be raised at any point in the proceeding. We concur with this viewpoint and believe that the County has raised these jurisdictional concerns at a suitable juncture in the process, and we assert those same concerns now.

In response to the Applicant's claim that the County's opposition is improper, the County rightly asserts its right to file comments and highlights the absence of formal rules governing the timing of comment submissions. We share the County's perspective on the importance of local agencies having the opportunity to provide relevant information to the Commission. Moreover, we agree that applying Commission jurisdiction over a previously denied project would conflict with the doctrine of exhaustion of administrative remedies. We concur with this perspective and believe that administrative autonomy and judicial efficiency should be preserved by determining that the Fountain Wind Project application is not a proper subject for CEC review under AB 205.

In summary, the Pit River Tribe stands with Shasta County in asserting that the Commission lacks jurisdiction over the Fountain Wind Project due to the County's prior review and denial. Any effort to extend such jurisdiction would raise constitutional and legal concerns that warrant careful consideration.¹⁷

Lack of Community Benefits

The Tribe shares the County's concern that it was denied access to certain information regarding the Applicant's Response to the Community Benefits Data Request. We ask the Commission to deny the Applicant's Confidentiality Application based on the assertion that no exceptions to the California Public Records Act (CPRA) apply. We request that the CEC suspend the review of the adequacy of the community benefits plan until unredacted versions of the documents are provided by the Applicant or until the Commission fully discloses the Response for public review and comment in parallel with the adequacy review.

We concur with the County of Shasta's perspective that CPRA exemptions should be applied judiciously and with consideration for the public's right to transparency. We appreciate the County's efforts to uphold the principles of the CPRA and the California Constitution, which favor disclosure and broad public access to governmental records.

Furthermore, we agree with the County's argument that Section 7927.605 of the Government Code does not appear to be applicable to the Response in question. This statute primarily addresses corporate records submitted to specific state agencies for purposes related to

¹⁷ County of Shasta Response to AB 205 Jurisdictional Comments, Fountain Wind Project, Docket 23-OPT-01, <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnum=23-OPT-01>

economic growth and does not seem pertinent to the regulatory context of power plant siting overseen by the Commission. We assert that Section 7927.500 is not applicable in this case since it typically pertains to drafts generated by public agencies, not submissions made by private companies in response to agency data requests. The nature of the Response and the Commission's retention of such documents in its ordinary course of business support this interpretation.

We also endorse the County's assertion that Government Code Section 7922.000, often referred to as the catch-all exception, should not apply to the Response. The public's interest in disclosure should outweigh any concerns related to nondisclosure, particularly when considering the Response's importance to the Commission's determination of project adequacy. The Tribe and the public have a right to review and comment on the community benefits plan and the adequacy of the Project Application. The Tribe and the community have a right to know which group seeks to accept responsibility for mitigating the impacts of this incredibly misplaced project. This right includes scrutinizing the validity of the community-based organization, ensuring geographic compliance, and evaluating the mutual benefits arising from the proposed agreement.

In conclusion, we believe that the principles of transparency, public access, and adherence to the CPRA are essential in this matter. We encourage the Commission to carefully consider these aspects as it evaluates the objections raised by the County of Shasta and the Applicant's Confidentiality Application.¹⁸

Local decision-making should be respected, particularly regarding prior denials. The Tribe seeks to ensure that AB 205 does not serve as a means to undermine local government authority and that the Commission's jurisdiction is applied in a manner consistent with the law and legislative intent. It is essential to maintain a balance between streamlining renewable energy projects and respecting the principles of local governance in an open way.

B. SAVE OUR RURAL TOWN

The Tribe agrees with the comments offered by Save Our Rural Town (SORT). SORT took the opportunity to oppose the Project by submitting a comment letter¹⁹ which aired its concerns about the potential project. SORT's concerns center on the adequacy of the Fountain Wind Project application's compliance with Section 1877(g) and its path towards meeting Section I 879(a)(8). The organization highlighted several deficiencies:

Section 1877(g) Compliance

SORT disagreed with the Commission's conclusion that the Fountain Wind Project application sufficiently complies with Section 1877(g). The "Crosswalk Matrix" in the application indicates legally binding agreements will be executed after CEC permits, not before as required by the law. It also lacks evidence of collaboration with community organizations and community benefit substantiation. We strongly believe that there will be no legally binding agreements coming forth

¹⁸County of Shasta, Objection to Applicant Confidentiality Request Re Community Agreement Data Response, Docket-23-OPT-01 <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-OPT-01>

¹⁹Save Our Rural Town. Fountain Wind Project, Docket 23-OPT-01 <https://efiling.energy.ca.gov/GetDocument.aspx?tn=251380&DocumentContentId=86215>

to help this Project move forward. Therefore, the application will not comply with Section 1877(g) and should be denied.

Community Benefits Plan

The "Community Benefits Plan" outlined by Fountain Wind lists proposed activities without substantial evidence of their benefits to local communities. Some activities are vague or unconfirmed, while the Plan fails to demonstrate community organizations' actual support. Whatever "benefits" that are to be found in the short term, are far outweighed by the long term effects to land, air, tourism, scenery, and fire danger. From the Tribe's perspective, there is literally no way to mitigate the impacts that will be caused by the Fountain Wind Project. There is no amount of money that could compensate the tribal and local community for the harm that would be caused by the Project.

Lack of Substance in Programs

SORT noted that some proposed programs, such as the Fuel Break Program, appear more self-serving or beneficial to the project's proponents than to the community. This raises concerns about the legitimacy of the claimed community benefits. Mitigation is not a community benefit.

Compliance with Section 1879(a)(8)

Fountain Wind does not seem to be on track to meet the requirements of Section 1879(a)(8). The company intends to enter into agreements after project approval, leaving questions about the organizations involved and the genuine representation of community interests. The people of Shasta County will not, we suspect, be fooled into making these sorts of agreements again.

In its conclusion, SORT requested the Commission to re-evaluate the Fountain Wind Project application's "Community Benefit Plan," promote transparency and accountability, and set robust standards for future "Opt-In" projects. We stand with the opposition put forward by SORT for this particular project.

C. SAN BERNARDINO COUNTY

The Tribe agrees with San Bernardino County's letter²⁰ which argues that the CEC does not have jurisdiction to review an Energy Project application that has already been denied by the local agency. The letter cites several reasons for this, including:

- The selection of the permitting authority is at the option of the applicant, and once an applicant selects the local agency, the CEC is bound by the local agency's decision.
- Requiring the CEC to review a previously denied application would be wasteful and duplicative.

²⁰San Bernardino County Land-Use Services Department. Fountain Wind Project, Docket 23-OPT-01 <https://efiling.energy.ca.gov/GetDocument.aspx?tn=252222&DocumentContentId=87230>

- The CEC's review process would conflict with the local agency's review process, leading to inconsistent results.
- The CEC's finding of public convenience and necessity would be meaningless if it could be overridden by the local agency's determination that the project is not in the public interest.
- The CEC's finding of an overall net positive economic benefit to the local government would be illogical if the local government had already determined that the project is not economically beneficial.

The letter concludes by averring that the CEC's lack of jurisdiction in this case would prevent wasted effort and expense, avoid manipulation, encourage reliance on local administrative proceedings, and foster repose through finality of decisions.

In unity with the compelling arguments and steadfast opposition articulated by Shasta County, SORT, and San Bernardino County, the Tribe stands resolute in our conviction that the proposed project poses an imminent threat to our sacred lands, our cultural heritage, and the fragile ecosystem that sustains us all. With unwavering determination, we implore the California Energy Commission to heed our collective plea and deny this project. Together, let us safeguard not only the legacy of our Tribe but also the invaluable natural resources that connect us all, for generations to come.

The weight of history and the responsibility to protect our shared future rests in this moment, and we call upon the CEC to make the courageous decision that will leave a lasting legacy of preservation, respect, and honor. Deny this project, and in doing so, uphold the principles of justice, conservation, and respect for indigenous communities that are the essence of our shared humanity.

Sincerely,

Yatch Bamford
Tribal Chairman



10-18-23