

DOCKETED

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California Energy Commission Memorandum

To: Docket 23-OPT-01
From: CEC Staff California Energy Commission
715 P Street
Sacramento, CA 95814

Date: December 13, 2023

Subject: Shasta County's Comments on the Notice of Preparation of the Draft Environmental Impact Report for the Fountain Wind Project (23-OPT-01)

The California Energy Commission (CEC) staff acknowledges the receipt of Shasta County's comments regarding the CEC's Notice of Preparation (NOP) of the Draft Environmental Impact Report for the Fountain Wind Project (TN 253508). Staff appreciates the concerns raised by Shasta County in its comments. Staff seeks to address some misunderstandings that are evident from the comments and to provide procedural clarification.

A. There is no Requirement to Re-notice the Notice of Preparation

Under the California Environmental Quality Act (CEQA) Guidelines, California Code of Regulations, title 14, section 15082, when a state agency determines it will prepare an environmental impact report, it is required to send an NOP to the Office of Planning and Research and each responsible and trustee agency and file the NOP with the county clerk in the county where the project is located. Service may be by mail, email, or other equivalent method. (Pub. Resources Code, § 21080.4(a).) The CEC provided the NOP to the Office of Planning and Research and each responsible and trustee agency on November 3, 2023. In addition, on November 2, 2023, the CEC filed the NOP into the proceeding's docket, which provided broad notice to all stakeholders on the Fountain Wind Project subscription list, including multiple individuals from the Shasta County Resource Management Office, Shasta County Counsel, and others. The CEC also emailed the NOP to the Shasta County clerk on December 1, 2023. The NOP identified the statutory 30-day period for the responsible and trustee agencies to submit information on the scope and content of the CEC's environmental impact report (EIR).

In its comments the County suggests that "the mandatory 30-day public comment period regarding the NOP could not start until December 1, 2023 [when the county clerk received the NOP] and must now be re-noticed to run until December 31, 2023." Such an extension is not required under CEQA because there is no 30-day public comment period on the NOP, so there is nothing to re-notice. The NOP is directed at

responsible and trustee agencies, as defined in CEQA, and seeks input from these expert agencies as to the scope and content of the lead agency's EIR. (Pub. Resources Code, § 21080.4(a).) The CEQA Guidelines section 15082(b), give responsible and trustee agencies 30 days "after receiving the [NOP]" to provide this information. The County was sent notice of the NOP on November 2, 2023, through the CEC's docketing system and is therefore considered to have received it on that day (Pub. Resources Code, § 21080.4(a).) The lead agency may begin work on the draft EIR before the end of the 30 days but may not circulate the document until the 30 days has expired. (Pub. Resources Code, § 21080.4(a); CEQA Guidelines §15082(a)(4).) This is not a public comment period as mischaracterized by the County because the deadline does not apply to the public who may continue filing comments into the proceeding's docket as they have been doing since the project's inception.

B. The Shasta County Air Quality Management District is Not a Responsible Agency Under CEQA

In its comments the County also suggests that the Shasta County Air Quality Management District (SCAQMD) is a responsible agency and must be sent the NOP and given 30 days to respond. (Shasta County Comment Letter, p. 3.) Staff values the information provided by all local agencies especially air quality management districts. While staff will continue to seek engagement with SCAQMD, in this case, SCAQMD is not a responsible agency. A responsible agency is a public agency, other than the lead agency, which has responsibility for carrying out or approving a project. (Pub. Resources Code, § 21069.) Here, Public Resources Code section 25545.1(b) of the Opt-in statute states, "...issuance of a certificate by the commission for a site and related facility pursuant to this chapter shall be in lieu of any permit, certificate, or similar document required by any state, local, or regional agency, or federal agency..." except for the State Lands Commission, the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, the State Water Resources Control Board, or the applicable regional water quality control boards. The SCAQMD is not one of the enumerated agencies so any local air quality permit would be subsumed in the CEC's certification, if the project is approved. Shasta County's comments inferring that staff will require the SCAQMD to issue a permit are incorrect, and the excerpts from the email and purportedly transcribed voicemail do not correctly reflect CEC's process. Rather, CEC air quality experts will continue to engage with SCAQMD to ensure that the local permitting requirements will be included in the conditions of certification if the project were to be approved.

To rectify any confusion on the 30-day agency comment deadline and to facilitate the exchange of information between county agencies and CEC staff to inform staff's development of the EIR, CEC staff can accommodate Shasta County's request to extend

comments for local county agencies until December 31, 2023, and will continue to work with Shasta County. Staff encourages Shasta County to provide any additional information promptly so that staff may utilize the information in the CEC's environmental review of the project.

C. The Docket Date is not Relevant in Determining the Date the Application was Deemed Complete

On October 30, 2023, the CEC's executive director signed the *Determination of Complete Application for the Fountain Wind Project (Docket No. 23-OPT-01)*. In its comments, Shasta County suggests that the date the CEC found the application complete is actually October 31, 2023 because the letter was filed into the CEC's docketing system after 5:00 p.m. on October 30, 2023, and therefore under California Code of Regulation, title 20, section 1208(b)(2), the filing date rolls over to the next business day.

The executive director officially deemed the application complete when he signed the letter on October 30, 2023. The letter itself states "[p]ursuant to Public Resources Code Section 25545.4(e), the CEC shall determine whether to approve or deny the proposed project within 270 days *of this letter* or as soon as practicable." [Italics added; TN 252844]. That California Code of Regulations, title 20, section 1878(b) requires the CEC's executive director to file a statement when the application is deemed complete does not change the fact that the determination was effectuated when the letter was signed, which was October 30, 2023.

The CEC thanks Shasta County for its comments. All other comments identified in Shasta County's comments regarding the NOP will be fully considered by staff during the preparation of the EIR.