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Suggestions for Emergency Rulemaking

Additional submitted attachment is included below.

PO Box 74
Aptos, CA. 95001
November 10, 2026

California Energy Commission
715 P Street, MS-40
Sacramento, California 95814

Re: Emergency Rulemaking Amending the Opt-In Regulations
Docket Number: 26-OIR-04

Dear Commissioners and Staff:

I live in Aptos, California just a few miles from the Moss Landing BESS facility that exploded and burned in a catastrophic manner in January 2025. I was actually right there as it happened and have firsthand experience with the aftereffects. It is for this reason that I write to you now with my suggestions for how to move forward with renewable energy projects in our state.

Relating to the Emergency Rulemaking Amending the Opt-In Regulations for AB205 and the Commission's certification authority, I believe that there should be clear direction and complete documentation of land rights prior to any pre-applicant meetings for the benefit of CEC, developers and local jurisdictions which will have oversight and complex relationships throughout project development and operation. This would ensure that local planning information is not treated as merely incidental background material.

Materially, the regulations applying to siting of a energy project, particularly a Battery Energy Storage facility should not only consider the exact footprint of the facility and its placement on a specific parcel or set of adjoining parcels, but also will be subject to the land uses surrounding the proposed site, including those parcels that substantially support the proposed facility in the form of ingress and egress roads, gen-tie location, transmission lines, retention ponds, etc.

Without thorough and clear direction from the regulations established under these proposed changes there will be ongoing debate and legal actions challenging the Commission’s ultimate decisions on siting energy facilities and developers will struggle with time consuming delays, CEC staff will be called upon to be mediators and local governments will bear unreimbursed expenses and investments of staff time trying to enforce oversight of mitigations approved autonomously by the CEC and local residents will suffer economic and possible health consequences.

Developers should not be allowed to bypass reasonable requirements with cursory affidavits of ownership and control of project sites. Regulations should follow language suggested below to properly and legally mandate adherence to both the intention and letter of the laws foundational to this Emergency Rulemaking action.

§ 1877

(~~h~~g) The opt-in application shall include a discussion of how ~~whether~~ the project meets the requirements of Public Resources Code sections 21183 and 21183.6.

(h) The opt-in application shall provide evidence that the applicant has sufficient real property rights to the proposed location to currently access, build, and operate the proposed facility. ~~Absent evidence to the contrary, an affirmation by the applicant of such rights and a description of those rights, shall be adequate evidence.~~ Applicant will provide documentation in the form of deeds, legally binding options, documented easements, signed and mapped right-of-ways, long term leases and formalized written agreements or other recorded means to assure the CEC decision makers and local government officials and meet the intention of the law for all necessary property transactions for the actual project site and surrounding lands and parcels which will be required to include access roads for safe emergency ingress and egress as well as construction requirements, run-off retention, gen-tie installations, transmission lines and other accessory components of the project.

(1) For projects on federal land such as land managed by the Bureau of Land Management, the application shall describe the status of the applicant's efforts to obtain a right-of-way or similar entitlement from the applicable federal agency, and a description of the applicant's access to the project site.

(2) For projects on California Tribal Lands, Treaty Lands and Reservations the applicant will provide documentation and agreements with the tribe assuring their sovereignty over their lands in regard to the project and any accessory components of the project on their land and will adopt agreements that any properties involved in the project upstream and within tribal land's watersheds will be unaffected or mitigated in such a way that no negative environmental impacts will occur on the tribal lands.

(3) Prompt denial of permit applications will be given should there be evidence of violations of ownership or tenant rights. Projects will not be considered if there is evidence of illegal evictions of tenants, eminent domain actions, forced or coerced takings, violations of voter approved restrictions on land uses or other broad over-reaches of takings.

(4) In reviewing an application for certification, the Commission shall identify and consider all applicable local land-use plans, general plan policies, zoning designations, specific plans, agricultural preservation policies, open-space designations, and adopted land-use regulations applicable to the proposed site and related facilities and make their decisions consistent with these requirements.

(i) For energy storage systems, the opt-in application shall include documentation of the applicant's consultation with the authority that has jurisdiction over fire suppression, consistent with Public Resources Code section 25545.19, including the

date, the names and titles of participants, a summary of matters discussed, and a description of how the proposed project would address those matters. Furthermore, the applicant will show documentation of coordination with State and local government agencies in regard to safety and emergency/evacuation plans to include coordination with California Highway Patrol, CalTrans, local Sheriffs, Medical Facilities and Police where appropriate, and Offices of Emergency Services, Tribal Police and other first responders as required.

Where a proposed project is inconsistent with an applicable local land-use designation, policy, or regulation, the applicant shall identify the nature and extent of the inconsistency. The Commission shall evaluate the inconsistency, its implications for surrounding land uses, and whether reasonable project modifications or mitigation measures can address the identified conflict.

Because CEC and local government authorities may have different understanding of terms the following definitions should be included for any discussions.

The regulations should define terms that currently risk being interpreted inconsistently.

Existing land use: The actual physical use of land at the time of application.

Designated land use: The use identified in the applicable adopted general plan or specific plan.

Compatible land use: A use that does not create unacceptable conflicts with existing or planned surrounding uses.

Sensitive land use: Residential areas, schools, hospitals, parks, agricultural operations, and other locations where project impacts could create particular concerns.

Cumulative land-use impacts: The combined effects of the proposed facility and other existing, approved, or reasonably foreseeable developments.

The following should also be considered in the immediate Rulemaking session OR subsequent to the adoption of the Emergency compliance work in a separate deep dive into needed changes relating both to land use and operational issues with pending and future projects. Ultimately, these changes are needed to prevent wastes of developer time and money, overtaxing CEC staff and offering local jurisdictions the ability for proper oversite of permitted projects.

Additional work could include:

1. **Suggested amendment:**

For purposes of this article, land-use compatibility shall be assessed by reference to both existing physical land uses and adopted future land-use designations. The Commission shall not presume that a site is suitable for development solely because it is vacant, previously disturbed, or designated for industrial or energy-related use
.
This last sentence is particularly important. Previously disturbed land is not necessarily land without competing environmental, agricultural, or community interests.

2. **Strengthen requirements for agricultural and conservation land**

I would add more explicit requirements concerning:

- Prime agricultural land and land under Williamson Act contracts.
- Agricultural preserves and conservation easements.
- Open-space and habitat conservation designations.
- Land identified for future agricultural or conservation use.
- Fragmentation of agricultural parcels and disruption of farming operations.

Suggested amendment:
The Commission shall separately evaluate impacts on agricultural and conservation lands, including impacts arising from the permanent or temporary conversion of agricultural land, fragmentation of agricultural parcels, interference with agricultural access, and restrictions on the continued operation of adjacent agricultural uses.
Where a proposed facility would affect land subject to an agricultural preservation agreement, conservation easement, or other legally enforceable land-use restriction, the application shall identify the applicable restriction and explain how the proposed project would comply with it or how the restriction would otherwise be lawfully addressed.

The regulations should also require consideration of indirect effects on neighboring agricultural operations, rather than focusing exclusively on the project footprint.

3. Establish a consistent geographical study area

One significant source of uncertainty is how far beyond the project boundary land-use impacts should be assessed.
I recommend establishing a minimum study area, with flexibility to expand it where impacts extend further.

Suggested amendment:
The land-use assessment shall identify existing and planned land uses within a minimum radius of one mile from the proposed project boundary. For transmission lines, access roads, pipelines, and other associated facilities, the assessment shall extend to the areas directly affected by those facilities.

The Commission may require a larger study area where reasonably foreseeable impacts, including noise, visual impacts, traffic, fire risk, agricultural disruption, or land-use incompatibility, extend beyond the minimum study area.
This would create consistency between applications while avoiding an arbitrary geographical limit.

4. **Improve assessment of surrounding and future land uses**

The regulations should explicitly require applicants to consider conflicts with both existing developments and reasonably foreseeable future developments.
For example, an energy storage facility might be technically suitable for an industrial parcel but create significant compatibility issues with nearby residential development or a planned school.

Suggested amendment:
The applicant shall identify existing, approved, pending, and reasonably foreseeable land uses within the study area. The assessment shall consider whether the proposed facility could constrain, displace, or adversely affect existing or planned uses.

Particular consideration shall be given to residential development, schools, healthcare facilities, recreational areas, agricultural operations, and other sensitive land uses.
I would also require consideration of cumulative impacts where multiple energy facilities are proposed within the same geographical area.

5. **Strengthen local government consultation and response requirements**

The regulations should give local authorities a clearly defined opportunity to identify land-use concerns and receive substantive responses.
AB 205 already requires local government involvement, and the CEC explains that local agencies can comment on applications and that the Commission will attempt to resolve potential noncompliance with applicable requirements.

Suggested amendment:
The Commission shall provide affected local governments with a reasonable opportunity to identify land-use conflicts, provide relevant planning documents, and submit recommendations concerning project design, siting, access, landscaping, setbacks, and compatibility with surrounding uses.

The Commission shall prepare a written response to material land-use comments submitted by local governments. Where the Commission does not adopt a recommendation made by a local government, it shall explain the reasons for its decision.

The Commission shall document the measures considered to avoid or minimize identified land-use conflicts.

This would make consultation meaningful without transferring the CEC's statutory decision-making authority to local governments.

6. **Additional provision: Require a consolidated land-use assessment**

I would introduce a specific section in the regulations requiring a standardized Land Use Compatibility Assessment as part of every application.

In additional, in regard to Battery Energy Storage Systems, preferential treatment should be given to those proposals that are based on non-flammable, non-lithium-based chemistries. These projects could be given expedited handling and move to the front of the CEC cue due to the lower risk and lower hazardous nature of their components.

Thank you for your consideration of these Emergency Rulemaking suggestions and please consider the possibility of including the additional items should CEC bi-forcate the processs.

Sincerely,

Karell Reader

Karell Reader