

<b>DOCKETED</b>	
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<b>Project Title:</b>	Fountain Wind Project
<b>TN #:</b>	261108
<b>Document Title:</b>	FWP Objection to County Invoice Reimbursement
<b>Description:</b>	N/A
<b>Filer:</b>	Caitlin Barns
<b>Organization:</b>	Stantec Consulting Services, Inc.
<b>Submitter Role:</b>	Applicant Consultant
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January 16, 2025

Drew Bohan  
Executive Director  
California Energy Commission  
715 P Street  
Sacramento, CA 95814

Paul Hellman  
Director of Resource Management  
Shasta County  
1855 Placer Street  
Redding, California 96001

Re: Fountain Wind's Objections to Shasta County Invoice Reimbursement Request #1  
(TN 260946; docketed January 8, 2025)

Dear Mr. Bohan and Mr. Hellman:

This firm represents the applicant Fountain Wind, LLC ("Fountain" or "Applicant"). We write to object to Shasta County's Invoice Reimbursement Request #1, docketed January 8, 2025 (TN 260946), and seeking \$152,631.98 (referred to herein as "Reimbursement Request #1"). This objection is filed pursuant to 20 CCR sections 1878.1(c)(4), (d)(3).<sup>1</sup> As explained further below, the County continues to seek reimbursement for costs which are ineligible for reimbursement under AB 205 and its implementing regulations. The County also provides no support for any of the claimed fees and expenses, instead providing over 200 pages of redacted invoices and leaving Fountain unable to verify or contest the reasonableness of any requested fee. Finally, the reimbursement request is untimely under the regulations. Accordingly, Reimbursement Request #1 should be denied in its entirety.

## **I. Factual Background Regarding Reimbursement Request #1**

The County's Reimbursement Request #1 is the latest in a series of requests for costs and expenses which are not eligible for reimbursement pursuant to Public Resources Code sections 25519(f) and 25538 and 20 CCR section 1878.1(a). Fountain therefore objects to almost all of the categories of activities in Reimbursement Request #1 as outside the scope of reimbursable activities. With respect activities that may be eligible, Fountain objects to the amounts requested, as they are unreasonable on their face and also cannot be evaluated for reasonableness due to their redacted nature.

On January 25, 2023, California Energy Commission ("CEC" or "Commission") staff sent an email to the County requesting that it provide comments on the Fountain Wind Project

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<sup>1</sup> Although the reimbursement request was submitted pursuant to 20 CCR section 1715, the CEC has adopted reimbursement regulations specific to the opt-in program under 20 CCR section 1878.1. While the provisions appear to be similar, we understand that section 1878.1 controls.

application pursuant to Public Resources Code section 25519(f). The email also invited the County to provide information on County laws, ordinances, and regulations the County believes would be applicable but for the Commission's exclusive jurisdiction. Two hundred and forty-one (241) days later, on August 15, 2023, the County submitted a "Request for Reimbursement and Itemized Budget" (TN 251628), seeking approval of an unreasonable and inflated reimbursement budget of over \$585,000. CEC staff rejected the County's request on August 25, 2023 (TN 251926), finding that the request was incomplete, failed to follow regulatory timing requirements, contained items that were invalid and ineligible, and was overbroad and unreasonable. In response, the County submitted an objection to staff's response (TN 252654) and, nearly two months later, on November 14, 2023, submitted a "Revised Request for Reimbursement" (TN 253120), seeking approval of a revised budget of over \$473,000.

CEC staff responded to the revised budget on November 29, 2023 (TN 253385), indicating which "activities" were potentially eligible for reimbursement, while identifying several other activities which were overlapping, duplicative, or ineligible for reimbursement. CEC staff did not address the amounts requested in the budget. We understand that CEC staff's November 29, 2023, letter constituted its determination that the County's request for a reimbursement budget was complete under 20 CCR section 1878.1(c)(3). Accordingly, Fountain timely objected to the completeness determination on December 12, 2023 (TN 253590). Fountain identified several deficiencies in CEC staff's determination, explaining why various categories of activities for which the County sought reimbursement were ineligible under the statute and regulations. Fountain's objections remain unaddressed by CEC staff; therefore, Fountain incorporates by reference its December 12, 2023, letter here and reasserts the objections asserted therein.

## **II. Reimbursement for County Review is Limited Under AB 205**

The scope of County activities eligible for reimbursement is narrow. Upon the filing of an application, "the Commission shall forward the application to local governmental agencies having land use and related jurisdiction in the area of the proposed site and related facility." (Public Resources Code section 25519(f).)<sup>2</sup> Section 25519(f) further provides that "those local agencies shall review the application and submit comments on, among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility." Other than the statutory mandate in section 25519(f) to review and comment on the application, the statute requires no other action by local government in the opt-in process.

To compensate local government for the statute's narrow mandate to review and provide comments on the application, Public Resources Section 25538 allows for the local agency to

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<sup>2</sup> Public Resources Code section 25545.8 indicates that Public Resources Code sections 25519(f) and section 25538 apply to opt-in applications.

request “a fee” from the Commission “to reimburse the local agency for the actual and added costs of this review by the local agency. The Commission shall reimburse the local agency for the added costs that shall be actually incurred by the local agency in complying the Commission’s request.”

20 CCR section 1878.1 provides further guidance on what costs are eligible for reimbursement:

Costs eligible for reimbursement.

- (A) permit fees, including traffic impact fees, drainage fees, park-in-lieu fees, sewer fees, public facilities fees and the like, but not processing fees, that the local agency would normally receive for an application for a facility as defined in Public Resources Code section 25545(b) in the absence of Commission jurisdiction, and
- (B) the added costs of services performed directly in response to Commission requests for review that are not normally covered by the permit fee and for which a fee is normally charged. This does not include expenses incurred prior to a Commission request for review or expenses incurred for review beyond the scope of the Commission request.

Thus, to be reimbursable, the County’s costs must either relate to permit and impact fees or fees for actions that perform a “service” that is “directly in response to Commission requests for review.” However, any expenses incurred “prior to a Commission request for review” or any expenses incurred for review “beyond the scope of the Commission request” are not reimbursable. Additionally, 20 CCR section 1878.1(b) identifies other costs which are not eligible for reimbursement:

Costs ineligible for reimbursement.

- (1) expenses incurred by a local agency for the presentation or defense of positions not reasonably related to the matters that the agency is requested to review or not within the area of the agency’s expertise; this includes attorneys’ fees and costs associated with advocating for or against Commission approval of the facility.
- (2) expenses for which it receives payment from other sources; or
- (3) entertainment and first class travel expenses.

The regulations also require that a request for reimbursement be filed within 21 days of receiving a request for review by the Commission. (20 CCR § 1878.1(c)(2).) “A local agency’s failure to file a proposed budget within the time specified herein shall not prevent it from receiving reimbursement; however, failure to use the approval process described in this section creates a risk that the local agency will not be reimbursed for the work already performed.” Further, after a proposed budget has been approved by the CEC, “on either a monthly or quarterly basis, the local agency seeking reimbursement shall file with the Commission staff and the project applicant an invoice for the expenses actually incurred during the past month or quarter.” (20 CCR § 1878.1(d)(2).)

### **III. The County Continues to Seek Reimbursement for Ineligible Costs**

The County's Reimbursement Request #1 seeks reimbursement for alleged fees and costs associated with eight broad categories. However, almost all of these categories are beyond the scope of Public Resources Code sections 25519(f) and 25538 and 20 CCR 1878.1. Therefore, reimbursement for costs associated with those categories should be denied.

Under Public Resources Code section 25519(f) and 20 CCR 1878.1, reimbursable costs are limited to the County's review and comment on "the application," such as "the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility." Clearly, the Legislature intended reimbursable work to focus on design and function of the proposed facility, and *not* on the review of other topics, such as alleged defects in the application materials, the Commission's processing of the Project, the Commission's staff assessment or EIR, the choice of alternatives, or determinations that the Project is needed for public convenience or necessity. Thus, providing comments on design and function of the proposed facility is the *only* obligation placed upon the County under the statute. If the County wants to participate in other aspects of the process, it is free to do so, but the cost of such discretionary advocacy is not reimbursable.

Accordingly, costs associated with nearly all of the County's categories of activities are not subject to reimbursement. Additionally, some of these categories, or portions thereof, were previously denied by Commission staff in its November 29, 2023, letter, yet the County continues to improperly seek reimbursement here in Reimbursement Request #1. Finally, despite a caution from Commission staff that many of its requests contained within these broad categories were duplicative or overlapping, the County has not refined or narrowed the categories or explained why its requests are not duplicative.

**Category 1: Initial review of the application.** For the reasons explained in Fountain's December 12, 2023, objection, costs to conduct these activities are not reimbursable. Section 25519(f) does not call for a duplicative "initial review" followed by a subsequent review of the application; rather, it calls for "review" and "comment" on the application, including specific aspects of the application on which comment would be appropriate such as "the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility." In other words, the statute clearly identifies the topics appropriate for County review; thus, there is no need for an "initial review" to determine what topics may be of interest to the County—the Legislature already has done that work for the County.

**Category 2: Applicant docket submittals related to its application requirements.** Fountain concedes that if the County actually provides specific comments on the application materials pursuant to section 25519(f), it is due a reasonable "fee" for that service under section

25538 and 20 CCR section 1878.1. However, to our knowledge, the County has provided very few comments in accordance with the statute's mandate and, thus, has performed limited services which potentially may be reimbursable. Indeed, the Project's online docket includes only *four* County activities which potentially may qualify for reimbursement under the statute and regulations:

- November 1, 2023, Report of Conversation with CAL FIRE Unit Chief/ Shasta County Fire Chief Sean O'Hara and CAL FIRE Chief Jake Sjolund re: Tactical Air Operations (TN 254899) – detailing 90-minute conversation with Chief O'Hara and Chief Sjolund regarding aerial firefighting;
- January 24, 2024, Record of Conversation with Shasta County re: Noise (TN 254432) – detailing a brief conversation with Paul Hellman, Director of the Shasta County Department of Resource Management, regarding County standards and regulations governing construction hours;
- January 25, 2024, Record of Conversation with Shasta County Fire Chief re: Fire (TN 254837) – detailing a 40-minute conversation with County Fire Chief Sean O'Hara regarding County fire infrastructure, response times, and fire history;
- February 20, 2024, Report of Conversation with CAL FIRE Unit Chief/ Shasta County Fire Chief Sean O'Hara re: Applicant's wildfire technical report (TN 254875) – detailing 35-minute conversation with Chief O'Hara regarding the Applicant's wildfire technical report.

Fountain is not aware of any other comments provided by the County in response to a Commission request that address appropriate aspects of the design and function of the Project.

The County asserts in various other docketed materials that its comments are submitted “in accordance with the County of Shasta's obligation under AB 205.” (See TN 259437; TN 260101; TN 260646; and TN 260765.) However, each of these comments is outside the scope of reimbursable activities. More specifically, these letters all address discretionary review activities conducted by the County which assert positions on matters not reasonably related to the matters that the agency is requested to review and which advocate against Commission approval of the Project. (See 20 CCR § 1878.1(c)(2).) Under the guise of reviewing the Project's “application,” the County broadly has commented on the Project's environmental review, net economic benefits, and community benefits agreements. But the Commission has not requested these comments, nor are they within the scope of reimbursable activities (see below addressing each category in more detail). In effect, the County is acting like any other member of the public in submitting these comments—although the County is free to do so and to comment on the Project as it wishes, the time spent preparing those comments (including the cost of any hired consultants) is not reimbursable.

Thus, given the very limited set of potentially reimbursable activities, Fountain objects to the reasonableness of the claimed amounts. Even without seeing unredacted invoices, the total claimed amount of \$152,631.98 is entirely unreasonable for four short telephone conversations. Further, all of the invoices attached to Reimbursement Request #1 appear to be from the law firm of Best Best & Krieger, yet *none* of the conversations with CEC staff included the County's outside counsel. The County has not provided any invoices for Mr. O'Hara's or Mr. Hellman's time related to the phone conversations.

Fountain also questions why the County required the significant use of outside counsel, as commenting of the design, aesthetics, highway access and other operational features of the Project does not require a law degree. To our knowledge, the County's lawyers have provided no "service" to the Commission in better understanding the design, architectural, technical, engineering or aesthetic attributes of the Project. In addition, review of development applications for design, aesthetic, traffic and architectural features *by in-house and outside counsel* are not services for which a fee is normally charged. Thus, Reimbursement Request #1 may be denied simply because it appears to seek only attorneys' fees, even though the County's counsel has not yet performed any reimbursable services.

**Category 3: Commission staff docket submittals related to AB 205 application requirements, including deficiency notices and data requests.** To be reimbursable, costs must be "directly in response to Commission requests for review." The Commission has not asked the County to review Commission deficiency notices and data requests. Further, providing comments on these topics is not a "service" for which a fee is normally charged, and these costs do not qualify under 20 CCR 1878.1(a)(1)(B) for this reason as well.

Additionally, Commission staff already has determined that review of its docket submittals is not reimbursable. "While Shasta County is free to comment on a filing made by any person in the proceeding, it would not be eligible for reimbursement for reviewing documents filed by the public, other agencies, or CEC staff." (Response to County of Shasta Revised Request for Reimbursement, TN 253385, at p. 3.) Any reimbursement request related to these activities should be denied.

**Category 4: Overall net positive economic benefit.** The County continues to request reimbursement of its activities related to the preparation of its position on why the Project will not result in a net economic benefit to the local government. These costs are not subject to reimbursement under AB 205, as the statute does not mandate any comment from local government on this topic. The County may comment on this topic in its discretion, but County comments on this topic amount to advocacy about the merits of the Project and thus are not reimbursable.

Further, even if these costs were reimbursable (they are not), Fountain objects to the reasonableness of the fee. The invoices are redacted, making it impossible to understand what activities were performed and by whom. To the extent the County continues to seek

reimbursement for costs associated with a consultant, the Shasta County Treasurer-Tax Collector-Public Administrator and Shasta County Assessor-Recorder, or for submitting the “administrative record” surrounding the adoption of Shasta County Ordinance SCC 2023-01, those costs should be denied for the reasons explained in Fountain’s December 12, 2023, letter.

**Category 5: Community benefits plan and agreement(s).** The County also continues to seek reimbursement for its costs to analyze whether, in its opinion, the Applicant’s community benefits plan and agreements are beneficial and whether they comply with the requirements of AB 205. While the County may, in its discretion, comment on these topics, comments on this topic are not mandated and therefore the cost to undertake these comments is not reimbursable. The Commission has not requested any comments on this topic, and it is outside the scope of section 25519(f). While 20 CCR section 1887 requires that an opt-in application discuss the applicant’s “plan or strategy” to enter in one or more community benefit agreements, the agreement itself is not required to be included as part of the application. Discretionary comments containing the County’s opinion on actual agreements are not subject to reimbursement.

**Category 6: Impacts to biological resources, habitat, species, cultural resources, tribal cultural resources, and wildfire.** The County seeks reimbursement on the broad, undefined category of impacts to biological resources, habitat, species, cultural resources, tribal cultural resources, and wildfire. As noted, the only mandated review and comment imposed on local government is pursuant to section 25519(f), which is limited to comments on the application itself. Section 25519(f) is not a catch-all bucket the County can use to pass its costs to advocate against the project onto the applicant. Nothing in the statute entitles local government to reimbursement for broadly commenting on the Commission’s staff environmental assessment or environmental impact report. Except in four limited circumstances discussed above, the Commission has not requested Shasta County’s comments on any of these topics. Therefore, such costs are not for a “service” that is directly responsive to a request for information by the Commission. Nor are comments on another agency’s environmental review costs for which a fee is normally charged to a project applicant.

Although Fountain is unable to verify exactly what types of activities the County claims fall into this bucket, Fountain notes that Commission staff already has deemed ineligible for reimbursement various activities within this category. Costs associated with the review and comment on the notice of preparation, public informational meeting, public workshops, public scoping meeting, notice of availability, staff assessment and draft and final environmental impact reports, consideration of final Commission certification, and other meetings, and Shasta County’s participation in the meetings “are beyond the scope set forth in Public Resources Code sections 25519(f) and 25538 and are not eligible for reimbursement.” (Response to County of Shasta Revised Request for Reimbursement, TN 253385, at p. 4.) They should be denied again here.



**Category 7. Design, construction, and operation of the project, including architectural and aesthetics features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects.**

Fountain concedes that comments on the “design, construction, and operation of the project, including architectural and aesthetics features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects” in accordance with section 25519(f) would be appropriate, provided the costs comply with section 25538 and 20 CCR section 1878.1. However, as discussed above, the only reimbursable services the County has performed appear to have occurred during four short phone calls. The County has not otherwise submitted any comments on any design, aesthetic, or engineering aspect of the application. If the County can demonstrate that it provided such comments on the application, the Applicant will be in a better position to evaluate whether the amounts incurred are reasonable.

**Category 8: Public convenience and necessity for the project.** Section 25525 contains the circumstances and criteria under which the Commission may certify a project despite inconsistencies with local and state laws and regulations, including by making a determination that the facility is required for public convenience and necessity. However, section 25525 says nothing about reimbursement and is not cross-referenced in section 25538. Thus, any costs incurred for activities related to the County’s review and comment on Public Resources Code section 25525 are not eligible for reimbursement. Further, the Commission has not requested Shasta County comments on this topic. Any expenses incurred by the County on this topic would clearly be “expenses incurred by a local agency for the presentation or defense of positions not reasonably related to the matters that the agency is requested to review or not within the area of the agency’s expertise; this includes attorneys’ fees and costs associated with advocating for or against commission approval of the facility.” (20 CCR § 1878.1(b)(1).) These expenses have been explicitly deemed ineligible for reimbursement.

Finally, to the extent the County continues to include within this category any activities associated with its comment on the Project under Public Resources Code sections 25527 and 25454.7.2, those costs are not eligible for reimbursement. Section 25527 lists areas in the state where energy facilities should not be approved and neither mandates comments from local agencies on these areas in relation to a particular project nor allows for reimbursement for such comments. Section 25454.7.2. calls for the Commission to conduct public outreach to seek input on a range of topics including the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. However, nothing in section 25454.7.2 mandates that local government provide input on these topics, and nothing in section 25454.7.2 calls for reimbursement to local government for the cost of providing discretionary input on these topics.

#### **IV. The County’s Request is Untimely**

In addition to seeking reimbursement for activities outside the scope of the statute and regulations, the County’s reimbursement request is untimely. As previously explained, the

regulations require that a proposed budget for reimbursement be filed within 21 days of receiving a request for review by the Commission. (20 CCR § 1878.1(c)(2).) The County failed to comply with these regulations. CEC staff requested that the County provide comments on the application pursuant to Public Resources Code section 25519(f) on January 25, 2023. Shasta County did not file its reimbursement budget until August 15, 2023, *241 days after the CEC's notification*. The County blatantly ignored the regulations, and its failure to comply with the timing requirements should preclude it from seeking reimbursement of the vast majority of its review activities. (See 20 CCR § 1878.1(c)(2) ["A local agency's failure to file a proposed budget within the time period specified herein shall not prevent it from receiving reimbursement; however, failure to use the approval process described in this section creates a risk that the local agency will not be reimbursed for work already performed."].) Fountain therefore reasserts its objections to the County's original and revised reimbursement budgets as untimely.

The County's Reimbursement Request #1 also is untimely. After a proposed budget has been approved by the CEC, "on either a monthly or quarterly basis, the local agency seeking reimbursement shall file with the Commission staff and the project applicant an invoice for the expenses actually incurred during the past month or quarter." (20 CCR § 1878.1(d)(2).) Even assuming the CEC's November 29, 2023, letter properly established a review budget, the County has failed to provide monthly or quarterly invoices as required by the regulations. The invoices provided in Reimbursement Request #1 are for work from the beginning of 2023 through July 31, 2024. At a minimum, these invoices should have been submitted for the CEC's and Applicant's review shortly after the CEC's November 29, 2023, letter and then on a monthly or quarterly basis throughout 2024. However, the County waited over six months from the latest billing date to submit a set of over 200 pages of redacted invoices covering more than a year of alleged review activities. This does not even remotely comply with the regulations; thus, the reimbursement request should be denied.

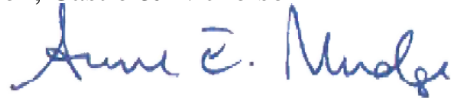
## **V. Conclusion**

The entirety of the requested \$152,631.98 should be denied. Apart from four phone conversations with CEC staff, the County has not performed a service directly in response to a Commission request, but instead has attempted to obtain reimbursement for advocacy positions against the certification of the Project. The regulations expressly exclude costs related a local government's presentation of arguments that are not directly related to the Commission's request for information and excludes costs related to advocacy. Additionally, the County has failed to provide adequate support for any of the claimed fees and expenses, and its reimbursement request is untimely. Reimbursement Request #1 should be denied.

Drew Bohan  
Paul Hellman  
January 16, 2025  
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Sincerely,

Cox, Castle & Nicholson LLP

A handwritten signature in blue ink, reading "Anne E. Mudge". The signature is written in a cursive, flowing style with a large initial "A".

Anne E. Mudge