September 13, 2026

LakeCAP · Comments to the Lake County Board of Supervisors

ATTACHMENT 3

Section-by-section response to the Lake County Energy Strategy (September 2026 draft)

How to read this attachment. Comments follow the order of the presentation deck. Each entry states what the Strategy provides, LakeCAP's response, and a specific recommendation. Recommendations that would be carried into an adopted policy are cross-referenced to the corresponding provision of the draft Energy Policy in Attachment 2, shown as *(Policy x.x)*.

PART I — PRELIMINARY

Title and characterization

The document is titled a "Draft Lake County Energy Strategy." The Board's charge to the Ad Hoc Committee was to develop an Energy Policy. A strategy describes how an entity will act; a policy states what it is trying to achieve and for whom. The draft is a capable strategy and is not a policy.

Recommendation. Receive the document as the *Lake County Energy Strategy Framework — Staff and Committee Work Product*, and direct that the County Energy Policy be developed separately and adopted first, with the strategy conformed to it.

Slide 2 — Purpose; "constraints come first on purpose"

The Strategy explains that most proposals made to the County over the past year fail on a legal or financial limit rather than on merit, and that naming those limits early is what makes the rest credible.

The premise is sound and the sequencing is defensible. But a constraints inventory is the beginning of a strategy, not the whole of one, and a document organized around that claim incurs an obligation to set out what *does* work with equal specificity. At present Part I runs eight slides and the affirmative program runs two.

Recommendation. Retain the constraints analysis. Balance it with a program of comparable length and specificity. *(Attachment 2, Parts E–F.)*

PART II — RESPONSE TO PART I OF THE STRATEGY ("THE BOUNDARIES")

Slide 3 — The five limits

Five limits are stated as settled: ownership, commodity, wires, permitting, and money.

Stated as Board findings, these cease to be analysis and become admissions available to every counterparty in every future negotiation and proceeding. A County that has formally found that it cannot condition road access, cannot secure revenue participation, and cannot own generation has narrowed its own bargaining range before the first application is filed. Separately, four of the five limits attach to the County's form as a general-law county, not to public agencies generally, and the document does not say so.

Recommendation. Receive and file Part I as staff and counsel analysis; do not adopt it as findings. Direct County Counsel to issue a citation memorandum supporting each limit — including the specific SB 254 amendments to Public Resources Code § 25545.8 and their practical effect — and to restate each limit as applying to *the County in its present form*. *(Policy 6.1, Part C.)*

Slide 4 — County cannot own merchant generation or resell power

Cal. Const. art. XVI, § 6 bars a subdivision of the State from holding stock in a corporation; no statute authorizes county equity in merchant generation; a county is not a utility, Electric Service Provider, or Community Choice Aggregator and has no market entry point.

LakeCAP accepts each of these as to the County in its present form, and the draft Energy Policy at Attachment 2 contemplates no County equity in merchant generation and no County purchase and resale of power.

The gap is what follows. The slide's own observation — that a supplier under State law is a utility, an Electric Service Provider, or a Community Choice Aggregator, and that counties are not on the list — is, read plainly, an argument for *considering* whether the County should act through a different vehicle. Community choice aggregation appears nowhere in the document. Neither does a joint powers authority, a public utility district, or a community services district.

The omission is conspicuous given the County's own recent record: negotiations with a neighboring community choice aggregator through 2025 that did not conclude in agreement; a subsequent Board request for an updated feasibility analysis on the reasoning that the earlier rate premium may have been overtaken by changed State cost allocations; a County ordinance from 2015 that appears to authorize implementation of a community choice aggregation program, whose present status should be confirmed; and the fact that the legislation the Strategy identifies as displacing County permitting was sponsored by that same neighboring aggregator.

None of this argues for a particular answer. It argues that the question cannot be absent from the document.

Recommendation. Add a section posing the vehicle question — status quo, participation in an existing aggregator, formation of one, a joint powers authority with the Cities of Clearlake and Lakeport, district formation, or targeted public-purpose ownership — with an evaluation standard, a staff direction to confirm existing authority, and a Board decision date. Recommend no answer in advance of the analysis. *(Article 6; Policies 6.1–6.4, 6.7.)*

Slide 4, asterisk — the public purpose exception

The slide concedes in a footnote that County ownership of an asset built for a public resilience purpose may be permissible, and a later slide identifies a microgrid or a pumped-hydro project as possible examples.

This exception is the entire remaining ownership space available to the County. It is stated as a qualifier to a prohibition rather than as a doctrine the County intends to use.

Recommendation. Move the public purpose exception into the body of the document, state the test the County will apply, identify the candidate asset classes — resilience-center microgrids, critical-facility storage, pumped storage — and require the finding to be documented at the time of acquisition. *(Policies 1.6, 6.6.)*

Slides 5–6 — Acquisition of the investor-owned distribution system

Required bond par of $466M–$850M against a largest-ever County bond of $20.64M; coverage of 0.37x at $690M par against a 1.25x covenant; a maximum supportable price of $112M against $307.7M net assessed value; no scenario clearing 1.00x; no AB 1054 Wildfire Fund eligibility for a publicly owned utility; Trinity PUD at 7,300 meters against Lake County's 36,343.

This is the strongest section of the document. The sensitivity analysis — driving operating cost to $400 per meter and removing the departing-load surcharge entirely still leaves coverage below 1.0x — is what makes it credible, because it shows the conclusion does not turn on a contested assumption. LakeCAP endorses it without reservation and recommends that the Board close the question.

One correction of reasoning, not of result. The slide describes California's rule as strict liability and contrasts it with negligence regimes elsewhere. The operative doctrine is inverse condemnation, which derives from the taking and damaging clause and reaches public entities directly; its extension to investor-owned utilities is the anomaly, not the rule. The conclusion is unaffected, and the precision matters because this material will be read by people who know the difference.

Recommendation. Adopt the conclusion as County policy, with a stated condition for reopening: a material change in State law governing wildfire liability, or a fully funded third-party proposal that carries the liability. Correct the doctrinal description. *(Policy 6.5.)*

Slide 7 — State permitting limits what the County can require

AB 531 extended Energy Commission opt-in certification to geothermal powerplants of any size; SB 254 repealed the LORS conformity finding and the override that went with it; the County cannot declare an ordinance binding and cannot use road access as leverage.

Two comments.

First — the two County documents conflict. The Geothermal and Hydrogen Siting Guide describes the Geothermal Setback Area as the strongest LORS the County holds and states that the Energy Commission must find compliance or expressly override it. This slide says the conformity finding no longer exists. Both cannot be right, and the County cannot submit both. The reconciliation should also distinguish the effect of County ordinances under each pathway — exploratory, below-threshold County permitting, small power plant exemption, traditional certification, and opt-in — because the answer may not be identical under each. *(Appendix B, § II.1.)*

Second — the road access statement is overbroad and internally inconsistent. A State certificate issues in lieu of County permits. It does not convey property rights in County roads and does not grant condemnation authority over them. The County's road interest is proprietary, not regulatory. The genuine constraint is narrower: the County may not use a proprietary approval to extract terms it could not lawfully impose by regulation, and may not use an encroachment permit as a substitute permitting veto. It may charge for the value of what it conveys, require pre-work condition surveys, restoration, haul-route management, insurance, indemnity, and performance security.

The Strategy already knows this. Its own "holds up" column lists road damage and restoration, traffic control and inspection, and actual-cost recovery, and its first exploratory next step is a road impact and use agreement signed before drilling, with insurance and indemnification behind it. Leaving the categorical statement in an adopted document hands every future applicant a quotation from the County's own strategy.

Recommendation. Reconcile the LORS treatment across both documents under Counsel's direction. Replace the categorical road statement with the accurate rule, stated together with Counsel's unconstitutional-conditions guardrails, and adopt the standard road impact and use agreement and encroachment package the Strategy already contemplates. *(Policies 3.4, 4.6; Appendix B, §§ II.1, III.1.)*

Finally, the Strategy should state expressly that **preemption is not irrelevance**. Even where a State certificate supersedes a County permit, County land-use policy, hazard and evacuation data, road condition, water limitation, and community impact evidence remain material to the State's environmental and net-benefit determinations. The Strategy's own recommendation that the County become the State's principal information source depends on exactly that point. *(Policy 4.8.)*

Slide 8 — A fixed revenue-share formula reads as a tax

Proposition 26, Sheetz v. County of El Dorado, and Jacks v. City of Santa Barbara are cited for the conclusion that output-indexed charges, standardized revenue-share schedules, and participation fees framed as permit conditions do not hold up.

The direction is right and LakeCAP accepts it: the County should not adopt a published, generally applicable, output-indexed schedule. The framing, however, collapses three distinct instruments into one conclusion and gives away more than the law requires.

- *Jacks* is cited only for its cap. It also holds affirmatively that a charge reflecting the value of what a public entity conveys is **not** a tax. That is a foundation for pricing road, corridor, and franchise access, not merely a limit on it.
- *Sheetz* extended nexus and rough proportionality to legislatively adopted permit conditions, and expressly left open whether that analysis reaches generally applicable fees. Several Justices wrote separately to say so. The slide states the holding more broadly than the opinion does.
- A **development agreement is a contract**. Its community benefits are consideration for vested rights, not an exaction imposed on an unwilling applicant. Nexus documentation remains prudent; treating a negotiated benefit package as presumptively unconstitutional is not.
- A **Mello-Roos special tax is not a Proposition 26 fee.** The Strategy's real and correct objection appears elsewhere on the following slide: a district with fewer than twelve registered voters is a landowner election and cannot be formed over the landowner's objection.

The operative variable throughout is **consent**, not characterization. Stated that way, the Strategy's own conclusion holds and becomes far more useful: the instrument is a negotiated agreement, and the County's task is to be ready to negotiate one before the State record closes.

Recommendation. Restate the section around consent and instrument selection, retaining the caution against published output-indexed schedules and adding the affirmative holding of *Jacks*. *(Policies 3.1–3.4.)*

Slide 9 — Districts, staffing, and grants do less than assumed

Community facilities districts cannot be formed over a landowner's objection and cannot fund services already provided; enhanced infrastructure financing districts are capital-only; the County is under a hiring freeze; grants generally do not fund formation, legal, or negotiation costs.

Each of these is accurate, and the draft Energy Policy at Attachment 2 is built to respect all of them. The concern is the use to which the hiring-freeze observation is put. It appears in the document as a general answer to program proposals, and it does not reach most of what is available: PACE and C-PACE require a resolution and no County lending; streamlined residential permitting is a process change within an existing department; incentive navigation, aggregated purchasing, and resilience-center microgrids are grant- and partner-delivered.

Recommendation. Retain the constraint and state its boundary: recurring County obligations must be funded, while programs delivered by partners, administrators, or third-party capital are not barred by the freeze. *(Policies 1.1–1.6, 8.4, 8.6.)*

Slide 10 — What remains, and the impact of The Geysers

Development agreements, community benefits agreements, State proceeding participation, applicant-funded cost recovery, and the Energy Element are identified as the tools that remain. The County's largest property taxpayer is identified at $593 million assessed in 2025, with 271 employees.

This is the most important slide in Part I and it is the last one. What the County retains should be stated before what it has lost, and at greater length. Additional retained interests belong on the list: wellfield and field-infrastructure permitting where it is not displaced, the property tax base, federal geothermal lease revenue, County property and franchise interests, CEQA lead-agency and responsible-agency roles, and the General Plan.

The Geysers figures should also be reconciled. The Strategy states that 13 of 15 plants sit in the adjoining county; other County-referenced sources describe a different plant count and capacity split. The County's entire fiscal and negotiating argument rests on that split.

Recommendation. Elevate this material into a section titled *What Lake County Retains*, placed ahead of the limits. Publish one reconciled dataset — plant count, nameplate and net capacity by county, assessed value, employment, load profile, and royalty receipts — and use it consistently in every County document and filing. *(Part C; Policy 9.4; Appendix B, § II.4.)*

PART III — RESPONSE TO PART II OF THE STRATEGY ("THE DRAFT STRATEGY")

Slide 11 — Guiding principles, risks, structure

Five principles, five risks, and an organizing structure moving outward from what the County controls.

The principles are sound as far as they go, and they are entirely about the County's posture toward developers and the State. None of them is about residents. The risk register likewise omits the risk that the policy delivers no visible public benefit and loses public support.

Recommendation. Add a first principle — *residents come first and come early* — and a corresponding risk and treatment. *(Part D; Part G.)*

Slide 12 — Posture and participation

Non-opposition to pathway choice; speed and predictability as the defense of local control; early formal participation; comment in the form of proposed conditions rather than objections.

LakeCAP endorses this section substantially without change. The observation that a letter urging denial gives the decision-maker nothing to adopt is correct and should govern County practice.

Recommendation. Retain. Add that the County will develop its proposed conditions with public and tribal input rather than in isolation, so that the conditions filed reflect local knowledge. *(Policies 4.1–4.3, 7.1–7.4.)*

Slide 13 — County–State relationship

A standing LORS compendium; the County as the State's data source; a published fiscal-impact methodology; a roster of community-based organizations.

The fiscal-impact methodology is the most valuable single recommendation in the document. Where a State agency must find net local benefit, and where that finding is a rebuttable presumption, the County that arrives with a published, pre-existing methodology controls the record. It should not wait behind nine other items.

Recommendation. Elevate the fiscal-impact methodology to the first near-term action, with a date. Confirm the compendium's contents against Counsel's citation memorandum so the County does not file authorities it no longer holds. *(Policies 4.4–4.6.)*

Slide 14 — Development and community benefits agreements

Modernize the 1988 development agreement ordinance to allow a standalone agreement; authorize the County to sign community benefits agreements for State-

certified projects; update the Master Fee Schedule beyond a 2017 twenty-hour Planning deposit.

This is the operative slide of the entire document, and its own text contains the reason: the authority must be in place before the State completes its review. It cannot be created in response to a filing. These three items are the County's critical path.

Recommendation. Calendar all three against the first expected filing rather than listing them, and report the schedule to the Board with any adopted document. Add to the fee schedule a line for community benefits agreement negotiation, recoverable by deposit agreement as a condition of County participation. *(Policies 3.3, 8.1, 8.2; Attachment 3, Part F, Tier 1.)*

Slide 15 — California Environmental Quality Act (CEQA) practice

Whole-of-the-action scoping where the County is lead; a request that State review cover the wellfield; full buildout disclosure as a completeness condition; a standing project list for the cumulative baseline.

LakeCAP endorses this section without change and notes that it answers the segmentation concern raised in the Siting Guide. It should be cross-referenced there.

Recommendation. Retain. Cross-reference to the Siting Guide's segmentation discussion. *(Policies 5.4, 5.5, 4.7; Appendix B, § III.2.)*

Slide 16 — Affirmative siting

A County siting map screened for disturbed ground, resource quality, leasehold, interconnection, haul routes, and sensitivity; current interconnection and transmission information; recruitment of downstream and co-located end users. Cost flagged at $2–4 million with a programmatic EIR, requiring outside contracting and outside funds.

This is the highest-leverage item in the document: it would place the County in the lead-agency role for program-level analysis and give every later project review a County document from which to tier. It is also the item marked "requires outside funding" and assigned to no one.

The recruitment of co-located end users is a genuine opportunity and should carry an express reservation: recruitment is not a waiver of review, and water demand, land use compatibility, noise, emissions, traffic, and net fiscal benefit remain subject to County evaluation.

Recommendation. Name a responsible department, adopt a funding strategy and application calendar with a date, and pursue the State geothermal-readiness funding under which an adjoining county secured a substantial award in 2025. Attach the review reservation to the recruitment policy. *(Policies 5.6, 5.7, 3.7; Part F, Tier 3.)*

Slide 17 — Geothermal setback

The setback holds against exploratory drilling led by the State's oil, gas and geothermal regulator, but not against opt-in certification that includes the wells; anchor it in General Plan policy, not zoning alone.

The recommendation to anchor the setback in General Plan policy is correct and should be carried into the Energy Element. The jurisdictional statement must be reconciled with the Siting Guide, which reaches a different conclusion, and with the unresolved question of how far "related facilities" reaches into field infrastructure. Until that boundary is settled by the Commission, the Legislature, the Attorney General, or a court, the County should preserve rather than concede every reasonable claim to its remaining jurisdiction.

Recommendation. Anchor the setback in General Plan policy. Label the jurisdictional reach of "related facilities" expressly as an unresolved question rather than resolving it against the County by assumption. *(Policies 5.3, 5.11; Appendix B, §§ II.1–II.2.)*

Slide 18 — Capacity and funding

Every commitment needs a named owner and an identified funding source; applicant cost recovery funds review and participation; development agreements cover project-specific costs; competitive grants fund planning work products; recurring obligations are County operating costs.

This is the correct rule and LakeCAP adopts it verbatim in the draft Energy Policy. The difficulty is that the document does not apply it two slides later.

Recommendation. Retain, and apply. *(Policy 8.6.)*

PART IV — RESPONSE TO PART III OF THE STRATEGY ("NEXT STEPS")

Slides 19–20 — Exploratory and commercial next steps

Fourteen actions across two slides, each assigned to a department.

The content is largely sound and several items are genuinely urgent. The presentation is not adoptable as written: no action carries a date, a cost estimate, or a funding source, notwithstanding the rule stated on the preceding slide. An unfunded and undated list of fourteen items, in a county under a hiring freeze, will not be executed, and the Board will have no basis on which to ask why.

Four items are genuinely time-critical and should be separated from the rest: the development agreement ordinance amendment, community benefits agreement authority, the Master Fee Schedule update, and wind standards at the section of the zoning ordinance that presently reads "None," ahead of the first wind application.

Recommendation. Reorganize next steps into tiers — time-critical, near term, and funding-dependent — and attach to every item a responsible department, a funding source, and a date, or move it to a clearly labeled aspirational list. Direct quarterly reporting to the Ad Hoc Committee against that schedule. Add the following actions, which the present list omits:

Added action	Basis
Adopt PACE / C-PACE by resolution	Policy 1.1
Implement streamlined residential solar and storage permitting	Policies 1.2, 5.1
Stand up incentive navigation and publish a resident guide	Policy 1.3
Identify resilience centers and apply for microgrid funding	Policy 1.6
Audit geothermal royalty and impact-mitigation receipts	Policy 8.3
Adopt interim hydrogen exploration and production standards	Policies 5.2, 5.8
Complete the governance-vehicle evaluation	Policies 6.2, 6.7
Establish a standing tribal government channel	Policy 7.4
Publish one reconciled County energy dataset	Policy 9.4
Publish annual targets and an annual energy report	Policies 1.8, 9.1

PART V — SUBJECTS THE STRATEGY DOES NOT ADDRESS

Subject	Why it belongs	Treatment proposed
Agricultural and critical load	Frost protection imposes large, weather-driven nighttime load; outage exposure is an agricultural economic risk	Article 2
Household affordability and resilience	The County's principal available public benefit	Article 1
Medically dependent and vulnerable residents	Outage exposure is a life-safety matter	Policy 2.3
Governance vehicle	Determines the answer to four of the five stated limits	Article 6
Existing hydroelectric assets in the County	A contested ownership question on which the County has no stated position	Policy 6.8
Local offtake and direct-use heat	Value capture that does not require County commodity trading	Policy 3.5
Workforce and apprenticeship	The employment benefit of hosting is not automatic	Policy 3.6
Tribal participation beyond consultation	Consultation is a floor	Article 7
Metrics and public reporting	Without them the Board cannot evaluate its own policy	Article 9

PART VI — SUMMARY OF RECOMMENDATIONS ON THE ENERGY STRATEGY

1. Receive the document; do not adopt it as the County Energy Strategy, Energy Policy, or Energy Policy Framework.
2. Direct Counsel to issue a citation memorandum and to restate each limit as applying to the County in its present form.
3. Reconcile the LORS treatment between the Strategy and the Siting Guide before either is adopted.
4. Correct the road and rights-of-way section; correct the revenue-participation section.
5. Move the public purpose exception into the body of the document.
6. Elevate *What Lake County Retains* ahead of the limits.
7. Add a residents program and a residents-first principle.
8. Pose the governance-vehicle question with an evaluation standard and a decision date.
9. Elevate the fiscal-impact methodology to first priority.
10. Calendar the four time-critical authorities against the first expected filing.
11. Apply the document's own owner–funding–date rule to every next step.
12. Publish one reconciled County energy dataset and use it consistently.