

DOCKETED

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CEC M Osa Comment to Fountain Wind Deficiency Letter and Jurisdiction

Additional submitted attachment is included below.

September 22nd, 2023

To: Leonidas Payne, Project Manager, California Energy Commission
Mr. Knight, Manager, Siting and Environmental Branch
Mr. Tran, CEC Staff – Jurisdiction

Subj: Response from Fountain Wind Applicant “fwp_response_to_deficiency_letter” dtd, 8 Sept 2023 (TN# 252167) and Project Jurisdictional Issues

I respectfully submit comments regarding the Fountain Wind Project in three areas: 1) the CEC’s jurisdiction, 2) Aerial Firefighting support, and 3) Community Benefit Agreements.

Jurisdictional issues

Based on excerpts from references 4-7, and the Shasta County response letter, posted by Mr. Tran, CEC Staff, the Fountain Wind Project application is being challenged on grounds of lack of jurisdiction and “in lieu of” which will affect and/or determine the CEC has jurisdiction to proceed to even consider the Project application. Also, as outlined by Mr. Johnson’s letter (TN #252245) this Project has already been litigated through an application approval and CEQA process within Shasta County and now the decision to deny the Project is final and was never challenged by ConnectGen.

The Fountain Wind Project will be the first energy project being considered under AB 205 and has proven to bring significant legal challenges, due to the fact it has already been through the CEQA process and was denied prior to AB 205 approval. The CEC would not have the jurisdiction under AB 205 to again “litigate” this denied project, or any other denied project, which completed their CEQA review and made their appeals through any county.

Since this is the first Project, for the CEC’s consideration under AB 205, it is apparent that additional clarification and/or updates to the “Trailer Bill” need to be put into place. As outlined the language “in lieu of”, and possibly other language in the statute, needs further legal interpretation and/or evaluation before any application should be considered by the CEC. These efforts need to take place prior to any continued review of this application, as legal action with respect to this Project is very likely, and with respect to other previously denied projects that may be submitted to the CEC later.

The CEC’s action regarding this Project will set the stage for other applicants, who believe they too can negate previous denials for their projects, by merely

resubmitting to the CEC under AB 205, in hopes to get another, now accelerated CEQA review, and then get your approval to move ahead. These projects were denied after lawfully completing a full CEQA process prior to AB 205 and such project denials cannot be negated. The Fountain Wind project was denied, prior to AB 205, for the “safety, welfare, protections, and health” of the communities who are most affected by this project.

AB 205 cannot provide the authority to open the proverbial “pandoras box” on denied energy projects. As stated by San Bernardino County these “absurd results” and manipulation would only allow this application and/or other applications to seek approval for previously denied energy projects.

This Project completed their CEQA process, over five years in Shasta County, and was denied twice (Planning Commissioners and on appeal to the Board of Supervisors) in 2021, long before AB 205 was put into place. The consideration of the application for this Project needs to be dismissed and/or denied immediately. In addition, the CEC should not accept any other applications from other previously denied projects, which completed their CEQA process, prior to implementation of AB 205.

AB 205 should not give the CEC the authority to “relitigate” and override every energy project denial in the state, overturning years (possibly decades) of lawful CEQA reviews and/or appeals, as is proposed for the Fountian Wind project.

The reference letters, 4-7 indicate the opposition across the state regarding usurping of jurisdiction authority from RCRC, CSAC, and League of California Cities. The letters indicate the legal issues which will bring additional potential litigation in 2023. The letters also indicate AB 205 has taken over not only the land use authority from the local governing authorities but also the local authorities’ decisions on what constitutes an “economic benefit” within their own County and/or district.

CEC - Wildfire Data Request

Background: Red Flag Days and High Fire Danger/Hazard

*“The applicant indicates that when the National Weather Service issues a Red Flag Warning (an alert that high winds and dry conditions could lead to rapid or dramatic increases in wildfire activity), the project-specific Fire Prevention Plan would require that the applicant and its contractors **must cease all non-emergency work to respond to changes in fire risk**. However, fires can start on days in which fire weather is bad and there are no red flag warnings. The applicant has indicated that a fire condition monitoring program will be implemented to monitor meteorological data during project construction and operations as part of the Fire Prevention Plan.”*

DATA REQUEST WF2-02: Please provide a summary/description of the fire conditions monitoring program and the meteorological triggers (independent of issued Red Flag Warnings) that would be developed/used to **determine if high fire hazards exist and what measures would be taken to reduce fire ignition hazards on high fire hazard days.**

“The Project-specific FPP would include a fire condition monitoring program to monitor meteorological data during construction and operation. During both construction a...”

As shown on the Fire Hazard Severity Zone Map below the project area is in the “Very High” severity zone.” Particularly during fire season, every day is a potential fire hazard for us, not just “Red Flag and High Wind days.” The increased wildfire risk of this project cannot be mitigated. The Applicant would like to propose “ceasing operations for non-emergency work” on Red Flag days, which does little or nothing to mitigate additional wildfire risk because the turbines will still be there and the very existence of the Project will preclude aerial attack if a fire were to erupt, even from natural causes. The Project also introduces thousands to hundreds-of-thousands of additional ignition sources, which increases wildfire risk through every activity (transportation, workmen on site, blasting, electrical equipment, transmission lines, construction, drilling, and thousands of other ignition sources). All this additional wildfire risk would be eliminated and would not be in the area with the No-Project alternative, consistent with Shasta County zoning, which bans all such projects in these high fire risk areas.

The Shasta County decision-makers, through the five-year review of the Fountain Wind Project, realized they needed to make zoning updates to prohibit any additional consideration of such a project that further increases the wildfire hazards/risk. The additional wildfire hazards and risk cannot be adequately mitigated from this Project or any others in the future.

Shasta County used the tools and maps available from CAL FIRE (Map #1) and the CPUC (Map #2) to evaluate just how severe the wildfire threats are in the unincorporated areas of Shasta County, including the information provided below.

As defined by CAL FIRE – Frequently Asked Questions - Fire Hazard Zone Severity Zones (Dec 2022)

How are Fire Hazard Severity Zones determined?

*Answer: CAL FIRE used the best available science and data to develop, and field tested a model that served as the basis of zone assignments. **The model evaluated the probability of the area burning and potential fire behavior in the area. Many factors were included such as fire history, vegetation, flame length, blowing embers, proximity to wildland, terrain, and weather.***

With the definition, and modeling efforts by CAL FIRE, costing the taxpayers millions of dollars, you cannot ignore the facts that this entire Project is in the “Very High Wildfire Severity Zone” and is not the place for this Project to be built. CAL FIRE, Office and Emergency Services, and the Governor’s Office has developed several safeguarding measures to help communities who are most valuable to the wildfire risk and this area as shown by the maps are amongst the “Very High Severity Zone” risk areas.

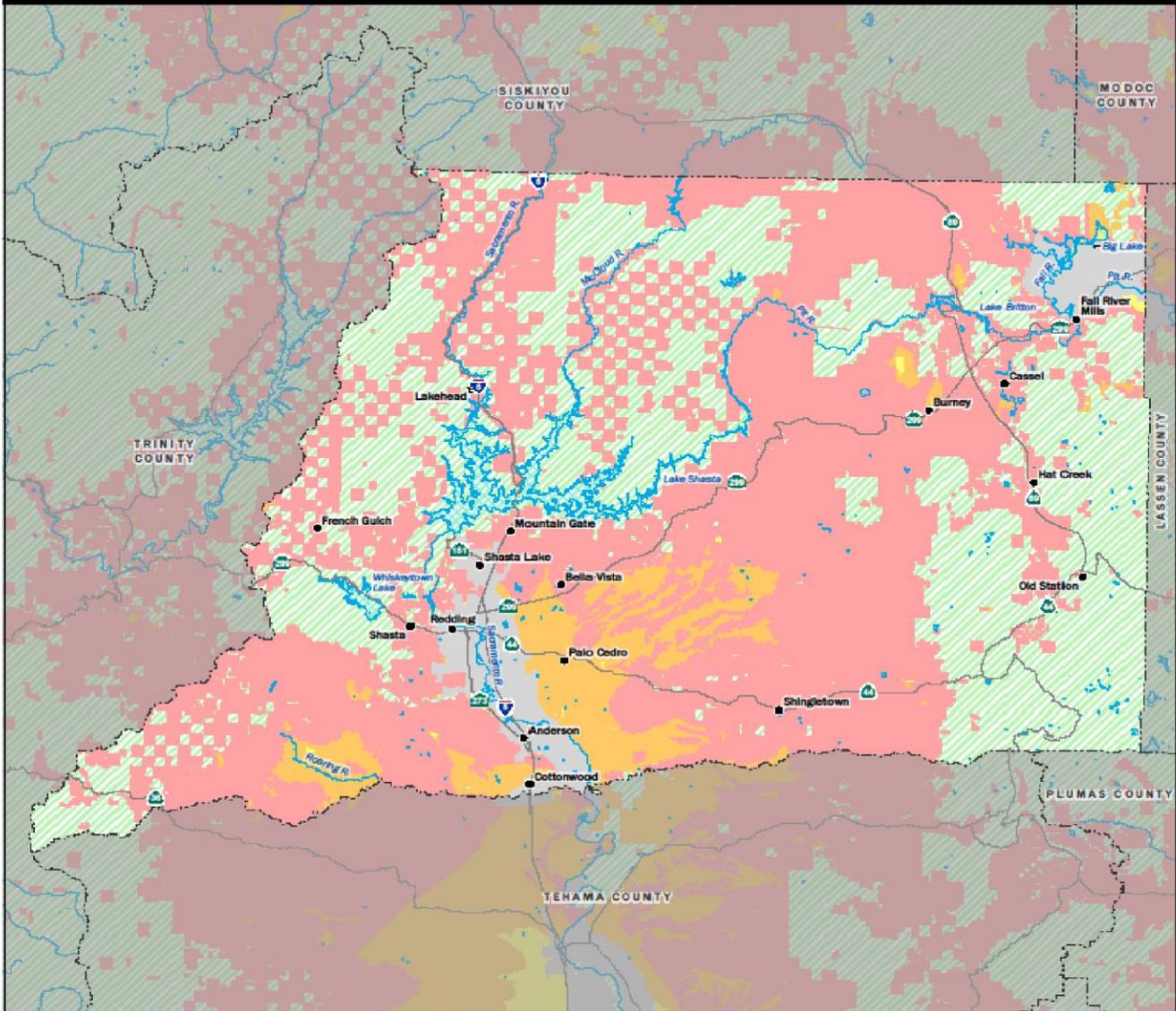
In addition, the CPUC fire threat map is used to identify areas of heightened fire risk for use by utilities.

“In 2018, CPUC adopted a fire threat map to identify areas of heightened fire risk for use by utilities in planning risk reduction activities. Developed in collaboration with CalFire, the Office of Emergency Services, utilities, and stakeholders, this map breaks down the wildfire risk in a utility’s service district into three tiers. Tier 1 areas of the service territory have an acceptable level of wildfire risk, Tier 2 areas have an elevated risk, and Tier 3 areas have an extreme risk. Combined with the map are utility requirements for enhanced mitigations in those areas of utility service territories with higher wildfire risk. For example, SDG&E has prioritized upgrading its transmission assets by targeting the hardening of all transmission assets in Tiers 2 and 3 by 2027.”

The two maps, published by CAL FIRE and the CPUC, show beyond any doubt that the Project area is already classified as “Very High Fire Hazard Severity Zone” and “extreme and elevated risk – (by utilities), EVEN WITHOUT THIS PROJECT. Given the current classifications alone, outlined by the current hazards and respect to potential for utility ignited wildfire, to suggest that any “cease-operations” on Red Flag or high fire hazard days’ work arounds, will provide any safety factors/measures against potentially thousands of wildfire ignition sources, simply is not true. It will only take one spark to create another out-of-control wildfire in the highest wildfire threat zone across the state, and once again lives will be lost. This is one of the main reasons the Project was denied in Shasta County.

State Responsibility Area Fire Hazard Severity Zones

June 15, 2023

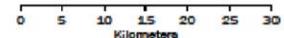
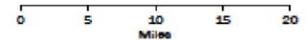


Fire Hazard Severity Zones in State Responsibility Area (SRA)

Very High	1,170,037 Acres
High	189,176 Acres
Moderate	6,084 Acres

Fire Protection Responsibility Areas (non-SRA)

Federal Responsibility Area (FRA)
Local Responsibility Area (LRA)
Waterbody



Projection: NAD 83 California Teale Albers
Scale: 1:595,000 at 11" x 17"

Public Resources Code 4201-4204 directs the California Department of Forestry and Fire Protection (CAL FIRE) to map fire hazard within State Responsibility Area (SRA) based on fuel loading, slope, fire weather, and other relevant factors present, including areas where winds have been identified by the department as a major cause of wildfire spread. These zones, referred to as Fire Hazard Severity Zones (FHSZ), classify a wildland zone as Moderate, High, or Very High fire hazard based on the average hazard across the area included in the zone.

Access PDF versions of the maps at <https://osfm.fire.ca.gov/fhsz-maps>. For more information, please visit the Frequently Asked Questions document for the 2023 Fire Hazard Severity Zones at <https://osfm.fire.ca.gov/fhsz> or scan the QR code at right. If you have further questions, please call 916-833-7855 or email FHSZcomments@fire.ca.gov.

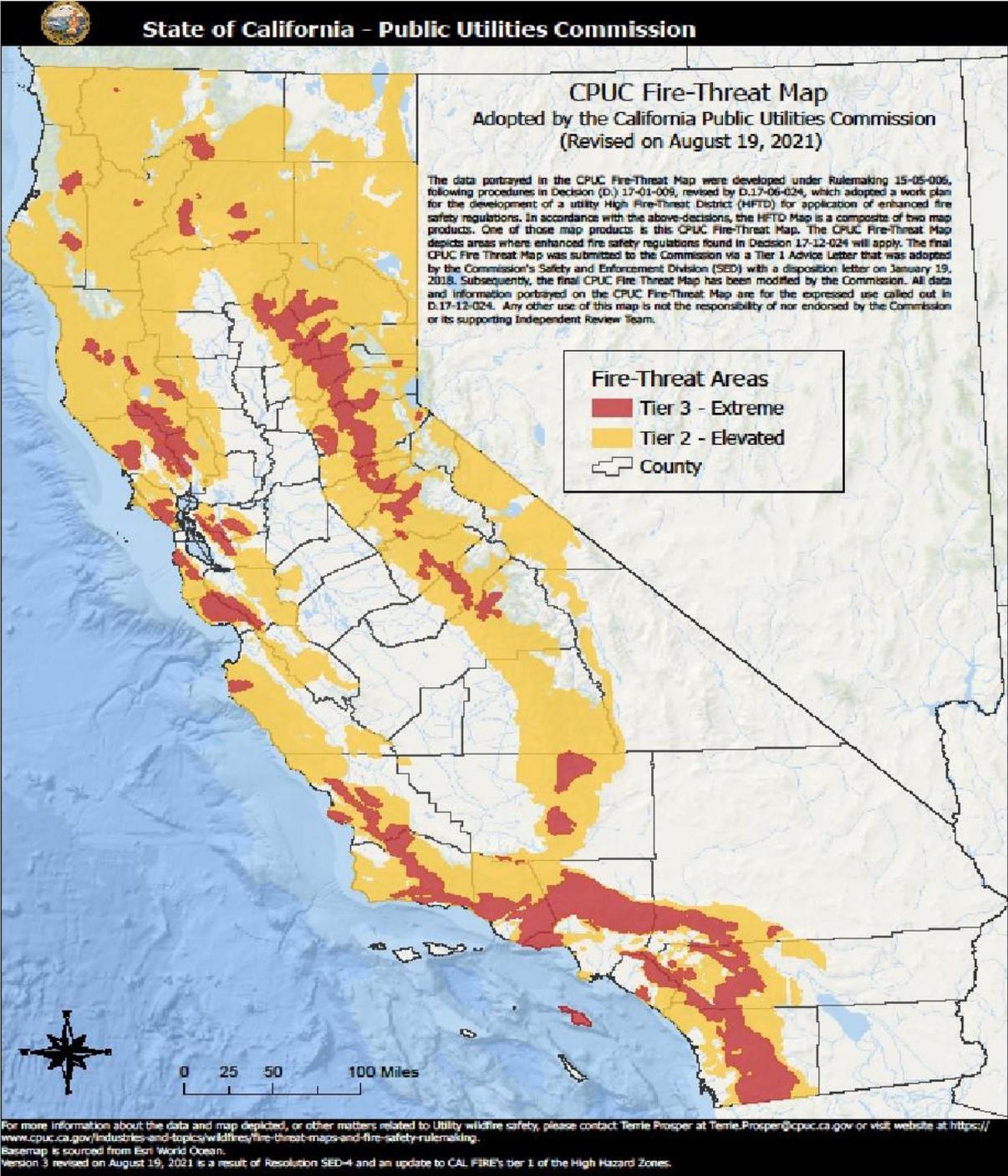


Scan or click the QR code for more information and to visit the interactive FHSZ viewer.

The State of California and the Department of Forestry and Fire Protection make no representations or warranties regarding the accuracy of data or maps. Neither the State nor the Department shall be liable

Gavin Newsom, Governor, State of California
Wade Crowfoot, Secretary for Natural Resources

Data Sources:
CAL FIRE Fire Hazard Severity Zones (FHSZ5RA_23_0)



Map #2

CEC - BACKGROUND: INTERFERENCE IN AERIAL FIREFIGHTING ACTIVITIES

“Current information in the record indicates that due to the height of the proposed turbine towers, aerial firefighting will be precluded over and near the proposed project. The inability to use aerial firefighting due to the project may result in significant impacts to the environment and public safety. The applicant has indicated that it will coordinate with Cal Fire and provide Cal Fire with maps of turbine locations, but such action does not appear to mitigate for the loss of aerial firefighting activities. Given the unique situation of a project that impacts firefighting in an area prone to wildfires, and the importance of aerial firefighting in mountainous wooded areas, information is necessary to ensure impacts are fully assessed and appropriate mitigation, if possible, is developed.”

“DATA REQUEST WF2-03: *Other than providing maps of the project structure locations, how will the applicant ensure that wildfire firefighting activities by Cal Fire, Shasta County Fire Department, or other local fire departments are not impeded by the project structures?”*

“APPLICANT RESPONSE *The statement “aerial firefighting will be precluded over and near the proposed project” is not accurate. In a memorandum prepared by Bret Gouvea, Chief, CAL FIRE/Shasta County Fire during the County’s review of the project in 2021 (Appendix A), Chief Gouvea explained that while obstacles such as wind turbines create some risk for aerial fire fighters, such obstacles are commonplace and do not preclude effective aerial firefighting. The distinction between potential hazards to aerial fire fighters and ability to use aerial equipment on wildfires is important. According to the Chief, “the key to working in this environment is knowledge of their existence.” Maps are prepared showing “the type of hazard, exact location and the height of the hazard.” Chief Gouvea clarifies: “these safety mitigations allow CAL FIRE to conduct aerial firefighting operations throughout the state in various hazard conditions.” Thus, the suggestion that the proposed turbines will result in “significant impacts to the environment and public safety” due to preclusion of aerial firefighting is not supported by the record and is the opposite of the conclusion by the Shasta County Fire Chief in 2021. Furthermore, the Project design, and specifically turbine spacing and alignment in linear “strings,” provides open corridors up to 1.3 miles wide before access by both fixed-wing and rotary-wing aerial firefighting equipment. To summarize, wind turbines do not preclude the use of aerial firefighting equipment, their location and height simply need to be made known to pilots as are other aerial obstructions across the state in consideration of this information and other information, the County’s EIR concluded that the project would create a less than significant impact to the environment and public safety based on wildfire risks. The record also contains testimony by wildfire expert, Dan Quigley, former CAL FIRE Chief in Siskiyou County, who was retained by the*

Applicant explaining that fire retardants could be successfully applied by both fixed wing and rotor wing aircraft in between and around the turbines.”

As evidenced by the wildfire pilots and stated in the CEC letter, Steven Allen Fitch, Air Attack Issues (TN# 249668), the same pilots who fly in this area (Dixie/Fawn fires) and the pilots with decades of experience in aerial wildfire support, using the same maps identified as “aerial hazards” stated in Mr. Gouvea’s letter, made clear that these statements in the Applicant’s response are not true. The evidence, already provided in the record, states the opposite of what is in the response by the Applicant.

In addition, the key detail that the Applicant failed to mention is that the Project was denied in Shasta County, due to the overwhelming evidence that this Project will cause “significant impacts to the environment and public safety”, due to the lack of aerial firefighting support. The Applicant also failed to indicate that the County’s EIR was never certified due to the evidence/public testimony that the section of the EIR on wildfire risk was inadequate due to the wildfire impacts and that the EIR should have concluded instead that the negative impacts of the Project on wildfire risk was instead “significant and unavoidable” with no mitigation due to the fact that the Project would preclude aerial firefighting in that area of the County. Reference 1-2 indicates “aerial firefighting will be precluded over and near the proposed project.” The CEC must rely on the expert testimony of the pilots who have flown these types of life saving efforts, for the boots on the ground, community residents, and the flight crews, all of whom agree that the existence of the turbines will preclude aerial firefighting thereby putting the local communities at great risk of being burned to the ground in a wildfire in that area.

I would argue that Mr. Gouvea’s letter supports the expert testimony from the aerial pilots in references 1-2 and does not support the Applicant’s response in WF2-03. As an initial matter, much of the Applicant’s response is not actually in the Gouvea letter at all. Second, when Mr. Gouvea states “Aerial hazards do pose a safety concern for aerial firefighters; however, they are something that we must work around on a daily basis. Though it is not an ideal condition to work in, it is understood that there is always the potential for these conditions to exist,” he is admitting that the turbines will be an aerial hazard. The evidence from the pilots is that these are the same “aerial hazards” (turbines) which they avoid on a daily basis. Avoiding them means that can’t fly anywhere near the turbines, which means aerial firefighting is precluded in that area. Also, I want to point out that the Applicant makes statements in their response that were not stated in Mr. Gouvea’s letter. For example, the Applicant states that, “such obstacles are commonplace and do not preclude effective aerial firefighting.” Mr. Gouvea never stated “and do not preclude effective aerial firefighting” in his letter. That part of the Applicant’s response is clearly false and is not supported by Mr. Gouvea’s letter. Nor

does Mr. Gouvea call the turbines “potential” hazards—he says they are aerial hazards that need to be avoided. These “aerial hazards” cannot be downplayed by inaccurate statements by the Applicant which are not supported by the letter from Mr. Gouvea. I believe that this misleading language in the Applicant’s response, and inaccurate references to Mr. Gouvea’s letter, further led the Applicant to falsely state, *“Thus, the suggestion that the proposed turbines will result in “significant impacts to the environment and public safety” due to preclusion of aerial firefighting is not supported by the record and is the opposite of the conclusion by the Shasta County Fire Chief in 2021.”* This statement by the Applicant is not supported by any evidence whatsoever and is not really supported by the Gouvea letter either.

This Project clearly poses several “environmental and public safety” issues and puts our lives at risk unnecessarily, as evidenced in the Shasta County denial of the Project. The Applicant has not provided any evidence to support the false statements they provided in their responses (WF2-02, WF2-03, WF2-04) to the effect that these aerial hazards will not impede aerial firefighting in the event of a wildfire in or near the Project area. These dozens of turbines spread over several thousand acres will be taller than anything north of downtown San Francisco, each nearly twice as tall as the Statue of Liberty. To suggest that they will not impede or preclude aerial firefighting is obviously false, as repeatedly pointed out by the air attack pilots themselves.

The pilots have made clear that they can’t mount an aerial wildfire assault within the Project site and surrounding areas because they would have to avoid the “aerial hazards” now identified as turbines (600+ feet or taller) which will preclude a safe aerial fly zone and create instead a NO-FLY zone. The Project turbines are at least several hundred feet taller than any other existing aerial hazards in the area such as the Hatchet Ridge turbines, transmission lines, antenna towers, cell towers, etc. As was evidenced in the County’s DEIR/FEIR, and now again by Mr. Knight, “this Project may result in significant impact to the environment and public safety.” This wildland area, with the highest wildfire rating in the state, simply cannot afford to lose any support by aerial attack in the event of a wildfire!

The size of the Project area, height of the towers, and now cumulative “aerial hazards” (estimated at 92 turbines – with the 44 Hatchet Ridge), do nothing but increase the “aerial hazards” in an area with steep terrain, and high winds which also put the residents through several PSPS events. Aerial hazards, found on a map, are indicators of the areas the aerial wildfire pilots will have to avoid to protect the lives of their crew and themselves. Mr. Gouvea states, with respect to knowing where the aerial hazards are so they can be avoided: “These safety mitigations allow CAL FIRE to conduct aerial firefighting operations throughout the state in various hazard conditions.” In references 1-2, statements received from the pilots indicate they will avoid the turbine aerial hazards which will be identified on the map, which are the “safety mitigations”

operations throughout the state. You certainly cannot fly through them so you will have to avoid them. Because you must avoid the turbines, then a wildfire, with one spark, can explode to tens of thousands of acres, and out of control, quickly due to the cumulative turbine footprint alone, which creates a no-fly zone for air tankers. The experienced pilots state how they have avoided turbines in fires in other areas by simply waiting for the fires to burn outside of the turbine field, and then do aerial wildfire efforts outside of the windfarm. But in this case, that would mean that tens of thousands of acres of forest would be on fire before the fire burned beyond the turbines, and the fire would have already become catastrophic. With the cumulative turbine count (92) now several thousand acres, becomes a “no-fly” zone. The applicant’s inaccurate assessment of the aerial firefighting problem, which can’t be mitigated, means that they want the CEC to allow them to put our lives at extreme risk every day of the fire season for the foreseeable future, essentially making that entire area and all the local communities there unsafe to live in. The Applicant has not provided any evidence to refute any statements provided by the aerial wildfire experts and Mr. Gouvea’s letter only supports the statement made by the pilots’ by identifying the turbines as “aerial hazards.”

The aerial support, provided by the CAL FIRE Tactical Air Operations Unit (TAO) is critical to the protection of the residents and territories of Shasta County, and across the entire state. The efforts of CAL FIRE over the decades have saved numerous lives, properties, and territories and we can’t thank them enough. To dismiss the testimonies provided by the aerial pilots and further jeopardize any type of aerial support by creating dozens of 600 foot tall “aerial hazards” is unacceptable and only endangers lives, including not just innocent men, women, and children who live in the local communities there, but also the firemen with boots on the ground, pilots, and crew members, and puts “public safety” and the environment at significant risk unnecessarily.

DATA REQUEST WF2-04: *Provide a plan that indicates how the applicant will ensure that adequate firefighting capabilities are in place to mitigate the loss of aerial firefighting at and near the project site, including coordination with Cal Fire, Shasta County Fire Department, and local fire agencies.*

APPLICANT RESPONSE: *The data request mistakenly assumes that the project will need to “mitigate the loss of aerial firefighting at and near the project site.” Because aerial firefighting will in fact be possible at and near the site, no mitigation is required to address such a loss. As noted in the record, by the Shasta County Fire Chief and confirmed by the project’s wildfire experts, aerial firefighting, particularly the use of helicopters, will still be possible at and near the Project. and the full suite of aerial firefighting assets, including air tankers and helicopters, can be effectively used along and within the perimeters of the Project area. Furthermore, aerial firefighting is an adjunct to effective ground-based firefighting. The Project will facilitate greater ground-based firefighting access, which wildfire experts also explain is the most effective and*

commonly used means of containing and suppressing wildfires (TN# 248297-3). The existing landscape within the Project area consists of a nearly homogenous young pine plantation with very limited break in the continuous dense forest compounded with complex topography. These factors pose increased challenges to a ground-based response. The Project, with its associated infrastructure including roadways and turbine pad sites, will improve access to the site for firefighting purposes compared to existing conditions. The Project will create access breaks in the existing dense vegetation, specifically up to 510 acres of defensible space, that will provide for increased opportunities to slow and contain the spread of wildfires and access to heavy ground equipment involved in wildfire response. In addition to the 510 acres of defensible space, the project will be implementing up to 687 acres of shaded fuel breaks along all the primary and secondary access roads. Shasta County's EIR concluded that the project would create a less than significant impact to the environment and public safety based on wildfire risks.

As stated above the Applicant has not provided any evidence that they have a plan, nor can they provide any evidence that that adequate firefighting capabilities are in place. The opposite is true, as stated in the pilot's testimonies in references 1-2, and Mr. Gouvea's letter supports their evidence which indicates the "aerial hazards" must be avoided.

The Applicant provides no evidence to make the statements that "the data request mistakenly assumes that the project will need to mitigate aerial firefighting at and near the project." The expert pilot testimony, and Mr. Gouvea's letter, supports just the opposite, and the evidence that "aerial firefighting at and near the project "shows that in fact aerial firefighting will be impeded, if not making the whole area to be considered a No-Fly zone entirely. The CEC data request regarding WF2-02, WF2-03, and WF2-04 are valid and specifically based on documented evidence of expert testimonies of aerial wildfire pilots with decades of experience. The response from the Applicant chooses to ignore the evidence provided by the pilots, and implies the CEC is mistaken with their data request, and inaccurately states, "*Because aerial firefighting will in fact be possible at and near the site, no mitigation is required to address such a loss.*" Neither Mr. Gouvea's letter, nor any response from the Applicant provides any evidence to support the statement that "aerial firefighting will in fact be possible". As stated above the opposite is true. I believe the Applicant is trying to take Mr. Gouvea's letter out of context, like they did when it was submitted to officials in Shasta County, who saw right through it. The Applicant clearly wants to minimize the fact that the very existence of the Project will mean no aerial firefighting support in case of wildfire, while at the same time creating thousands of additional ignition sources that may spark such a wildfire.

Wildfires have proven to be unpredictable, even creating their own weather, billowing smoke, unexpected behaviors, and unforeseen hazards, so to add any “aerial hazards”, in such steep rugged terrain, to air or ground firefighting crew is unacceptable and will cause a greater loss of life. The This Project should be dismissed/denied due to the “public safety and environmental hazards” since they cannot remove the aerial hazard the turbines create which are the turbines themselves. As evidenced by the CEC data request, pilot testimony in the record, the lack of aerial firefighting capability will result in “a significant and unavoidable” impact creating a public safety risk with environmental impacts. The lack of any possible mitigation makes this project dangerously deficient and hence this Project application must be dismissed/denied by the CEC.

CEC Background - Community Benefit Agreement:

The CEC letter (TN# 252072) states “Community benefits agreements are required under the applicable statute which states, “the commission shall not certify a site and related facility under this chapter unless the commission finds that the applicant has entered into one or more legally binding and enforceable agreements with, or that benefit, one or more community-based organizations...”

The Applicant Response “Pursuant to the conversation on July 27, 2023, the Applicant has been diligently working to finalize a legally binding and enforceable agreement with a community-based organization within Shasta County and provides the following information on the status of that agreement:

- The Applicant proposes to contract with a community-based foundation with an established presence in Shasta County to guide the distribution of funds for various community improvement projects to benefit the immediate project area, such as the communities of Burney, Montgomery Creek, and Round Mountain. Funding for these improvement projects will be made via grants from the foundation from an endowment supplied by the Applicant.*
- As of late August, the Applicant has received a form of endowment agreement from the foundation which is undergoing internal legal review and approval by the Applicant.*
- The Applicant expects to execute a legally binding and enforceable endowment agreement by the end of September and will provide a signed version of the agreement shortly after execution.*
- The Applicant anticipates it will be able to provide a copy of the signed agreement no later than 45 days following the CEC’s determination that the application is complete.”*

I appreciate Mr. Knight's deficiency letter and the second letter to the Applicant (TN #252320) when he responded to the Applicant regarding a "community benefit agreement" where he states, "The CEC staff finds that the additional information applicant provided regarding community benefits agreements fails to meet both the letter of the law and purpose of the Opt-in provisions related to community benefits."

I appreciate and ask that you continue to be diligent in your review since this Project was denied within Shasta County, who was also aware of the 'supposed economic benefits' and those benefits were refused. The County denied the Project and refused the supposed "community benefit agreements" and I believe it is impossible to find a 'legal and/or binding' agreement that would support the letter of the law and purpose of the Opt-in provisions related to community benefits. The County denied the Project because any supposed "economic benefits" would be completely erased if a wildfire broke out within or near the surrounding area which has already been proven to impede aerial firefighting support.

When the Project sought approval in Shasta County the Applicant tried several different approaches to put together this same type of agreement but was refused by all the community organizations closest to the Project site. Many community members stated these agreements were only "bribe money" to get community members to support the Project to the decision-makers. Community members, including the Pit River Tribe, refused to accept any monies from the Applicant.

The Applicant continues to use the same vague language they used when the Project was proposed within Shasta County, with the funds being distributed across the entire county. When the Applicant uses the language "community-based foundation" as opposed to "community-based organizations" it appears that they are skirting 'the Intent of the Law' on which this "legally binding and enforceable agreement with the community-based organization within Shasta County" was intended. The words "community-based foundation" can encompass an extremely broad-based Community-based foundation, who often works across the US and/or internationally. This foundation language could imply that the Applicant may have the intent of creating their own "community-based foundation" which they would fund and then distribute these funds through their own board, through this "endowment agreement from the foundation", as in reference 3.

In addition, I believe it is impossible for any Shasta County community-based organization to enter a "legally and/or binding" agreement with the Applicant since these projects are prohibited with zoning code (17.88.335 Large Wind Energy Systems). I would argue that any such agreement presented by the applicant, could NOT be considered "legal or binding."

In addition, for the Applicant to be “contracting with “a community-based foundation with an established presence in Shasta County, to guide the distribution of funds for various community improvements projects to benefit the immediate project area” only puts the funds into someone else’s hands, not within and/or near the Project area. This is nothing different then what was proposed in Shasta County to put money in the Shasta County “fund.” This supposed “community-based foundation” does not represent the voice of the residents who are most affected by the environmental, Tribal cultural, and increased wildfire risks impacts. This “foundation” will likely receive financial benefits themselves, while making supposed decisions about “what best benefits the local community” that they are not directly a part of and may know very little about. This “community-based foundation with an established presence in Shasta County” could be any number, or under any number, of “community-based foundations (United Way, Salvation Army, Rotary, Lions, McConnel Foundation, or others) which also includes a new community-based foundation (possibly established/funded by the Applicant). This supposed community-based foundation may have no connection to the real “community-based organizations” which will be most affected by the Project and this foundation will issue these grants to organizations as they promised before when trying to get the Project approved in Shast County (Shasta Beam, Fall River Conservation, Shasta Voices, Union Workers, etc.) who are outside of the development site and will be least affected by the Project, as also mentioned in reference 3.

I bring this to your attention since during the Shasta County public hearings the Applicant also proposed a “Community Benefit Agreement” in which they used the Pit River Tribe and Hill Country reputation/ names as members who were part of their “Community agreement”. When this information was revealed the Pit River Tribe Legal Counsel had to tell the Applicant to “cease and desist.” In addition, the Hill County representative stated they were in no such agreement at the County’s public hearings. I don’t believe any such “benefit agreement” can be presented and as indicated in Mr. Knight’s letter, the application must remain in a “deficient status.”

Again, I ask that you dismiss and/or deny the application for this Project, by upholding, and honoring the Shasta County ordinances and zoning code, established to protect our lives, in addition to the jurisdiction challenges, not only brought by this Project, but potentially hundreds across the state which were lawfully reviewed through CEQA.

You have received letters and testimony from the expert pilots who fly around these “aerial hazards” and have the CAL FIRE and CPUC maps indicating the extreme wildfire hazards conditions even without the Project. Increasing the threat of catastrophic wildfires and the continued destruction of sacred Tribal cultural resources is unacceptable.

The Shasta County decision makers were aware of the supposed economic benefits of this Project (which would be far offset by any catastrophic loss from a wildfire) and determined that the risk to our lives was just too great. The preclusion of aerial firefighting brings its own dangers in such steep rugged terrain. It makes no sense to add any more “aerial hazards” for the pilots to fly around or to have to avoid such that the local communities burn to the ground and innocent people die.

I ask that the CEC truly listen to the Shasta County residents, decision-makers, and now CEC staff in recognizing the “environment and public safety” risks are very real and now could be even higher risk due to the increase in “aerial hazards” proposed with this Project.

Best Regards,
Maggie Osa
Shasta County Resident

References:

1) Docketed TN# 249668, Stephen Allen Fitch Comments – Air Attack Issues, dtd 4/14/2023

Excerpt:

We want to alert the California Energy Commission (CEC) to the serious impediments to aerial firefighting in Eastern Shasta County that would be posed if the Fountain Wind Project is built. We hope you and your staff will carefully read this and each of our comments in the four Exhibits that follow. For example, as stated by Dave Wardall, a consulting aircraft structures engineer to the NTSB and retired CDF Deputy Chief of air tanker operations for 34 years: “We have examined the proposed project and determined it is an accident looking for a place to happen.”

Our preliminary review of the CEC’s February 10, 2023, Deficiency Letter leads us to believe that the CEC is unaware of the serious impediments to aerial firefighting posed by the existence of such a wind turbine project in Shasta county on the proposed site. As described herein, such a project would make it impossible to fight a wildfire, regardless of the cause of the fire, with air tankers (as well as rotor aircraft) anywhere in or near the project site and surrounding areas.

The most effective way to quickly contain wildfires in California is with the use of fixed wing aircraft that drop fire retardant. Cal Fire and all other agencies depend heavily on aerial firefighting to contain fires, create fire lines, and otherwise protect lives, homes, businesses, and in many cases entire communities. As stated in the Proponent’s own

experts” report, “it has been noted that in the vicinity of turbines, there will be a reduction of available airspace for fixed wing aircraft...”

Thus, if there were to be several thousands of acres sprinkled with 700-foot-tall wind turbines in or near to any flight-path that an air tanker would otherwise take to attack a wildfire, the impediment to aerial firefighting would extend far beyond the project site itself and would not be limited to the footprint of the wind turbine project itself.

As mentioned above, if an air tanker were compelled to fly a safe distance above the top of the turbine blades, the drop height would be around 900 feet from the ground. Drops at this height are ineffective and simply disperse in the wind. Worse, wind turbines are often located on top of ridges or other high points. This means that a fire burning in a lower area canyon bottom or on the slope—within or near the turbine project, along a flight approach line, could be well over 1000 to 2000 feet or more below the height of the safe flight path. Drops at this height would have no effect on fire on the ground whatsoever.

EXHIBIT A

Statement of David Wardall -Chairman-Associated Aerial Firefighters -Former Deputy Chief CDF air tanker operations for 34 years. -Consulting engineer to the NTSB on aerial firefighting accidents. -Involved in around 200 fatal and serious injury aircraft incident/accidents investigations. -FAA Airline Transport pilot. The Associated Aerial Firefighters with approximately 100 members represents pilots from across the country and provide a forum to advocate for safety, effectiveness, and efficiency in wildland aerial firefighting. I have examined the proposed Fountain Wind Project and determined it is an accident looking for a place to happen and testified in person at the Planning Commission Hearing where it was unanimously rejected.

The planning and analysis gone into this project is **seriously** flawed— Let me explain:

1. Real world dispatch and safety issues created by these huge turbines at over 600-ft AGL are many.
2. No consideration for huge vortexes produced downwind from the turbines was taken.
3. The movement of the turbine blades will produce sunlight reflections that will impair visual see and avoid for maneuvering among turbines.
4. Most effective drop height is 150' above the ground and lower crossing ridge tops **not** 600 to 750 feet.

I urge you to consider that flying heavily laden aircraft (fixed and rotor wing) with poor visibility from smoke and very tall obstructions with whirling, immense blades is a **prescription for a fatal accident** both in the air and on the ground.

EXHIBIT B

Statement of Mark Baird -I have 23,000 hours with type ratings in the DC-10, MD-11 and B744 (747) supertanker -Was an instructor in both the DC-10 and 747 supertankers - Have spent the last 7 years flying the DC-10 (Very Large Air Tanker). -Have flown fires

all over the United States, Australia, and Chile. -Have flown the DC-10 on several large fires in the Shasta County area including the Dixie-largest fire in recent California history.

As I testified to the Shasta Board of Supervisors, in my humble opinion the area adjacent to the ridge lines, spur ridges, and approaches to or escape routes away from heavy fuel fire would be rendered useless by the turbines. (Fountain Wind Project). The communities near the development would be indefensible by air assets, particularly Large Air Tankers, or Very Large Air Tankers. Further, the turbines themselves are potential ignition sources, which would compound the existing danger. Fires like the Dixie burned so hot the turbines themselves may combust and then sling burning debris as much as a quarter mile away.

These projects built in flashy fuels are indefensible by air. We wait until the fires, which are usually started by the turbines, burn well outside the perimeter of the project before we attempt suppression efforts. Remember air tankers are prohibited from dropping anywhere near power lines or associated infrastructures unless we are given specific permission and the subject infrastructures have been de-energized. Retardant weighs nine pounds per gallon and might be traveling as fast as 150 mph when it hits a structure. Retardant dropped directly on a structure will crush it. All said and done the proposed project is a dangerous and unproductive risk to the environment, communities, and their citizens.

EXHIBIT C Statement of Stephen Fitch -Former Forest Supervisor and District Ranger of the adjacent Shasta Trinity National Forest -Formerly responsible for 7 National Forests and 10 million acres in 3 states -Past type 1 (large fire) Planning Section Chief & Fire Behavior officer on fires across US -Served 15 yrs. On Advanced Fire & Resource Mgt. training Cadre training US, Canadian, Mexican forest managers. -Congressional Fellow and adviser to U.S. Senate Energy & Natural Re-source Committee Chairman on fire and resource matters 100th Congress. -On the team that developed and tested the Incident Command System used on all fires today. -Was responsible for the largest Air Tanker base in California at Ontario International Airport

Why am I concerned with this project? As the former Forest Supervisor and District Ranger of the National Forest located adjacent to this project on two sides, I consider this project a threat to the area I spent 11 yrs. Of my life protecting. I have been responsible for reviewing and approving or denying similar projects that threaten or enhance 7 National Forests in 3 states. A fire escaping from within or near this project would immediately threaten the Shasta Trinity National Forest. Foremost I'm concerned about the effect on wildfire suppression and protection of the adjacent communities. These concerns emanate from having served in the positions listed above.

As you review this proposal, please consider that no matter how many **experts** the **proponents** bring in to justify this project they will **never** be able to explain how to make up for the loss of what has become a key to keeping fires small and saving communities, homes, and **lives** from big fires. **Air Tankers**

This Project is an absolute **design for disaster** for at least 3 communities, a major power distribution system and the many homes scattered adjacent to the project. This Project sits in a dense stand of young conifers forming continuous horizontal and vertical (ladder) fuels. It is bordered on the West and North by Highway 299 with high potential for fire starts from vehicular accidents. Homes and many other ignitions sources surround the project and within-the turbines themselves and support systems. The most devastating fires in this area come from the Northeast during strong gradient winds. **Our Forests fuels have changed** and under these conditions we've learned fires jump with ease roads and forest openings. The devastating Carr fire jumped the Sacramento River in two places.

This means **ALL** the firefighting tools must be present for us to be successful.

This proposal sets up a condition that cannot be mitigated. 700-foot towers and blades scattered over thousands of acres combined with power lines **virtually eliminates** the option for using fixed wing aerial attack over a broad area making the adjacent communities and homes **undefensible** from fast moving large wildfires.

As a former Planning Section Chief, I would never recommend assignment of fixed wing aerial attack to this project area and would greatly restrict the use of rotor aircraft.

It couldn't have been made more clear recently how absolutely critical it is to have **bombers** help save lives and communities. The condition of our Forests has changed so that **backing off and burning out and protecting structures has become routine.** **All with much much greater dependency on aircraft.**

This County has recently experienced 2 deadly and costly fires, the Carr and the Zogg. There was a recent headline article in the Record Searchlight about **Shasta County** filing suit against PG&E to recover costs incurred from the Zogg Fire. As you consider the benefits this project might bring to the State, I hope you will also **weigh** the costs. Recent Carr, Zogg, Camp, Fawn, Hirz and Dixie fires in this area have cost the State dearly. What are the potential costs, liability and **LOSS OF LIVES** that could result from **your** decision on this **DESIGN FOR DISASTER?**

Finally Remember Shasta County's General Plan sets "preserving quality of life, especially in rural areas and "safety of citizens and communities" as its paramount precepts. Therefore, the Commission must reject the proposed project already carefully reviewed and denied by Shasta County. The untenable alternative would be to ask the County to re-move "Safety" as its plan precept.

EXHIBIT D

Statement of Jim Barnes -Past chairman of the Associated Aerial Firefighters -Have been a Forestry Air Tanker Pilot for over thirty years. -Have flown air attack on California wind farms. -Have flown Air Attack from the Redding Air Attack Base protecting the vicinity of the current turbine proposal -Have testified in Shasta County concerning the Fountain Wind Project before the Planning Commission and Board of Supervisors

I am Jim Barnes the immediate past chairman of the Associated Aerial Firefighters. The Associated Aerial Firefighters, with over 100 members represents pilots from across the country and provide a forum to advocate for safety, effectiveness, and efficiency in

wildland aerial firefighting. As an air tanker pilot, myself for over 30 yrs. I have flown fires all over California including on **wind farm fires** and frequently flew out of the Redding Air Attack base as initial attack on fires all over Shasta County. We in the Association have become aware of the recent Fountain Wind Project proposal, carefully reviewed it, and hope the Commission will consider our comments as they directly affect the safety of our pilots, several communities, and the forests in Shasta County. This appears to be a very unsafe proposal to adjacent communities and aerial firefighters.

Let me explain: Aerial Firefighting in and around turbines presents a set of unique challenges that are problematic to say the least. I have worked fires at Altamont pass and in Tehachapi pass. The strategy employed in both cases was to not use fixed wing air tankers in the turbine fields at all except around the borders. At Altamont we almost always stopped the fire after it burned completely through the field usually at highway I-5. Except for one occasion when it spotted across the highway exposing about a mile of parked cars on the road to a burn over.

At Altamont and Tehachapi most of the turbine field was contained within light flashy fuels such as vast stands of grass lands. The proposed Fountain Project would be located in an area containing large stands of pyrophytic fuels such as chaparral, manzanita, digger pines and mixed conifers. The heat generated by such a fire, especially if it is wind driven, would be significantly greater than the heat produced by a fast-moving grass fire. This would pose a greater risk to ground Firefighters because of the lack of ability to provide them effective air support and the adjacent homesteads surrounding the communities of Round Mountain, Montgomery Creek, and Hill Crest. The Threat of fatal damage to the tower structures is also worthy of consideration, Not only because of material losses but as an additional hazard that could endanger firefighters on the ground.

High towers and high winds are a situation that shouts watch out when it comes to aerial firefighting. At some point, winds above 30 knots, air tankers operations would be suspended but even winds below that flowing through the high towers would generate eddy currents that would contribute greatly to the danger for aircraft trying to conduct retardant or water drops above the turbine field. To be effective typical drop altitudes are 150 feet above ground and a bit lower crossing a ridge top. Dropping retardant above these 700'. Towers with height and wind dispersal will have little to no effect on the fire. A state investigator and current chairman of our organization who has been involved with over 200 fatal and serious injury aircraft accident investigations advises that these structures over 700' scattered over thousands of acres and poor visibility from smoke would be a "prescription for a fatal accident". From an air tanker pilot's point of view fighting such a fire would be a no-win situation. Please consider our thoughts as you review this proposal.

2) Docketed TN# 25223, Steven Kerns, Worker Safety and Fire Protection, dtd 9/12/2023 Excerpt:

Air tanker pilot Mark Baird further comments on this issue:

Cal Fire notes that it is important to know and to note where aerial hazards lie in order to ensure the safety of the aircraft and crew. While situational awareness and the exact location of the hazard may aid in navigation it does not, in any way, change the maneuverability, nor the climb performance of the aircraft either prior to or during the escape maneuver after the retardant drop. The mere presence of five-to-seven-hundred-foot obstacles severely limits the ingress, egress, and maneuverability of any aerial asset in the area where the towers are present. In addition to the tower itself, if the turbine is operational, it produces turbulence and tip vortex. This phenomenon is not mentioned in the mitigation plan. The FAA TERPS and the ICAO PAN OPS publications detail minimum climb gradients of 200 feet per nautical mile as mandatory for climb to clear obstacles. These minimum climb gradients are required in airport environments where obstacles are charted very carefully and restricted in climb and descent paths. Further, Category E aircraft such as a VLAT, require a minimum turn radius of 2.7nm while maneuvering in situations of low visibility and obstacles. The Fire traffic area may require far greater climb gradients just because steep terrain requires it. This is certainly true in the project area. With the added hazard of wind turbines protruding hundreds of feet into the maneuvering airspace, it may be impossible or at least improbable to out climb the obstructions. Accurate charting of the turbines simply tells me that I won't be able to go anywhere near the area to drop retardant" (Baird, 2023).

In a letter to the Shasta County Planning Commission Connect Gen's own fire experts state: "It has also been noted that in the vicinity of turbines, there will be a reduction in available airspace for fixed-wing firefighting aircraft used to apply fire retardant, and a reduction in available airspace for the use of rotary wing aircraft used to deliver water/foam/gel/retardants, supplies and firefighters to wildfires" (Quigley,Zerr, 2021)."

3) Docketed TN# 251380, Save Our Rural Towns (SORT), dtd 7/28/2023.

Excerpt:

It also does not comply with the "spirit of the law" in Section 1877(g) because it suggests that Fountain Wind is not collaborating with community organizations to

develop agreements that provide “mutual benefits to the parties to the agreement” as required by Public Resources Code section 25545.10; instead, Fountain Wind appears to have unilaterally developed a suite of activities that it is committed to implementing without any particular regard for the opinions of said affected local communities. The “Crosswalk Matrix” does not identify any community organizations that have expressed any interest in the “commitments” that Fountain Wind has offered, and it certainly does not indicate that any community organizations have agreed that the “commitments” will provide substantial community benefits.

The “Community Benefits Plan” (“Plan”) offered by Fountain Wind has 6 components: 1) Donating to the refurbishment of a closed elementary school campus that will be used for youth education and community events; 2) Developing a 23 mile Fuel Break along Highway 299 and Big Bend Road; 3) Constructing two new cellular towers; 4) Donating to the Pit River Tribe Tribal Employment Rights Office; 5) Donating to the Shasta County Sheriff ’s Office for county-wide services; and 6) Offering limited public access to lands owned by Shasta Cascade Timberlands. However, close inspection reveals that the Plan merely describes proposed activities which Fountain Wind is willing to pursue and then asserts (without substantiation) that these activities will benefit local communities; while the Plan lists organizations that could perhaps participate in the activities offered, it does not indicate that any of these organizations concur that the activities will indeed benefit the local community. There is actually very little substance to several of the activities that the Plan offers and there is even less substance to the claimed community benefits that will be derived from these activities.

Furthermore, the Plan provides no evidence that local community interest organizations are actually amenable to any of the programs that the Plan offers; in fact, though the Plan claims that community interest organizations are in favor of the programs that are offered, these claims are not corroborated by any letters of support or positive communications from any community interest organizations.

For instance, the Plan proposes a “Workforce Program” to offer tribal members apprenticeship opportunities through donations made to the Pit River Tribe “Employment Rights Office”, however the Plan does not include any communications from tribal members indicating that they are interested in such a proposal and it certainly does not identify a plan to secure a binding and enforceable agreement with the Pit River Tribe to implement the proposed “Workforce Program”. In other words, the Plan itself appears to be largely “pie in the sky” with little substance and no demonstrable “buy in” from any community interest organizations.

The Commission should have concluded that the Community Benefits Plan is deficient for the purpose of complying with Section 1877(g) because 1) it provides little evidence that the programs it offers are materially beneficial; 2) it provides no evidence that any community based organizations are even interested in any of the programs that it offers; 3) it does not demonstrate that any community based organizations are willing to enter into “binding and enforceable agreements” pertaining to the proposed programs; and 4) it offers no schedule demonstrating that binding and enforceable agreements will be in place prior to Commission certification.

Sort is concerned that the Programs offered by the Plan are either not “community based” or are actually self-serving. For instance, the Shasta County Sheriff Department donation offered by the Plan will be used for countywide public safety purposes and is not restricted to providing local community-based services in the project area. Additionally, it is clear that the "Fuel Break Program" offered by the Plan will overwhelmingly benefit the Shasta Cascade Timberlands Corporation (“SCT”), PG&E, and the Fountain Wind Project itself because the Fuel Break that is proposed predominantly protects SCT timberlands, PGE infrastructure, and the proposed wind turbines.

Furthermore, page 8 actually admits that the Fuel Break Program will “increase timberland access through a network of new and enhanced roads”; this means SCT (which actually controls the land on which the Fountain Wind project is located) will benefit financially from additional timber harvesting opportunities that will be created by the Fuel Break Program. The Fountain Wind project and the associated Fuel Break Program that is billed as a community benefit actually provides a trifecta of significant benefits for SCT because it increases wildfire protection for SCT timber assets, it increases timber access (and thus timber harvesting opportunities), and it provides a regular revenue stream from operation of the windfarm itself. Furthermore, because the Application does not provide any information about any community-based organizations at all, the Commission has no basis to conclude that the agreements which Fountain Wind will eventually execute are in fact with, or benefit, organizations which represent community interests. In other words, the record provides no information pertaining to the community-based organizations with which Fountain Wind will execute agreements; therefore, the Commission cannot find that Fountain Wind agreements will actually involve or even benefit any community-based organizations which represent community interests.

Sort believes it is essential that the Commission develop a mechanism to assess the legitimacy of organizations identified in “Opt-In” Applications and affirm that they genuinely represent community interests. Anybody can file paperwork with the Secretary of State and form a non-profit organization that

claims to represent the interests of a community; a mere claim that an organization represents community interests is not dispositive.

SORT understands that the proponents of these battery projects could easily form their own “community interest” organizations and then enter into binding contracts with these organizations which they control and have suddenly sprung into being; we also understand that project proponents could enter into binding contracts with broad-based organizations that have regional, statewide, or nationwide interests and then claim that community interests are being served by such contracts because broader interests are benefitted. SORT does not consider that either of these scenarios comport with the letter or the spirit of AB205; therefore, guardrails must be established regarding what constitutes a community-based organization that represents community interests.

SORT recommends that the Commission develop standards to assess whether the community benefits that are claimed in an “Opt-In” Application are real and legitimately accrue to the community (as required by Section 1877(g)) and not to special interest “pop up” organizations or to organizations that represent regional, statewide, or nationwide interests.

4) League of California Cities, Draft “Energy Reliability, Relief, and Clean Energy Investment” Trailer Bill notice of Position of CONCERNS (As Amended 05/18/22), dtd June 1st, 2022.

Excerpt:

Shared Goals: Cal Cities understands and supports the dire need for additional clean energy resources to ensure that California has a reliable and green electricity grid. As you know, cities have been recently negatively affected by years of public safety power shutoff events and rolling blackouts. Critical city operations must continue to operate to protect residents and provide critical services. Cal Cities supports the Legislature and Administration in exploring creative ways to meet these goals in the near and long term.

Local Permitting Authority: Cities must retain the ability to approve and permit projects within their city limits. City officials are ultimately held accountable for any projects within their jurisdiction, regardless of if they are responsible for a project, such as could be in this case. Cal Cities wants to ensure that any proposals that contemplate state control over local permitting allow for cities to retain the ability to have input and collaboration on these projects. Both energy and carbon capture and storage (CCS) projects will profoundly impact cities, and their elected representatives need to continue to advocate for their constituents.

Retaining the Ability to Comment on the Environmental Impacts: Section 25544(f)(3) describes how the California Energy Commission (Commission) will solicit public input on the impacts a project will have on the environment. However, the proposal does not explicitly state that the Commission needs to seek input from the appropriate local governments. Cal Cities urges that the California Environmental Quality Act (CEQA) or equivalent process require outreach and solicitation to the appropriate local governments on the environmental impacts a project would have, so cities can provide comments and input. Cities and their local elected officials know their communities the best and want local voices to be heard when the environmental review process happens.

Furthermore, in section 25544(g)(4), the proposal states that the Commission shall not permit a facility unless it determines such a facility will have an overall net positive economic benefit to the local government that would have had permitting authority over the site and related facility. Given that local governments know best how a project will affect their communities, the local government must be consulted to make this determination. It may be difficult for the Commission to determine such net benefits without discussions with the local governments.

5) Rural County Representatives of California (RCRC), Energy Trailer Bill Opt-In Streamlined Review for Renewable and Zero Carbon Facilities – OPPOSE, June 3rd, 2022.

Excerpt:

“RE: Energy Trailer Bill Opt-In Streamlined Review for Renewable and Zero Carbon Facilities – OPPOSE

“Dear Assembly Member Bloom:

On behalf of the Rural County Representatives of California (RCRC), we must respectfully oppose the Administration’s Opt-In Streamlined Review provisions in the proposed Energy Trailer Bill. RCRC is an association of thirty-nine rural California counties, and the RCRC Board of Directors is comprised of elected supervisors from each member county.

RCRC agrees that the state must improve energy reliability both at the local level and for the larger grid. Many of our communities have suffered a dramatic decline in energy reliability over the last several years. These improvements will require significant investments in infrastructure, development of new energy and storage assets, and rethinking the state’s lengthy interconnection process.

Unfortunately, we believe that the proposed opt-in permit review process misses the mark, is overly broad, usurps local control, excludes local governments from meaningful involvement in major development projects within their jurisdictions, and could result in even more litigation”

Overly broad scope of projects eligible for opt-in permitting by California Energy Commission (CEC). The opt-in permitting process applies to solar photovoltaic and terrestrial wind larger than 50MW (and appurtenant facilities), energy storage facilities over 200MW, renewable energy manufacturing facilities, and transmission lines.

It is unclear why solar projects should be included in this process, as these facilities are large, enjoy tax treatments created by the state that undermine the ability for local governments to provide core public services, and will not help the state fix its reliability problems. It is widely recognized that the state desperately needs power during the early evening hours after the sun sets and the state’s solar generation capacity is unavailable. Given this need, including solar in this process will not provide the types of power that California needs at the time it is needed. It is unclear what appurtenant facilities will be covered by this proposal, but many of those facilities are better suited to the conventional local permitting process.

Similarly, manufacturing, production, and assembly facilities are similar to other major commercial and industrial uses that are well within the purview of local land use authority. It is not clear that the existing local permitting process is an impediment to opening these facilities. While there may be a need for CEQA relief to protect against anti-competitive litigation, that does not require usurpation of local permitting authority.

Usurps local permitting authority. Local governments are invested with authority over local land use decisions and permitting. The trailer bill improperly usurps that local permitting authority by allowing the CEC to permit a wide variety of renewable energy production, storage, transmission, and manufacturing projects.

Local governments are best suited to make these decisions because they know the communities impacted, are tasked with balancing competing land uses, and are situated closest to those residents and communities that will be impacted by the projects. In the local permitting process, local decision makers are able to identify and compel mitigation of the project’s impacts on the affected community.

The energy trailer bill takes these crucial responsibilities away from local governments and hands them to the CEC, which is far removed from being held accountable by impacted residents. Instead, the CEC is merely required to hold one scoping meeting and one public meeting “as close as practicable to the proposed site.” Furthermore, the trailer bill allows the CEC to bypass local standards, ordinances, and laws if the facility is required for public convenience and necessity.

The CEC is required to give consideration and respond to comments made by the Coastal Commission and State Lands Commission for projects within their jurisdictions – and cannot proceed with a project where those agencies determine the facility is inconsistent with the primary uses of the land and would result in substantial unmitigated adverse environmental impacts. Disturbingly, there is no similar deference to concerns or determinations of the local governments in which those projects will be located.

It must be noted that these facilities can be very large, may conflict with local land use and planning, and are likely to impose significant impacts on the surrounding communities. These are the types of facilities and impacts where local control over the permitting process is absolutely necessary.

Increases risk of future litigation. By virtue of their close proximity (and accountability) to individuals and communities impacted by these projects, local governments are best suited to issue permits and mitigate the project’s impacts. In bypassing the local permitting process and the individuals who will be impacted, the trailer bill substantially increases the risk that the new CEC permitting process will result in even more litigation from those impacted residents and communities who are dissatisfied with the decisions made by the CEC.

Fails to address even bigger permitting hurdles. We believe this opt-in permitting process misses the mark. The state has long heard that the interconnection process can be a nightmare for major energy generation and storage projects, yet this proposal instead seeks to shift land use decisions from local governments to the state without addressing the interconnection nightmare.

For these reasons, RCRC respectfully opposes the Administration’s Opt-In Permitting component of the Energy Trailer Bill. We look forward to working with you and the Administration on changes that will expedite permit processing without alienating those communities and residents in which the projects are to be located.

6) **California State Association of Counties (CSAC), Draft “Energy Reliability, Relief, and Clean Energy Investments” Trailer Bill Notice of Position of CONCERNS (As Amended 05/18/22), dtd June 6th, 2022.**

Excerpt:

Dear Budget Committee Leadership,

The California State Association of Counties (CSAC) respectfully expresses our concerns about of the proposed Energy Trailer Bill which would allow for a shift of local authority for siting of solar, wind, and certain battery backup projects to the California Energy Commission (CEC). These facilities can have enormous impacts on very specific local communities, even when the benefits are spread to other parts of the state. Counties work closely with energy developers to site facilities and appropriately balance the needs of the community. As such, we would support efforts to assist local governments in expediting permitting but transitioning authority to the CEC is not the solution.

CSAC opposes provisions which would greatly expand the categories of projects that may be considered by the state without direct input from the county to the detriment of county land use authority. Though this section is “opt-in,” the parameters of when a project would be subject to local permitting versus when the state would be are unclear.

The issue of siting of renewable energy projects is further complicated by the extended solar tax exclusion, which reduces county revenues. This exclusion is slated to continue through at least 2024. In some counties this exclusion erodes tens of millions of dollars of revenue that would otherwise be used for community services, health and human services, administration of justice, and ongoing capital projects. Discussions continue between the industry and local governments on this exclusion, but a resolution has not been reached.

We respectfully request that any proposal affecting land use decision making be done in cooperation with counties, with corresponding discussions on taxation, reasonable cooperation, and local land use considerations. A last-minute trailer bill is not the venue for meaningful discussion. **CSAC suggests that the Senate and Assembly move the permitting sections of this proposal to a policy bill or interim working group so that stakeholders have an opportunity for meaningful changes to the language.**

7) TN# 25222 – San Bernadino County Land Use Services Department Comments, dtd 12 Sept 23

Excerpt:

Please allow this letter to serve as San Bernardino County’s (“County”) comments in support of the County of Shasta’s “Opposition to Commission Jurisdiction under AB 205 and Objection to Fountain Wind LLC Request for Application Completion Determination,” (“Opposition”) docketed on August 14, 2023. As outlined in the Opposition, the California Energy Commission (“CEC”) lacks jurisdiction to consider an application for an eligible energy facility (“Energy Project”) pursuant to Assembly Bill (“AB”) 205 when the same or similar Energy Project has previously been considered and denied by the applicable state, local, regional, or federal agency (collectively “Local Agency”) having permitting authority. To interpret the provisions otherwise would create absurd results, invite manipulation, and directly conflict with the intent and processes of AB 205.