DOCKETED	
Docket Number:	26-OIR-04
Project Title:	Emergency Rulemaking Amending the Opt-In Regulations
TN #:	273487
Document Title:	Save Our Rural Town Comments
Description:	N/A
Filer:	System
Organization:	Save Our Rural Town
Submitter Role:	Public
Submission Date:	11/10/2026 6:09:44 AM
Docketed Date:	11/10/2026

Comment Received From: Save Our Rural Town
Submitted On: 11/10/2026
Docket Number: 26-OIR-04

Comments by Save Our Rural Town

Additional submitted attachment is included below.

SAVE OUR RURAL TOWN

Bryan Boersma, Attorney
Chief Counsel's Office
Docket Unit, MS-4
715 P Street
Sacramento, California 95814

November 10, 2026

Subject: Comments by Save Our Rural Town (SORT) Pertaining to Proposed Rulemaking.

Reference: California Energy Commission Docket Number 26-OIR-04.
Express Terms Document (TN # 272980).

Dear Mr. Boersma;

Save Our Rural Town (SORT) understands that the California Energy Commission (Commission) proposes to amend AB 205 "Opt-In" regulations and pursuant thereto, has prepared an "Express Terms" document which identifies the proposed changes. SORT understands that the revisions incorporate statutory changes resulting from SB254 and SB 283; however, many of the proposed rule revisions bear no relation to SB 254 or SB 283. SORT is also concerned by deficiencies and errors noted in the proposed regulations; these deficiencies are summarized below.

The Proposed Rule Does Not Properly Address Hazard Index and Exposure Assessment Methodologies.

Page 19 of the "Express Terms" document specifies that applications for battery energy storage systems (BESS) must demonstrate whether the acute "Hazard Index" resulting from toxic air contaminants (TACs) released during a BESS failure event is less than 1.0. While SORT has no objection to this requirement, we note that the "health-based exposure standards" identified as "appropriate" for "Hazard Index" assessments are EPA's "Acute Exposure Guideline Levels" (AEGLs); this is highly problematic because AEGLs are ***never*** used to calculate Hazard Index results. In fact, protocols established by the California Office of Health Hazard Assessment (OEHHA) require Hazard Index results to be derived based on adopted "Relative Exposure Levels" (RELs) which are much lower than EPA AEGLs. For example, the OEHHA REL for hydrogen fluoride is only 240 $\mu g/m^3$, but the AEGL value for hydrogen fluoride is 818 $\mu g/m^3$ (which is nearly 4 times higher). Even EPA's Hazard Index assessment methodologies do not rely on

AEGLs; to the contrary, they rely on Reference Concentration values (RfCs)[1]. In fact, the 2020 Technical Support Document which describes EPA's Hazard Assessment methodologies do not even mention AEGLs[2].

The Commission is aware that AEGLs are only used to address "once-in a-lifetime, short-term exposures"[3] and are thus inappropriate for assessing exposure impacts from BESS failures which (as explained in detail below) are not "once in a lifetime" events because they occur at fixed BESS locations with some frequency (particularly at large BESS facilities). The Commission is also aware that AEGLs apply only to unforeseeable emergency release scenarios that do not exceed 8 hours and involve a single compound[4]; this renders them intrinsically inapplicable to BESS failure scenarios which involve multiple toxic constituents and can persist for days. Equally important, exposure to toxic concentrations that are below the very lowest AEGL values (referred to as "AEGL 1" values) ***do*** result in health effects which, though transient, are arguably "significant" because they include discomfort, irritation, and asymptomatic non-sensory effects (as the EPA affirms[5]). For example, an air toxic concentration that is below an AEGL 1 threshold may trigger only transitory health impacts, but these impacts can still be significant because they can trigger an asthma attack which sends a child to an emergency room. EPA further clarifies that "AEGL 1" thresholds represent the transition point at which significant health impacts cannot be presumed reversible, and when concentrations reach AEGL 2 levels, they are both disabling and irreversible[6].

The Commission offers no explanation or justification for proposed rulemaking language that establishes AEGLs as the basis for calculating Hazard Index values in BESS licensing proceedings. Perhaps this is because *no such justification exists*. AEGL values are applicable in unforeseeable circumstances that involve the release of a single toxic compound at an unexpected location for unanticipated reasons (such as a train accident in the heart of a community that results in the release of a single toxic

---

[1] EPA's 2020 Technical Support Document for Air Toxics Screening. Pages 114-115. epa.gov/AirToxScreen/airtoxscreen-technical-support-document

[2] EPA's Hazard Index calculation methodology addresses long term exposure scenarios. Pages 12, 133.

[3] Page 5.10-9 of the Corby BESS Staff Assessment (Docket 24-OPT-05) cites to a 2008 OEHHA Technical Support Document which states on page 81 that the objective of U.S. EPA's AEGL program is "to develop guideline levels for once-in a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals". This document is found here: oehha.ca.gov/sites/default/files/media/downloads/crnr/noncancertsdfinal.pdf

[4] Page 5.10-9 of the Corby BESS Staff Assessment affirms that AEGLs apply to exposure durations of 8 hours or less. Page 11 of SORT's comments filed on September 14, 2026 in Docket 24-OPT-05 (incorporated herein by reference) explain that AEGLs only apply to single toxic release scenarios.

[5] epa.gov/aegl/about-acute-exposure-guideline-levels-aegls

[6] The EPA clarifies that, beginning at AEGL 1 concentrations and up to AEGL 2 concentrations, significant health impacts become disabling and irreversible. epa.gov/aegl/about-acute-exposure-guideline-levels-aegls

compound from a damaged tanker car). These are not the circumstances that surround BESS failure events which release *multiple* toxic compounds at *expected* locations for *clearly anticipated* reasons and occur with *sufficient regularity* to make them *entirely foreseeable*. SORT understands that these concerns are routinely dismissed by energy developers and the organizations that represent energy developer interests which persistently claim that BESS failure rates have dropped substantially in recent years and that new BESS systems with Lithium Iron Phosphate (LFP) battery chemistries are "safe" because they will not experience thermal runaway. Neither of these claims are dispositive and in fact, they are categorically false.

First, industry claims pertaining to decreases in BESS failure events are based on a database maintained by the Electric Power Research Institute (EPRI); however, EPRI itself acknowledges that the database is incomplete because it does not include all BESS failure events[7]. In fact, EPRI's most recent "white paper" publication regarding BESS failures (which was issued October 5, 2026) affirms on page 4 that BESS failure data can be "incomplete or unavailable" and that "data gaps" are "a major challenge to a complete database"[8]. Therefore, claims that BESS failure rates have reduced in recent years are not based on substantial, defensible evidence.

Second, EPRI substantially misrepresents trends in BESS failure rates. For example, page 56 of EPRI's "white paper" states that "global BESS failure rates" dropped by "50% between 2024 and 2025"; however, this statement is directly controverted by Figure 9 on page 22 of the "white paper" which shows there were 26 "Global BESS Failures" in 2024 and 24 "Global BESS Failures" in 2025. A reduction from 26 global BESS failures in 2024 to 24 global BESS failures in 2025 is so small that it is almost imperceptible; it is ***certainly not*** 50%. SORT cannot fathom why EPRI would make such an erroneous claim.

Third, LFP BESS can and do experience thermal runaway and toxic release. A recent BESS fire which persisted for more than a week at a renewable energy facility that was constructed in 2024 in Canada is believed to involve LFP batteries because video imagery indicates that the event involved Powin Centipede containers which utilize an

---

[7] As SORT explains on page 25 of our comments dated September 14, 2026 filed in Docket 24-OPT-05, EPRI "picks and chooses" the BESS failure incidents that it reports. As evidenced by attachments to these comments, the EPRI website affirms that "the database is necessarily limited to public reporting and may have missed incidents with minimal or local-only media coverage". And, when SORT members reported BESS fire incidents to EPRI, EPRI declined to include them in the database. For instance, EPRI was provided fire department response reports in 2024 regarding multiple ignition events over several months at the 800+ MW Sanborn BESS; it does not appear that EPRI has added them to the database (though EPRI has added a BESS fire incident labeled "Mojave" with a February 22, 2024 date that corresponds to one of the Sanborn failures; however, EPRI reports the BESS capacity is only 66 MW).

[8] EPRI's "White Paper" is found here: epri.com/research/products/000000003002034920

LFP chemistry[9,10,11]. It should be noted that this BESS fire engulfed multiple containers. Moreover, EPRI itself disputes contentions by energy developers and industry shills that LFP BESS are "safe"[12].

Fourth, there is insufficient data to conclude that, over the long term, LFP batteries are indeed "safer" than other battery chemistries; this is of particular concern because studies show that aging of LFP batteries accelerates at relatively low operating temperatures. For example, experiments with fully charged (but not overcharged) LFP batteries indicate that the protective film which is formed on the anode and is essential to preventing thermal runaway *actually begins to degrade* at only 80 °C[13]. As degradation of this protective film progresses, the anode becomes more exposed and when sufficient degradation occurs, thermal runaway initiates. Additionally, when LFP batteries become overcharged, the temperature at which they experience thermal runaway is *lower* than the temperature at which thermal runaway is initiated in other types of lithium batteries including NMC[14]. This means that LFP BESS are actually *more* susceptible to thermal runaway than other battery chemistries in overcharge conditions, and as a result, LFPs are highly susceptible to failure when battery management systems do not adequately prevent overcharging. These facts indicate that 1) BESS failures will persist and even increase over time as the number of deployed LFP systems increase; and 2) LFP aging characteristics may further accelerate LFB BESS failure rates and are likely to increase BESS failure rates over time.

BESS failures pose predictable land use impacts because they are entirely foreseeable and even expected; accordingly, the Commission must address BESS failures as events that are an integral part of standard BESS facility operations. To support this

---

[9] The BESS was constructed in 2024. summerside.ca/news/what_s_new/summerside_sunbank

[10] Video footage suggests that the BESS is a Powin Centipede System. youtube.com/watch?v=hXY9Cdkd2C8 .

[11] Powin Centipede systems have utilized an LFP battery chemistry since at least 2022. energy-storage.news/manufacturers-powin-energy-kore-power-bringing-ess-supply-chain-closer-to-us-demand/, prnewswire.com/news-releases/powin-announces-new-centipede-battery-energy-storage-platform-301433100.html

[12] The EPRI "white paper" points out on page 51 that "While there is broad messaging that LFP is "safer", multiple LFP BESS incidents have occurred, and there are 34 recorded incidents involving LFP BESS between 2018-2025".

[13] To prevent thermal runaway, lithium batteries form a solid electrolyte interphase film (SEI); however, the protective SEI film in LFP batteries begins to degrade at temperatures as low as 80°C in charged (but not overcharged) conditions. This means that even slight increases in LFP operating temperatures will substantially increase SEI degradation and thus advance cell aging. *Revealing the Thermal Runaway Behavior of Lithium Iron Phosphate Power Batteries at Different States of Charge and Operating Environment*. Tianyi Li, Yinghou Jia. Journal of Electrochemical Science (September 2022) Article Number: 221030. electrochemsci. org/ papers/vol17/ 221030.pdf.

[14] Thermal Runaway can be initiated at only 116 °C in overcharged LFP batteries. *Study on Temperature Change of LiFePO4/C Battery Thermal Runaway under Overcharge Condition*. Fei Gao et al 2021. iopscience. iop.org/article/10.1088/ 1755-1315/631/1/012114/

contention, SORT points out that EPRI's "white paper" concludes that historic BESS failure rates range from 0.00014 to 0.00137 failed containers per deployed containers per year[15]. These are exceedingly high failure rates, and they suggest that large BESS facilities could routinely experience BESS failures on an annual, semi-annual, or even quarterly basis. For instance, when EPRI's historic BESS failure rate factors are reconciled with information pertaining to the Prairie Song BESS project (which is now undergoing Commission review and involves 2,035 BESS containers[16]) the results suggest that Prairie Song would experience ***up to 3 BESS failures per year***[17]! EPRI also assessed historic failure rates normalized to MWh capacities and found 0.000287 BESS failures per MWH · year[18]; reconciling this value with the Prairie Song project's storage capacity of 9,200 MWh suggests that BESS failure rates could occur twice per year[19]. At the very least, EPRI's statistics prove conclusively that BESS failures events are foreseeable and expected, and thus pose predictable land use impacts.

SORT recognizes that EPRI discourages the use of its historic BESS failure rate factors as "predictive metrics" for a given project[20]; however, EPRI has expended considerable time and effort in deriving these historic BESS failure rate factors, and they provide important insights into just how frequently BESS failures occur. This is particularly important given that EPRI's analysis shows BESS failure frequencies have quadrupled since 2020[21]. It is an indisputable fact that EPRI's analysis demonstrates that BESS failures are very likely and that multiple BESS failures will occur at particularly large BESS facilities (like Prairie Song). Accordingly, repetitive BESS failures and the temporary release of multiple toxic constituents that attend BESS failures must be perceived and addressed by the Commission as routine and predictable outcomes ***and not*** as unforeseen, unexpected, or unanticipated events.

Furthermore, OEHHA exposure assessment methodologies are intrinsically appropriate for assessing exposures from BESS failure events because they were *specifically designed* to assess acute impacts of short term, multi-toxic releases from stationary sources. These are the characteristics of every BESS failure event, and OEHHA methodologies address them by identifying "Maximum Exposed Individuals" and "Zones of Impact" to map populations exposed to toxic release events[22]. Therefore,

---

[15] Table 7 and Page 18.
[16] Docket 25-OPT-02.
[17] 0.00137 x 2,035 = 2.8.
[18] Page 19.
[19] 0.0002087 x 9,200 = 1.92
[20] Page 19.
[21] According to Figure 1 in EPRI's recent "white paper", there were 6 global BESS failures in 2020 and 24 global BESS failures in 2025. That is a *fourfold increase* in BESS failure events.
[22] OEHHA 2022 Risk Assessment Guidelines. Pages 4-15 to 4-17. oehha.ca.gov/sites/default/files/media/downloads/crnr/2015guidancemanual.pdf.

OEHHA methodologies are the ***only*** exposure assessment methodologies recognized by the State of California that are applicable to predictable failures of stationary BESS. As a state agency, the Commission is obligated in this rulemaking process to rely on state-adopted exposure methodologies that were specifically designed to assess acute impacts of short term, multi-toxic releases from stationary sources (i.e. failing BESS units). Moreover, the Commission has no evidentiary basis to dismiss California-adopted exposure assessment methodologies that are perfectly tailored to address predictable BESS failure events. The Commission also has no evidentiary basis to defer to inapplicable federal guidelines that are intrinsically incapable of assessing the exposure risks posed by the simultaneous release of multiple toxic compounds from a failing BESS and which are intended to be used for unforeseeable and unanticipated single compound toxic release scenarios occurring at unexpected locations for unanticipated reasons.

The Proposed Rule Fails to Require BESS Developers to Demonstrate Access to Sufficient Water Supplies for Responding to BESS Failures.

The proposed rule requires BESS developers to include in their application a "water quality protection plan with best management practices to protect surface- and ground-water quality in the event of a BESS fire"; this requirement suggests the Commission is aware that standard BESS fire response protocols involve the application of copious quantities of water onto the BESS containers surrounding the burning BESS to ensure they do not overheat and ignite. As SORT has previously pointed out to the Commission in comments submitted in the Prairie Song docket (all of which are incorporated herein by reference[23]), a burning BESS container will ignite surrounding containers even under low wind conditions; this is because UL9540A test protocols limit windspeeds to 12 miles per hour or less during testing. Therefore, the assurance provided by a UL9540A certification that a BESS fire will not spread is only valid at BESS sites which experience little or no wind.

In very windy areas like Acton (where the Prairie Song BESS is proposed) multiple BESS units will burn as a result of a single BESS ignition, and the only option available to prevent such an outcome is to continually cool the BESS units surrounding the ignition point and stop them from overheating. This can only be accomplished by staging firefighters at key areas and equipping them with fire hoses that are capable of pouring copious quantities of water on to BESS containers adjacent to the burning BESS. And, because firefighters must stay hundreds of feet from a burning BESS to prevent injury, the water must be applied via high pressure/high volume "deck guns" that are capable of

[23] SORT comments in Docket 25-OPT-02 include, but are not limited to, those dated August 18 and November 5 of 2025, and January 5, 15, 27, March 4, April 6, May 21, 2026, and June 24 of 2026.

projecting water hundreds of feet away. These deck guns operate at 1,000 gallons per minute (gpm), and to sustain the operation of just two deck guns over a 10 hour period, 1.2 million gallons of water is required. While such resources may be readily available in urban communities or in areas that have abundant access to water, they are certainly not available in rural desert communities like Acton which has limited water resources and a community-wide municipal water storage volume of only 3.5 million gallons.

The Prairie Song developer does not propose to connect the BESS yard to Acton's local municipal water system; instead, the developer will install two 40,000 gallon water tanks for firefighting purposes[24]. Each time a BESS failure event occurs, these tanks will be completely drained in approximately half an hour, after which no water will be available and BESS fire spread will result in the destruction of multiple BESS units over many days; throughout all that time, Acton residents will be exposed to highly toxic emissions. SORT anticipates that, after the first few BESS fire events, the developer will seek to procure additional water resources by connecting to Acton's municipal water system. After this interconnection is completed, each BESS fire will rapidly deplete more than one third of Acton's entire water storage capacity, thereby substantially reducing water pressure and impairing water deliveries across the community. This will not just pose an inconvenience to Acton residents; it will also blunt firefighting capabilities across the community and could even result in drinking water contamination via back siphonage and through pipe joints and holes within system segments that experience significant pressure loss[25]. Yet, and incredibly, the Commission has ***never considered*** the effects of BESS firefighting activities on local water systems in any of the BESS applications that they have approved to date.

That is unacceptable. As part of this AB 205 rulemaking process, the Commission *must* incorporate regulations that require BESS developers to demonstrate that their projects provide sufficient water resources to sustain 3,000 gpm fire flows for a minimum of 12 hours and that these fire flows will have no effect on municipal system water pressure, local water deliveries, or local firefighting capabilities. Such evidence must include not only "will serve" letters provided by municipal water suppliers, but also engineering calculations demonstrating that local water pressure will remain unaffected by a 3,000 gpm fire flow sustained for a minimum of 12 hours.

The Proposed Rulemaking Fails to Properly Address BESS HF Emissions.

SORT appreciates that the proposed rule directs "Opt-In" applicants to provide dispersion modeling results representing "worst case" scenarios which assess public

[24] Opt-In application submitted on in Docket 25-OPT-02. Page 3.17-20.
[25] 19january2017snapshot.epa.gov/region8-waterops/emergencies-and-security-loss-pressure_.html

exposure levels to the toxic air contaminants that will be released with each BESS failure; we also appreciate that the proposed rule requires the dispersion modeling results to reflect the specific battery chemistry that is proposed and that Hydrogen Fluoride (HF) is one of the toxic constituents that must be analyzed. However, the rule does not require applicants to establish HF emission rates based on actual battery configurations and instead authorizes HF emission factors that are estimated from "literature reviews" and "emission tests". However, ***all*** HF emission rates and HF emission factors published for lithium battery fire scenarios are heavily biased low and thus substantially inaccurate and erroneous (as SORT has previously explained in comments submitted in various AB 205 dockets[26] which are all incorporated herein by reference[27]). Because all published HF emission factors and HF emission studies of lithium battery fires are inaccurate and erroneous, they do not constitute "substantial evidence"; accordingly, the Commission is barred by the California Environmental Quality Act (CEQA) from relying upon published HF emission factors and HF emission studies in any toxics exposure assessments performed in any lithium BESS "Opt-In" licensing proceeding[28].

Fortunately, accurate HF emission rates for lithium BESS fires are easily derived from BESS manufacturer information. As SORT has previously explained[29], lithium BESS fires generate significant HF emissions because the flammable electrolyte contained within each battery cell is suffused with fluorinated salts ($LiPF_6$, LiFSI, LiTFSI, etc.). During the initial stage of every lithium battery cell fire or vent scenario, all the electrolyte in the cell is released and all the fluorinated salt dissociates; this in turn releases fluorine which quickly reacts with moisture in the air to form HF. That is why

---

[26] SORT first addressed this in the Prairie Song docket when we pointed out that published HF emission factors and HF emission studies cited by the applicant rely on Fourier Transform Infrared (FTIR) analyzers which were not properly configured and thus substantially underestimated HF concentrations (SORT letter dated April 6, 2026). In the Corby docket, we carefully analyzed *every* HF emission factor and HF emission study cited by the Commission's Staff Assessment, and demonstrated that they provided inaccurate and erroneous HF results (SORT letter dated September 14, 2026). These comments conclusively proved that HF emission factors and HF emission studies published for lithium battery fires substantially suppress HF concentration results and are thus intrinsically inaccurate and erroneous.

[27] SORT comments submitted in the Corby Docket (24-OPT-05) include, but are not limited to, letters dated August 20, 2026 and September 14, 2026. SORT comments submitted in the Seahawk Docket (26-OPT-02) include, but are not limited to, letters dated June 23, 2026 and August 11, 2026. SORT comments submitted in the Prairie Song Docket are identified in a previous footnote.

[28] AB 205 requires the Commission to comply with CEQA in all "Opt-In" licensing proceedings, and CEQA requires all determinations regarding the "significance" of a project's environmental effects to be supported by "substantial evidence" [Cal. Pub. Res. Code § 21082.2(a)]. CEQA also explicitly states that substantial evidence ***is not*** "evidence which is clearly inaccurate or erroneous" [Cal. Pub. Res. Code § 21082.2(c)]. Accordingly, published HF emission factors and HF emission studies of lithium battery fires cannot be used as a basis for assessing the environmental effects of a proposed BESS project because they are inaccurate and erroneous and thus not "substantial evidence".

[29] See comments submitted September 14, 2026 in the Corby docket and June 23, 2026 in the Prairie Song docket.

HF is emitted every time a lithium battery cell vents or burns. The fluorinated salt contained in each lithium battery cell is the principal source of HF emissions (particularly during venting when there is no flame and thus no vinyl casings are burned); therefore, the most accurate methodology for assessing HF emissions from a BESS failure event is to obtain manufacturer information pertaining to the amount of electrolyte and fluorinated salt that is present in each battery cell. Typically, this is done by reviewing the Safety Data Sheet (SDS) provided by the manufacturer which, by law, must identify all the constituents in the product (particularly those that are hazardous, flammable, or toxic). Because the SDS provides precise information regarding how much fluorine is present in the fluorinated salts dissolved in the electrolyte, it provides an accurate basis for calculating the amount of HF that will be emitted by each battery cell when it vents or burns. The calculation merely involves factoring the amount of fluorinated salt in each battery cell that is reported in the SDS with the molecular weight of the salt and the fluorine content in the salt, and then reconciling these results with system data to derive an HF emission rate. A sample calculation involving the Sungrow PowerTitan 2 BESS unit has already been provided to the Commission[30].

Because all published HF emission factors and HF emission studies of lithium battery fires are inaccurate and erroneous, and because accurate HF emission factors are easily derived based on manufacturer data, the proposed rule must be revised to preclude the use of published HF emission factors and HF emission studies and instead require applicants to rely on manufacturer data pertaining to the concentration of fluorinated salts for assessing public exposure to HF during BESS failure events. Furthermore, the SDS and other manufacturer information must be made publicly available and included in the record of the Opt-In proceeding so that the public will have the ability to assess the accuracy of any claimed HF emission rates.

Proposed Rule Language Pertaining to the Suspension of Opt-In Applications Directly Controverts AB 205 Statutory Language.

The AB 205 statute limits the circumstances under which an applicant can request an extension of time to complete the certification process, and it requires the applicant to "demonstrate a reasonable need" for a delay [Cal. Pub. Res. Code § 25545.4(e)(2)(F)]. This is an important public safeguard because it ensures that a developer does not dither or unreasonably stretch out an application and thereby erode project opposition efforts by creating "public participation burnout". The stringent time frames and approval deadlines established by the AB 205 statute are critical for ensuring adequate public participation; therefore, time extensions authorized pursuant to § 25545.4(e)(2)(F) should be very limited and only granted for substantive reasons.

[30] SORT letter filed in the Prairie Song Docket on April 6, 2026.

Shockingly, the proposed rulemaking ***eliminates*** the public participation safeguards provided by § 25545.4(e)(2)(F) and actually allows an applicant to delay the application process for any amount of time they wish because it adds the following sections to 20 Cal. Code Regs. § 1876.5:

> (d) At any time after filing the application, the applicant can request the proceeding be suspended by filing a written request to the executive director stating the request for suspension, the estimated length of time needed for the suspension, and an acknowledgment that the commission will cease all work on the application during the suspension.
>
> (1) Upon receiving a request for suspension that meets the requirements of this section, the executive director shall grant the suspension and may require status reports based on the length of the suspension to keep the commission and public informed on the state of the project.
>
> (2) If the estimated time for suspension has passed and the applicant does not request the proceeding be resumed, the executive director may seek termination of the application at a business meeting unless the applicant shows good cause for why the suspension should be continued.
>
> (3) The executive director may terminate the suspension and resume the proceeding upon request by the applicant, at which time the executive director shall establish a new proceeding schedule.

SORT stridently objects to the inclusion of these new provisions for several reasons. First, the proposed regulations are intrinsically inconsistent with AB 205 statutory language and are therefore facially invalid[31]. For instance, the AB 205 statute gives the Commission discretionary authority regarding whether or not to approve an applicant's extension request because § 25545.4(e)(2) states "the time to certify the environmental impact report, mitigated negative declaration, or negative declaration or issue a certificate for the site and related facilities pursuant to this chapter ***may*** be extended if…. (F) The applicant files into the docket a written request that demonstrates a reasonable need for extending the time…" (emphasis added). However, the proposed rule eliminates this discretionary authority and compels the Commission to grant every extension request because it states "Upon receiving a request for suspension that meets the requirements of this section, the executive director ***shall*** grant the suspension…" (emphasis added). Additionally, the proposed regulations eliminate the applicant's statutory obligation to demonstrate that there is "reasonable need" for an extension; in fact, they do not require the applicant to provide ***any*** explanation for the requested delay. Every aspect of the proposed subsection (d) of 20 Cal. Code Regs. § 1876.5 is facially invalid; therefore, it cannot be approved.

[31] Regulations are only valid if they are consistent with the underlying statute. Cal. Gov. Code § 11342.2

Second, proposed subsection (d) of 20 Cal. Code Regs. § 1876.5 will apply to any application that is submitted regardless of whether it is "complete"; thus, it will allow developers to submit any number of substantially deficient, incomplete, and last minute "slapdash" applications before June 30, 2030 (when AB 205 sunsets) and then immediately request that these applications be "suspended" for whatever amount of time the applicants need to assemble a properly "complete" application. In other words, proposed subsection (d) of 20 Cal. Code Regs. § 1876.5 will essentially render the June 30 2030 deadline for AB 205 applications to be so elastic that it is almost meaningless.

Third, proposed subsection (d) of 20 Cal. Code Regs. § 1876.5 will allow applications to drag on for *years* and it does not even compel termination of the application after the suspension deadline is passed! In fact, it grants the Commission discretion to *never* terminate a suspended application no matter how old it is! At the very least, a suspended application should be terminated as a matter of law after the suspension deadline is passed. There is absolutely ***no*** statutory basis for proposed subsection (d) and if adopted, it will not withstand judicial review.

Finally, SORT objects to proposed subsection (d) of 20 Cal. Code Regs. § 1876.5 because it will erode public participation in licensing proceedings by dragging out projects in a manner that entirely controverts AB 205's expedited timelines; this will create cycles of public fatigue, distrust, and skewed community representation that only punish the public and benefit the applicant.

Proposed Rule Language Pertaining to Community Benefit Agreements Must be Rejected.

SORT appreciates some aspects of the proposed revisions to 20 Cal. Code Regs. § 1879.5. For instance, SORT appreciates that executed Community Benefit Agreements shall be filed in an unredacted form and will thus be accessible by the public; this will make it more difficult for applicants to sow enmity between local community groups by keeping the terms of each agreement secret. SORT also greatly appreciates proposed language which requires the Commission to "consider the number of agreements and diversity of benefits to be provided to local communities when considering whether to approve the project"; this will go a long way to ensure that Community Benefit Agreements are tethered to the communities in which the associated projects are located and thus exclusively benefit the communities which are burdened by with the projects' adverse effects[32]. It is anticipated that this will achieve the fundamental purpose of

[32] SORT comments submitted into the Prairie Song Docket on January 5, 2026 explains that AB 205 can only be interpreted to mean that the organizations which benefit from the agreements mandated by AB 205 must represent the interests of the community that is burdened by the adverse impacts of the project; any other interpretation would lead to absurd outcomes. We also clarified that agreements between

Community Benefit Agreements established under AB 205: namely, that they benefit community based organizations *that represent the interests of the local community in which Opt-In projects are located*. This distinction is critical for rural unincorporated communities that fall under county jurisdiction and are thus located far from, and have few connections with, county representatives. Opt-In applicants with projects in unincorporated areas have historically shown a disdainful disregard for the local communities that host their projects and instead consider the counties themselves to be the communities that are to be benefitted[33].

While SORT appreciates some of the language added to § 1879.5, other proposed revisions are substantially troubling. For instance, proposed subsection (c) establishes minimum funding requirements based on the physical sizes or output capacities of proposed projects. Because it is not clear where these values came from or how they were derived, they lack basis and appear arbitrary. Even more concerning, they are presented as minimum "floor" values, but they will be weaponized by applicants and used as "ceiling" limits to pressure and intimidate local community organizations. Finally, there is no statutory basis for the funding requirements established by proposed subsection (c) and while AB 205 requires applicants to execute Community Benefit Agreements, it does not grant the Commission authority to establish baseline funding values for such Agreements. Thus, it appears that the Commission will exceed its statutory authority if proposed subsection (c) is adopted.

Materials Relevant to All Pre-filing Consultations Must be Made Accessible to the Public and Included in the CEQA Record.

Recent changes in the CEQA statute now require the Commission to incorporate all materials in the administrative record that are relevant to the Commission's CEQA compliance mission; this includes materials submitted to, or transferred from Commission staff as well as communications involving an "administrative official in a supervisory role who is reviewing the project" [Cal. Pub. Res. Code § 21167.6(e)(7) and § 21167.6(e)(10)(B)]. SORT notes that the proposed rule adds language which compels

---

applicants and labor union organizations that have no presence in the local community do not qualify as "Community Benefit Agreements".

[33] For example, the application submitted for the Prairie Song BESS did not even acknowledge that the project was in the Community of Acton, and instead claimed Acton was located miles away (page 2-1). The applicant's Community Benefit Plan was prepared by the applicant without any engagement with Acton-based organizations; in fact, it does not even mention Acton (Appendix 1B). Instead, the Community Benefit Plan describes an agreement with a labor union organization that is headquartered in the City of Los Angeles that has no connection with, or members in, Acton; it also states that benefits would "align" with Los Angeles County priorities and achieve things like providing backup power to hospitals, acquiring "open space" across the county, and expanding "energy education". As a community based organization that represents the interests of the Community of Acton, SORT can say with absolute confidence that none of these activities would benefit any community based organizations that represent the interests of Acton and that none of them would satisfy the applicant's community benefit obligations.

the applicant and responsible Commission staff to participate in a "Pre-filing Consultation" and discuss potential environmental impacts pertaining to water quality, site access, and other CEQA issues. Because the Pre-filing Consultation will address matters pertinent to CEQA, and because the Commission staff who will be directing the Pre-filing Consultation will be participating as "administrative officials in a supervisory role" who are "reviewing the project", any materials presented or discussed during the Pre-filing Consultation and any substantive communications that occur pursuant thereto must be included as part of the CEQA Record. And, given that a core purpose of CEQA is to keep the public informed regarding a proposed activity's potential environmental impacts, the Pre-filing Consultation meetings should be recorded and made accessible to the public.

The proposed rulemaking demonstrates that the Commission is interested in understanding local perspectives on projects before an application is submitted because it directs the applicant to discuss "local concerns" during the Pre-filing Consultation. SORT greatly appreciates the Commission's inclination to understand local concerns from the very inception of a project. However, it is doubtful that an applicant would convey an honest and forthright description of "local concerns" to Commission staff particularly if the local community does not generally support the proposed project. Moreover, because AB 205 applicants are neither from, nor connected to, the communities in which their projects are proposed, they are fundamentally incapable of accurately conveying "local concerns" regarding their project. Accordingly, the Commission should not accord any weight to applicant opinions regarding "local concerns" regarding proposed projects. If the Commission really wants to attain an accurate understanding of local concerns regarding a proposed AB 205 project, then SORT recommends the following revision:

> § 1876.5. Pre-filing Consultation.
> (a) At least 30 days before submitting an opt-in application under this Article, the applicant shall meet with staff and local community representatives to discuss information requirements for the opt-in application and potential issues that may arise during formal review of the project, including, but not limited to, significant project impacts, local concerns, grid connectivity, water supply, or site access.

Materials Relevant to Local Agency Consultations Must be Made Accessible to the Public and Included in the CEQA Record.

SORT appreciates the intent of proposed revisions to § 1878.1 that pertain to local agency consultations occurring after an application is submitted. Given that these consultations address environmental effects of proposed AB 205 projects, any materials pertaining to such consultations are relevant to the Commission's CEQA mission; accordingly, for the reasons presented above, they must be made available to the public

and included in the CEQA record. These materials include, but are not limited to, the local agency notification described in § 1878.1(a), any documents received pursuant thereto, and any communications between Commission staff and local agencies.

Copyrighted Records Must be Included in all AB 205 Dockets.

Proposed revisions to 20 Cal. Code Regs. § 1880.5 establish that "All documents, except for copyright protected records, placed in the record of proceedings shall be publicly available at the time the Staff Assessment is filed". This is very troubling. The mere fact that a document is copyrighted does not make it a "protected record" that must be withheld from the public. A "copyright" designation does not automatically preclude public access to an electronic version of the document. This is particularly true when the document is relied upon by a government agency to approve a project or assess the environmental effects of a proposed action because the public has a right to review and comment on such documents under the common law "fair use" doctrine[34]. It is also particularly true in circumstances where the document is already in the public domain.

According to information provided at the Rulemaking Workshop on November 2, 2026, the language which withholds copyrighted material from the docket was incorporated because it is believed it reflects a statutory requirement. During the Workshop, Mr. Babiola stated "the copyright is actually statutory language in the area of CEQA where it talks about the administrative record… that is statutory on the administrative record" [timestamp 1:03:10]. SORT respectfully disagrees with this conclusion. Section 21186 of the CEQA statute states that, for the preparation and certification of the record of proceedings for a leadership project certified by the Governor, "documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format". It is clear from this plain and unambiguous language that the Commission may include copyrighted documents in electronic format in the docket and that there is ***no*** statutory requirement which compels the Commission to withhold such documents from the public. Furthermore, making copyrighted documents available in the docket is essential to achieving the transparency and public engagement purposes of CEQA (particularly when such documents are utilized to assess potential environmental impacts and the efficacy of proposed mitigation measures). Accordingly, SORT urges the Commission to refrain from adopting rule language which directs copyrighted documents to be withheld from the docket.

SORT has, with appropriate credits and citations, submitted numerous copyrighted documents into multiple Commission dockets; thus, it would be completely untoward for the Commission to adopt a rule that requires these documents to be withheld from

[34] justice.gov/archives/oip/blog/foia-update-oip-guidance-copyrighted-materials-and-foia

the dockets in which they were submitted. It would also be completely untoward for the Commission to alter SORT's comments by removing the copyrighted documents that are attached. There is only one document that SORT has cited which was not submitted into a docket because it was behind a "paywall"; nonetheless, relevant portions of the document were summarized (with citations) as permitted under the "fair use" doctrine, and a link was provided for use by the public and the Commission to acquire a copy. This is perhaps the only circumstance in which it may be reasonable for the Commission to withhold a copyrighted document from the docket; however, such a circumstance would still require the Commission to summarize all relevant portions of the withheld document and discuss how such information was factored into any conclusions or findings. And, in the interest of full transparency, SORT contends that copies of all copyrighted documents that are part of the administrative record be made available at a location that is within or near the community where the project is located (such as at the local library) so that affected members of the public will have full access to all relevant records.

Proposed Language Pertaining to Evidence of Site Control is Vague and Requires Clarification.

SB 254 amended Public Resources Code Section 25545.2 to require Opt-In applications to provide "evidence that the applicant has sufficient real property rights to the proposed location to currently access, build, and operate the proposed facility". The statute provides no specific information regarding what would constitute evidence of "sufficient" property rights; it could be anything from a "Grant Deed" conveying "fee simple" ownership to a temporary agreement between the applicant and a property owner that the land would be conveyed to the applicant if the application is approved by the Commission within a certain timeframe. Because the statutory amendment to Section 25545.2 is vague and imprecise, it is essential that the rulemaking which implements Section 25545.2 provide clear language regarding what constitutes "evidence that the applicant has sufficient real property rights". Unfortunately, the proposed rulemaking does not provide this clarification; instead, it adopts the same vague language found in Section 25545.2 regarding "proof of site control evidencing sufficient real property rights…".

SORT contends that the level of evidence required to demonstrate "sufficient real property rights" should be reasonable and not excessive. For example, the regulations should *not* require the applicant to provide proof of ownership of all lands involved in a proposed project for several reasons. First, if an applicant is required to purchase all lands required for a proposed project before an application is even submitted, then the applicant will certainly argue that any alternative project sites are "economically infeasible" even if they do eliminate significant environmental impacts pursuant to

Public Resources Code Section 21081(a)(3)[35]. Second, SORT can find no statute or regulation which states that the issuance of a license by the Commission is contingent on ownership of the project site by the applicant; therefore, an applicant should be allowed to wait to purchase the property until after the license is issued. If an applicant wants to take on the risk of not owning the project site until after the license is issued, then that is their choice; it should not in any way alter the Commission's licensing decision. Third, SORT has seen how developers have used and abused residents in their attempts to purchase land for BESS projects. SORT members have spoken with residents who have been repeatedly harassed and even threatened by BESS developers who tell them to sell now because once the project is approved, their land will be worthless. Some residents have been told that they cannot discuss the offers with neighbors or other community members even *before* any contracts have been signed; others signed non-disclosure agreements without realizing it, and when they finally understood what they had done, they became too frighted to even discuss their experiences out of fear of being sued. The whole process is disgustingly exploitative: developers use high pressure fear tactics which count on residents to be too ignorant to understand their options and too poor to hire a lawyer to help them with the process.

The "land acquisition" process for the Opt-In program is already too furtive, too dark, too threatening, and too upsetting to local residents, and SORT is concerned that the imposition of burdensome site control requirements by the Commission will make the entire process even more furtive, dark, threatening, and upsetting. SORT also contends that the evidence of site control provided by an applicant must be filed in the docket in an unredacted form and made available for public review.

Proposed Rulemaking Should Reflect New Federal Requirements.

On August 26, 2026, a national emergency was declared[36] and an executive order was issued which bans the acquisition, importation, and installation of certain foreign-produced bulk-power system electrical equipment and software within the United States

[35] Public Resources Code Section 21081(a)(3) authorizes the Commission to reject alternatives which reduce environmental impacts if there is evidence showing the alternatives are economically infeasible. The test for economic infeasibility was established by *Uphold Our Heritage v. Town of Woodside* and it holds that an alternative is economically infeasible if the marginal costs of the alternative, as compared to the proposed project, is so great that a reasonably prudent developer would not proceed with the alternative. SORT is certain that, if applicants are required to invest significant capital into purchasing all the land required for a proposed project before their application was even submitted, they will argue that any location other than the proposed location is economically infeasible. SORT does not concede that such arguments are valid; to the contrary, SORT considers such arguments to be completely invalid because the applicants can always sell the land and recoup their initial investment. Nonetheless, applicants will manufacture reasons to support economic infeasibility arguments which the public will have to overcome to ensure that less environmentally damaging alternatives are properly addressed.

[36] whitehouse.gov/presidential-actions/2026/08/declaring-a-national-emergency-to-secure-the-united-states-bulk-power-system/

due to national security concerns. Pursuant thereto, the Department of Energy (DOE) has until the end of December to publish specific implementation directives that detail which suppliers and parts face enforcement and restrictions. Notably, these pending restrictions focus on utility-scale electrical facilities in the United States such as substation transformers, grid-connected inverters, large generators, battery energy storage systems, turbines, and industrial control systems which are precisely the same systems that the Commission is seeking to expedite through this rulemaking process. Given these circumstances, SORT recommends that the Commission consider the DOE directives when they are released and ensure consistency between them and whatever rules are adopted in this rulemaking process.

Additional Concerns

SORT also has the following concerns pertaining to the proposed regulations:

- The proposed regulations add § 1881.5 which prohibits the "Compliance Project Manager (CPM)" from commencing testing or operation of a BESS facility until either local fire suppression inspections are completed or until 90 days after the applicant informs the local fire department that the facility is ready for inspection (whichever occurs first). This is dangerously imprudent because it authorizes a BESS facility to commence operations ***before*** fire suppression inspections are completed, and it places expediency above safety. Also, the term "Compliance Project Manager" should be defined (though it is presumed that the CPM is an employee of the Commission).

- During the November 2, 2026 Rulemaking Workshop, several commenters asked the Commission to recognize "workforce development" and "worker transition" training as "community benefits" that can be secured under the Community Benefit Agreements required by AB 205. While worker programs may be perceived as beneficial for urban communities, they are not "per se" beneficial for rural communities and thus should *never* be presumed to provide "community benefits" in rural communities. Rural communities tend to have far fewer community-serving programs and amenities than their urban counterparts and as such, they tend to prioritize programs that provide community-wide benefits over programs like "workforce development" which benefit few (if any) rural residents[37]. Accordingly, the Commission *should not* automatically or perfunctorily recognize "workforce development" or "worker transition" programs as "public benefits" in rural communities.

[37] As explained above, the Prairie Song BESS applicant claimed the "Workforce Development" contract it signed with a Los Angeles-based labor union organization was a "Community Benefit Agreement" even though the organization had no members in Acton and had no "Workforce Development" plans in Acton.

- SORT appreciates the proposed rule which requires applicants to include UL 9540A cell-level, module-level, unit-level, and installation-level-large-scale fire test reports in accordance with the latest edition of the UL 9540A standard; however, applicants should not be permitted to claim that these reports are confidential because they are essential to the public's understanding of the environmental effects posed by the project.

- SORT appreciates the proposed rule which requires applicants to describe their decommissioning process. However, it fails to compel applicants to identify the facilities where BESS units will be shipped at the end of their service life or demonstrate that these facilities have sufficient capacities to accommodate all the waste BESS modules that will be generated. Waste BESS units are designated as "hazardous waste" that must be responsibly shipped and properly disposed of; yet, the Commission has never addressed this problem in any of the Staff Assessments it has prepared for proposed BESS projects. Moreover, the proposed Prairie Song BESS project will generate 10,000 or more waste BESS units over its 40 year lifespan and insofar as SORT is aware, no battery disposal facilities have sufficient capacities to process this massive waste stream. The proposed rulemaking must be expanded to address these very real and very significant concerns.

- SORT appreciates the proposed rule which requires applicants to provide detailed site plan and road access information for proposed BESS developments. However, this rule should be expanded to require site plans to depict primary and secondary evacuation routes that residents will use when BESS fires occur.

Conclusion

SORT respectfully requests that the Commission consider the information presented above and amend the proposed regulations accordingly.

Respectfully submitted;

/S/ Jacqueline Ayer
Jacqueline Ayer, Director
Save Our Rural Town