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CEC Opt-In Rulemaking Edits

Please see attached comment letter.

Additional submitted attachment is included below.

November 10, 2026

California Energy Commission
Docket Unit, MS-4, Docket No.: 26-OIR-04
715 P Street
Sacramento, California 95814
Efiled to Docket #: 26-OIR-04
RE: Docket #: 26-OIR-04 - Project Title: Emergency Rulemaking Amending the Opt-In Regulations

Dear Commissioners:

INTRODUCTION

Stop Lithium BESS in Santa Cruz County is a growing community advocacy group made up of more than 1,000 Santa Cruz County residents. We are actively engaged with the proposed Seahawk BESS Project, currently proceeding through the Opt-In Certification Program. We submit these comments on behalf of concerned community members affected by proposed lithium-based battery energy storage system (BESS) facilities, including the proposed Seahawk BESS in south Santa Cruz County on the outskirts of Watsonville City.

EXECUTIVE SUMMARY

We support the Commission's goal of timely transition to a reliable carbon neutral energy infrastructure and responsible development. We also expect the Commission to exercise independent judgment, evaluate credible contrary evidence, and establish enforceable protections before authorizing facilities with potentially lethal consequences for neighboring residents and emergency responders, and potentially critical consequences for agricultural lands, natural habitats and historic resources. The September 29, 2026 Express Terms (TN 272980) present an opportunity to improve the opt-in process. We strongly support several key regulatory updates, including early termination provisions, proof of site control, BESS manufacturer failure-history disclosures covering the last 5 years, and toxic plume dispersion modeling that evaluates acute hazard indices at sensitive receptors and requires an explanation of planned mitigation if the index exceeds 1.0. To build upon these foundational provisions, we propose targeted edits to further clarify and strengthen site control, interagency input, staff response to material public evidence, community benefit agreements, public notice and participation, agricultural land safeguards, final inspection authority, battery energy storage system (BESS) safety, public health disclosures, and emergency preparedness, including an express requirement to demonstrate that acute hazard indices do not exceed 1.0 at the sensitive boundaries specified in our proposed text. Specifically, we recommend:

1. Evidence, not just affirmation, of site control inclusive of both primary and secondary access **(§ 1877)**;

2. Expanded applicant consultation with the authority that has jurisdiction over fire suppression as well as other agencies and emergency service providers inclusive of draft emergency response and public warning/evacuation communication materials **(§ 1877(i))**;

3. Structured roles and timeframes for local and regional agency participation and reimbursement clarity **(§ 1876.5, § 1878 and § 1878.1)**;

4. Enhanced response to material public evidence (**§ 1878**);

5. Evidence that community benefit agreements provide a net positive bonus as an amenity or program to the host community beyond any statutory/regulatory mandate or CEQA mitigation **(§ 1879.5)**;

6. Enhanced, multilingual, and radius-based notice and defined opportunities to be heard throughout the proceeding **(§ 1880)**;

7. Timely access, commensurate to access time on the docket, for the public to documents that are not compatible with the docketing system or are copyrighted **(§ 1880.5)**;

8. Clarified authority over final inspection and approval of operational clearance **(§ 1881.5)**;

9. Operational readiness linkages requiring fire authority acknowledgement of emergency public protection plans before BESS testing or operation **(§ 1881.5)**;

10. Transparent assessment of residential and right-of-way setbacks based on site specific noise and credible thermal runaway, fire, explosion, and toxic smoke risks **(Appendix B and § 1877)**;

11. Enhanced soil, water, and hydrogeologic safeguards to protect adjacent agricultural lands and water resources from potential contamination **(Appendix B and § 1877)**;

12. Detailed public warning/notification and evacuation communication plans to maximize safe evacuation and community coordination; **(Appendix B and § 1877)**;

13. Explicit noise assessments and mitigation commitments at the setback interface **(Appendix B)**; and

14. Rigorous, conservative worst-case BESS toxic plume and dispersion modeling standards under CEQA **(Appendix B(b)(9) and § 1877)**.

These edits build on and are tied to the updated provisions addressing application content, pre-filing fire authority consultation, interagency consultation, staff review, community benefit agreements, public outreach, public comment, final fire inspection and operational approval, and BESS-specific Appendix B requirements. The proposed express terms include new and revised sections in Title 20, including sections 1876.5, 1877, 1878, 1878.1, 1879.5, 1880, 1880.5, 1881.5, and Appendix B.

COMMENTS FOR PROPOSED AMENDMENTS TO REGULATORY TEXT

Comment 1: Require Tangible Evidence at Application of Site Control Inclusive of Primary and Secondary Access § 1877 and Appendix B(a)(4)(i)

1. Require tangible documentation at the time of application, such as a recorded grant deed, an executed lease, a binding option to lease or purchase, or recorded easements for access and off-site mitigation, inclusive of primary and secondary access, demonstrating that the applicant possesses sufficient, legally valid, binding and enforceable real property rights to access, construct, operate, maintain, inspect and decommission the proposed facility, including all ancillary facilities, transmission interconnections, utility corridors and primary and secondary emergency access routes.

2. Make it clear that a bare statement of intent or self-affirmation is not enough.

3. The applicant should identify each affected parcel by assessor's parcel number, identify the record owner or owners, and provide a parcel-specific description of the rights claimed, the duration of those rights, any material conditions precedent, and any limitations affecting construction, operation, emergency access, or decommissioning.

4. Where an instrument requires authorization by multiple property owners, trustees, governmental entities, or other parties with a legally recognized interest, the applicant should provide documentation establishing that all authorizations legally required for the claimed rights have been obtained.

5. The applicant should identify any proposed project component or emergency-access route dependent upon an agreement that has not been executed, an option that does not confer present necessary rights, or an unresolved third-party authorization. Such a component or route should not be represented as legally secured.

6. The applicant should disclose any known pending litigation, recorded claim, written objection, or other material dispute concerning the validity, scope, or enforceability of the property rights necessary for the proposed facility. The Commission should provide affected parties an opportunity to submit relevant documentation and should evaluate material disputes within the scope of its certification authority.

7. Before certification, the Commission should make a written finding, supported by substantial evidence in the administrative record, that the applicant has demonstrated the legal authority necessary to construct, operate, maintain, and decommission the project as certified.

8. A material change in ownership, access rights, lease terms, easements, or other site-control instruments affecting project feasibility or public safety should be promptly disclosed to the Commission and evaluated before the affected activity proceeds.

9. Clarify that if an application proposes physical improvements, road construction,

grading or environmental mitigation on land where the developer holds no legal property interest or written consent, the filing is considered incomplete.

10. Appendix B(a)(4)(i) should require a parcel-specific site-control report containing the documentary evidence required by Section 1877(h), together with a map identifying the boundaries of all property interests and rights-of-way necessary for the proposed project.

    The report should distinguish between existing enforceable rights, conditional rights, pending agreements, and rights not yet obtained. It shall separately identify all primary and secondary emergency-access routes and the legal instruments authorizing their use.

    Confidential personal information may be protected in accordance with applicable law, provided that confidentiality shall not relieve the applicant of its obligation to furnish the Commission with sufficient evidence to verify site control.

Reasons/Rationale
Accepting a bare assertion that a developer "affirms" site "control," or allowing them to propose mitigation on parcels they have no agreement to touch ties up state staff, exhausts community resources and fuels public distrust.

Comment 2: Clarify Fire Authority Consultation and Expand to Include All Other Public Agencies and Emergency Service Providers Responsible with Management of a Reasonably Foreseeable Site Emergency § 1877(i) and Appendix B (g)(9)

1. The fire authority consultation should include discussion of water supply, secondary access and all-weather access, realistic evacuation routes, SCADA operation and chain of command emergency notification, incident command, mutual aid, response limitations, history of failures of any and all battery technology from chosen supplier and other related equipment, real-time infrared sensors of all facility areas, 24/7 off-gassing monitoring and notification systems, HF monitoring in real time with data delivered directly to local fire and hazmat teams, realistic worst-case multi-unit thermal runaway plume modeling, additional specialized equipment and training necessary, energy storage system design, input on mitigating potential fire and life safety concerns, and input on the content of emergency action plans.

2. The applicant should provide any and all materials presented in the consultation with the fire staff not less than 30 days prior to the consultation. Fire officials need adequate time to process substantial amounts of technical information and prepare for the consultation. They should not be required to achieve this on the spot at a fast-paced discussion.

3. For an energy storage system, the opt-in application should include a site-specific Emergency Response Coordination and Capability Assessment documenting consultation and coordination with the authority having jurisdiction over fire suppression and all other public agencies and emergency service providers reasonably expected to have responsibility for responding to or managing a reasonably foreseeable

emergency at the facility, the resulting toxic hazards and resulting evacuation and/or closures, inclusive of:
- the fire department having authority over fire suppression
- neighboring mutual-aid fire agencies
- neighboring specialized hazardous-materials response teams
- county sheriff
- local police departments
- CHP
- county office of emergency services or emergency management
- emergency medical services authorities
- ambulance and emergency medical transport providers
- CA Department of Transportation
- local public works and transportations departments
- public health agencies, environmental health departments, water agencies
- evacuation centers, emergency shelters and animal shelters
- school districts and university boards

4. The applicant should provide draft emergency response and public warning/evacuation communications materials to the authority having jurisdiction over fire suppression and all other relevant agencies not less than 30 days prior to consultation and summarize the fire authority's and other agencies' feedback and applicant responses.

5. The assessment should document the dates of consultation, names and titles of participating representatives, information provided, concerns identified, and the applicant's proposed resolution of each material concern.

6. The assessment should evaluate credible emergency scenarios, including thermal runaway, fire propagation, explosion or deflagration, toxic gas release, hazardous smoke dispersion, contaminated runoff, loss of communications or power, and simultaneous emergencies affecting regional response resources.

7. The assessment should identify available emergency personnel, equipment, specialized training, hazardous-materials capabilities, emergency medical resources, firefighting water supplies, access routes, evacuation routes, and mutual-aid arrangements.

8. The applicant should prepare a written interagency emergency response plan addressing incident command, notification procedures, agency responsibilities, protective actions, evacuation and shelter-in-place decisions, a public warning and evacuation communications plan, traffic management, medical response, environmental monitoring, contaminated runoff management, and recovery procedures. The interagency response plans should include:
   - documented site-specific field verification and scenario-based exercises demonstrating clear findings that conflicts between evacuation and ingress are resolved and that emergency access and safe evacuation can actually be maintained
   - verified roadway widths, turnouts, shoulders, intersections, obstructions, emergency-vehicle dimensions, evacuation demand, evacuation clearance times, traffic queues

and realistic incident scenarios, including road blockage and impaired visibility
- roles of applicant/owner, local emergency management, and the authority having jurisdiction over fire suppression
- the authority vested with the power to order evacuation or shelter in place
- coordinated evacuation and shelter-in-place criteria
- a Public Warning and Evacuation Communications Plan, inclusive of:
  - accessible alerts transmitted through redundant channels, including Wireless Emergency Alerts, reverse-911 or county alert systems, sirens, social media, multi-lingual messaging and direct contact that address power, internet and cellular failures, people who are asleep or away from electronic devices, non-English-speaking households, residents with hearing or vision disabilities, people with mobility or medical needs, and individuals who require assistance to evacuate
  - notification decision trees
  - clear, route-specific instructions
  - designated safe destinations
  - notification of residents away from home with animals confined in residences, barns, paddocks or pastures
  - which authorized agencies or trained animal-response organizations will coordinate access, rescue, transport, shelter, veterinary care and reunification without obstructing emergency vehicles or exposing owners to hazardous conditions; residents must not be expected to violate evacuation orders of enter hazardous areas to protect their animals
  - a commitment to conduct at least annual joint evacuation exercises with local responders and to update plans based on after-action findings
- equipment, methods and metrics for onsite, real-time and timely monitoring of key toxic off-gassing constituents, including hydrofluoric acid (HF), hydrogen cyanide (HCN), carbon monoxide (CO), phosphoryl fluoride (POF3), and respirable lithium and heavy metal particulate matter (PM2.5) that accurately accounts for variable wind direction
- infrastructure and equipment sufficient for containment of fire suppression water runoff during a multi-container, multi-day BESS fire incident that occurs in conjunction with a 100-year rain storm
- contaminated firewater runoff waste sampling and disposal
- post-incident testing of and clean-up plans for soil-groundwater systems, aquifers, water treatment facilities, irrigation conveyances and domestic wells
- soil testing that is based on most current and accurate methods and metrics for identifying lithium and heavy metal deposition from BESS lithium fires, specifically testing that does not use the standard EPA agricultural or regulatory core drilling depth of 7.6 centimeters and instead applies the <5mm depth vetted as accurate for deposition from BESS lithium fires by the scientific community in Professor Ivano Aiello's landmark November 2025 study (Aiello, I.W., Endris, C., Cunningham, S. *et al.* Coastal wetland deposition of cathode metals from the world's largest lithium-ion battery fire. *Sci Rep* **15**, 42113 (2025). https://doi.org/10.1038/s41598-025-25972-8)

9. The applicant should provide each consulted agency a reasonable opportunity to review and comment on the draft assessment and emergency response plan. Written comments,

recommendations, objections, and agency responses should be included in the application record.

10. A failure of an agency to respond should not constitute concurrence, approval, or a determination that emergency-response capabilities are adequate. The applicant should document its consultation efforts and the Commission should independently evaluate any unresolved material emergency-response issue.

11. The Commission should not certify the facility without determining, based on substantial evidence, that reasonably foreseeable emergency-response needs have been adequately evaluated and that necessary protective measures, resources, and enforceable mitigation requirements have been identified.

12. The Emergency Response Coordination and Capability Assessment and emergency response plan should be updated before initial operation and whenever a material change in battery technology, facility design, emergency access, or identified emergency response capability could affect public safety.

13. Nonconfidential portions of the assessment, agency comments, and emergency response plan should be made publicly available with sufficient opportunity for review and comment before certification. Sensitive security information may be protected as authorized by law."

14. The applicant should provide a coordination matrix identifying each responsible agency, its role, the date of consultation, concerns raised, actions required, outstanding deficiencies, and the status of agency review.

15. The applicant should also identify the funding, equipment, training, and continuing support necessary to implement the emergency response plan, including any enforceable commitments to provide such resources.

Reasons/Rationale
Documented consultation with the fire authority is useful, but consultation is not a substitute for demonstrated response capability. The regulations need to require a written evaluation of personnel, specialized equipment, training, water supply, mutual aid, incident command, response limitations, and sustainable funding. Material gaps should be resolved through enforceable measures before certification or operation, as appropriate.

Given credible risks of thermal runaway, toxic smoke, and fast-moving hazards, communities need advance, plain-language notification frameworks and clear interagency coordination. A major BESS incident may require road closures, evacuations, hazardous-materials response, ambulance transport, hospital preparedness, air monitoring, water protection, and animal evacuation. These responsibilities extend beyond the fire department and require an interagency Emergency Response Coordination and Capability Assessment.

Tying emergency response plan elements to the applicant's dispersion modeling ensures technical coherence and facilitates coordination with fire authorities and emergency managers. Appendix B requires dispersion modeling for worst-case BESS thermal runaway, comparison to acute exposure thresholds, and mitigation if acute hazard index exceeds 1.0. Building public protection plans on that modeling aligns with CEQA transparency and public safety.

Emergency response plans must be operationally realistic for rural communities, which is where the majority of the proposed grid-scale BESS are being sited, including for residents with disabilities, households requiring evacuation assistance, and people who cannot immediately relocate.

For rural roads such as the no through way Minto Road, which provides primary access to the proposed Seahawk BESS, the analysis must address circumstances in which residents have only one practical means of egress and the roadway is too narrow to accommodate simultaneous outbound evacuation traffic and inbound fire engines, ambulances, law-enforcement vehicles, and other emergency personnel. An emergency response plan cannot assume two-way traffic capacity that the roadway does not physically provide.
We request an express prohibition on reliance upon unverified assumptions that residents can evacuate while responders enter along the same constrained roadway. The Commission should require consultation with affected residents, the responsible fire and law-enforcement agencies, road authorities, and emergency-management personnel; documented field verification; scenario-based exercises; and publicly available findings resolving conflicts between evacuation and ingress. If a safe and feasible evacuation or shelter-in-place strategy cannot be demonstrated, certification should not proceed on the premise that the issue can be resolved after approval.

Comment 3: Require Detailed Warning and Evacuation Communication Plans § 1877 and Appendix B(g)(9)

1. The application should include BESS Emergency Protection Plans inclusive of:
   - a Public Warning and Evacuation Communications Plan detailing:
     - accessible alerts transmitted through redundant channels, including Wireless Emergency Alerts, reverse-911 or county alert systems, sirens, social media, multi-lingual messaging and direct contact that address power, internet and cellular failures, people who are asleep or away from electronic devices, non-English-speaking households, residents with hearing or vision disabilities, people with mobility or medical needs, and individuals who require assistance to evacuate
     - notification decision trees
     - clear, route-specific instructions
     - designated safe destinations
     - notification of residents away from home with animals confined in residences, barns, paddocks or pastures
     - which authorized agencies or trained animal-response organizations will coordinate access, rescue, transport, shelter, veterinary care and reunification without obstructing emergency vehicles or exposing owners to hazardous

conditions; residents must not be expected to violate evacuation orders of enter hazardous areas to protect their animals
- a commitment to conduct at least annual joint evacuation exercises with local responders and to update plans based on after-action findings

Reasons/Rationale
Please see Comment # 2.

<u>Comment 4: Enhance Local and Regional Agency Participation and Reimbursement Clarity</u> § 1876.5, § 1878 and § 1878.1

1. Mandate (instead of making it optional) staff invitation of relevant state and federal agencies, regional agencies (including MPOs and air districts) and California Native American tribe to the pre-application meeting.

2. Allow requests for additional information to be based on issues raised by local governments, regional Planning agencies, air districts, water boards and California Native American tribes with reasonable timeframes for those agencies to review and comment.

3. Mandate staff notice for agency participation to regional transportation planning agencies, MPOs, air districts, water quality control boards, and county agricultural commissioners for projects on or adjacent to agricultural land.

4. Require staff to meet in at least one interagency technical session within [45] days after completeness to resolve site-specific standards, thresholds, or design concerns raised by local and regional agencies with the developer attending.

Reasons/Rationale
Formal invitations and structured technical engagement promote early resolution of site-specific standards and ensure agency expertise informs the record. Requiring invitations to regional bodies and technical session enhances meaningful interagency input.

The proposal's direction that local agencies are not expected to conduct studies or retain experts risks limiting the quality of local technical participation. Local agencies may need independent fire engineering, toxicology, hydrology, cultural resource, or other expertise to evaluate highly specialized claims. The Commission should not define the requested scope so narrowly that significant local concerns are excluded.

<u>Comment 5: Enhance Response to Material Public Evidence</u> § 1878

1. Require a written disposition when material, reasonably supported concerns about public health, safety, or environmental impacts are submitted. The response should identify the evidence considered, any independent verification obtained, unresolved disputes, and reasons for declining further investigation.

Reasons/Rationale
This establishes a transparent process for resolving substantial contradictory evidence. This does not require agreement with every commenter; it requires accountable consideration of material evidence.

Comment 6: Clarify Community Benefit Agreements (CBAs) § 1879.5

1. Mandate that CBAs must provide tangible, visible benefits to the actual residents living next to the project. Funding should be focused on real neighborhood infrastructure, roadway safety and local utility relief.

2. Mandate that CBAs provide a net positive bonus as an amenity or program that is different from and beyond any statutory/regulatory mandate or CEQA mitigation.

3. Mandate that all approved CBA obligations transfer automatically to any new owner as a binding condition of the permit.

Reasons/Rationale
CBAs should not become private deals that merely fund non-profit administrative overhead or rely on uncertain installment payments that disappear if a project runs into financial trouble.

The CEC needs to strongly clarify that a community benefit provides a net positive bonus while a regulation is a requirement and mitigation fixes a harm. If an action is already legally required by a statute, a regulation, or a CEQA mitigation, allowing the action to also double as a benefit defeats the purpose of the statutory requirement that the community be provided a benefit.

Comment 7: Strengthen Public Notice and Opportunity to be Heard § 1880

1. For each public meeting, informational workshop, scoping workshop, and business meeting at which the opt-in application will be considered, staff and the applicant should provide mailed notice to all postal addresses within 2 miles of the project site boundary, and emailed notice to persons on the project listserv, at least 21 days in advance. Notice shall be provided in English and in the two most prevalent non-English languages spoken in the census tracts within 2 miles of the site, based on the most recent American Community Survey."

2. The applicant should maintain a project website with meeting dates, agendas, recordings, translation availability, key docket filings, and a plain-language project overview, updated within 3 business days of any filing or scheduling change.

3. Each public event should include a defined oral public comment period of no less than 60 minutes, with procedures for remote testimony and language access, including real-time interpretation in the languages identified in subsection (d)."

4. Staff shall accept written public comments on the Staff Assessment for not less than 60 days and on the updated Staff Assessment for not less than 30 days before Commission consideration, and shall publish responses to significant environmental comments as part of the final environmental document.

Reasons/Rationale
Ensuring timely, multilingual, and radius-based notice and meaningful oral and written comment opportunities is essential to public safety, environmental and climate justice, CEQA and administrative transparency, and meaningful participation.

Comment 8: Timely Public Access to the Record § 1880.5

1. All documents that the CEC relies upon or comprise the administrative record must be readily available to the public. This should include documents "incompatible with the docketing system" or copyrighted.

2. The CEC must provide an alternative electronic method for public access that is commensurately as timely as access on the docket.

3. The regulation should be amended to make it clear that all documents including Material Safety Data Sheets (MSDS), Safety Data Sheets (SDS), UL 9540A Test Reports, modeling assumptions, and modeling outputs, etc. are not confidential nor constitute trade secrets.

Reasons/Rationale
Technical records should be accessible early enough to permit meaningful public scrutiny. There must be a reasonable opportunity for the public to identify omissions and request correction. These documents are essential to understanding the potential impacts caused by the project.

Comment 9: Clarify Authority Over Fire Inspection and Approval of Operational Clearance § 1881.5

1. The CEC may not automatically certify a BESS when the required fire inspection has not occurred within the legislated timeframe of 90 days (per SB 283).

2. Should the CEC decide to allow a BESS to start operation without the authority that has jurisdiction over fire suppression completing the required fire inspection the Compliance Project Manager will need to explain and justify such decision to the public ***before*** deciding to certify the BESS (per SB 283).

3. The Compliance Project Manager should require that any design or equipment changes or modifications recommended by the jurisdiction over fire suppression at the final inspection be fully implemented before certification.

4. The Compliance Project Manager should not have veto power over whether the fire

authority's recommended changes are "approved" (or not) or implemented (or not.)

5. Approval to commence testing or operation should be conditioned on submittal to the CPM of finalized emergency response plans and public warning/evacuation plans acknowledged by the authority having jurisdiction over fire suppression.

Reasons/Rationale
SB 283 and Public Resources Code Section 25545.19 do not grant the Compliance Project Manager (CPM) a statutory "veto" over a failed inspection report anywhere in the text of the statute or the code. Furthermore, allowing the CEC's Compliance Project Manager the right to nullify the fire authority's inspection recommendations also nullifies the clear intent in SB 283, the Clean Energy Safety Act, which was to grant the fire jurisdiction responsible for fire suppression the authority to be the final check on whether the BESS is operationally safe.

Comment 10: Site-Specific Setback Justification and Analysis Appendix B(b)(1)(i) and § 1877

1. Require a clearly stated and mapped setback distance from the nearest BESS enclosure to: a. the property line of the nearest residential receptor; b. the nearest shoulder of a public roadway and c. the nearest passenger rail line. The application shall include a sites specific evaluation demonstrating that the proposed setbacks provide adequate protection against noise and credible thermal runaway, fire, explosion, and toxic smoke risks, supported by technical evidence, barrier modeling, or location-specific conditions.

2. For applications including BESS, the application should demonstrate compliance with Appendix B(b)(1)(E)(i) setbacks and demonstrate that proposed distance buffers or alternative physical mitigation provide adequate protection for nearby residential receptors and public rights-of-way.

Reasons/Rationale
Setbacks reduce exposure to operational noise and credible risks associated with thermal runaway, fire, explosion, and toxic smoke. Appendix B currently requires mapping of setbacks to residences and roadways but does not explicitly require an evidentiary demonstration that the proposed spacing is sufficient to protect public health and safety. Grounding setback proposals in site-specific risk data and engineering controls advances public safety while maintaining project flexibility.

Comment 11: Soil, Water and Agricultural Protections and Mitigation Safeguards Appendix B(b)(1)(e) and § 1877

1. The CEC should prioritize and respect existing local measures, policies and codes that protect agricultural land. It is within the CEC's statutory right to not just "consider" LORS, but also to act on them to deny the siting of grid-scale BESS on agricultural lands. This should at minimum be a site-by-site decision, taking into account a close

analysis of site-specific circumstances.

2. For BESS proposed on or adjacent to agricultural lands, the application should incorporate protective measures ensuring long-term preservation of soil productivity, groundwater quality, and adjacent agricultural uses.

3. For BESS proposed on or within 1,000 feet of Prime Farmland or Farmland of Statewide Importance, the applicant should:
   a. Provide a soils and hydrogeologic assessment identifying potential contaminant migration pathways and attenuation using the most current and scientifically vetted methods and metrics, without relying on outdated EPA standard sampling that is not scientifically viable for toxic deposition from a BESS lithium fire;
   b. Establish appropriate vegetated or engineered buffers between any BESS enclosure and active agricultural land boundaries;
   c. Provide secondary containment and stormwater isolation sized for worst-case firefighting runoff volumes;
   d. Provide a soil and groundwater monitoring plan with baseline sampling and post-incident confirmatory testing triggers; and
   e. Provide a remediation and restoration plan and financial assurance mechanism adequate to address potential contamination.

Reasons/Rationale
The Opt-In Certification Program is a statewide initiative. It should approach the siting of grid-scale BESS through a statewide planning lens. In that sense, not every county or municipality has siting options appropriate for large-scale, hazardous industrial development, and some counties and municipal locations are tied economically to outsized agricultural economies. Between 2000 and 2022, California lost 13.7% of its farmland.

Prime and statewide-significant agricultural lands are valuable resources susceptible to potential soil and water contamination from BESS fire runoff and off-gas deposition. Establishing clear buffer analysis, containment, baseline testing, and financial assurances protects soil health, water quality, and agricultural operations consistent with CEQA principles. Appendix B already requires a water quality protection plan for BESS fire events and discussion of biological impacts including soil, surface water, and groundwater contamination. The proposed additions create practical risk-assessment standards to implement these protective aims.

Comment 12: Noise Transparency and Mitigation Commitment at Setback Interface
Appendix B(b)(1)(e)

1. Require a project-specific noise assessment for BESS operations at the nearest residential property line and public right-of-way shoulder, including tonal and low-frequency components, and identify mitigation to meet applicable local noise standards or, where none apply, to achieve community-protective levels at the setback interface.

Reasons/Rationale
Operational BESS equipment can produce tonal and low-frequency noise affecting nearby residences. Transparency and mitigation at the setback interface support public health and community acceptance. Section 1878.1(a)(1) contemplates solicitation of local noise requirements and thresholds of significance from local agencies. This addition ensures those standards are analyzed and met.

Comment 13: Require Rigorous Worst-Case BESS Toxic Plume Modeling Parameters
Appendix B(b)(9) and § 1877

1. In Parameters for Worst-Case BESS Toxic Plume & Dispersion Modeling (H), require that any air quality or toxic dispersion modeling submitted for a Battery Energy Storage System (BESS) facility model a worst-case foreseeable thermal runaway event using conservative meteorology, source term, and chemical composition parameters. The analysis shall satisfy the following minimum standards:

   - **Source Term & Failure Scale Assumptions.** (a) The modeling source term should evaluate plausible multi-container cascading thermal runaway based on facility layout and barrier design. (b) Credit for active fire suppression, water injection, or nitrogen purge systems should be supported by empirical testing or verified manufacturer specifications under multi-container conditions.
   - **Meteorological Parameters**. (a) Dispersion modeling should utilize AERMOD, SCIPUFF, or validated Computational Fluid Dynamics (CFD) software evaluated under conservative atmospheric dispersion conditions. (b) Modeling should incorporate low ground level wind speeds and stable atmospheric conditions (such as Pasquill-Gifford Stability Class F) representative of local worst-case site meteorology.
   - **Chemical Species & Toxicity Thresholds.** (a) Emission estimates should incorporate cell-level off-gas generation rates derived from UL9540A testing data or representative literature for the proposed battery chemistry. (b) The dispersion analysis should quantify ambient ground-level concentrations for key off-gassing constituents, including Hydrofluoric Acid (HF), Hydrogen Cyanide (HCN), Carbon Monoxide (CO), Phosphoryl Fluoride (POF3), and respirable lithium and heavy metal particulate matter (PM2.5). (c) The Hazard Index (HI) calculated for acute chemical exposures should be evaluated against applicable health-protective exposure standards to ensure acute impacts do not exceed HI = 1.0 at off-site sensitive receptors and mapped agricultural land boundaries.
   - **Mapping, Deposition & Technical Submittal Requirements**. (a) The applicant should submit high-resolution isopleth maps depicting the maximum geographical extent of modeled acute toxic plume contours (HI >= 1.0), overlaid onto local aerial imagery, residential property boundaries, public roads, passenger rail lines, and mapped agricultural lands within the modeling domain. (b) The analysis should include deposition modeling evaluating potential post-incident soil, crop, and surface water accumulation rates for fluorides and heavy metals. (c) The applicant shall submit all executable digital input files to the public docket concurrently with the application filing.

2. For applications including BESS, the application should demonstrate compliance with Appendix B(b)(9)(H). The geographic reach of the modeled toxic plume contour (HI >= 1.0) shall be utilized to inform the applicant's Public Warning and Evacuation Communications Plan required under Appendix B(b)(9)(G).

Reasons/Rationale
Under CEQA, public health risk assessments and toxic air contaminant evaluations must be grounded in realistic yet conservative worst-case modeling supported by substantial evidence. Specifying clear meteorological, source-term, and chemical parameters ensures that dispersion modeling provides a transparent, scientifically sound basis for evaluating off-site environmental impacts and enforcing the requirement that thermal runaway events do not exceed an acute Hazard Index of 1.0 at sensitive boundaries.

CONCLUSION
The proposed edits advance public safety, environmental and climate justice, CEQA and administrative transparency and meaningful participation. They build on the Commission's updated framework by specifying clarified community benefit agreement requirements, transparent setback evaluations, agricultural land safeguards, robust emergency public protection planning, clarified final inspection authority, and conservative toxic plume modeling, while enhancing public and agency engagement. These comments help build a permitting process that respects both the state's energy goals and the communities hosting lithium-based, grid-scale BESS infrastructure. We respectfully request that the Commission adopt the proposed regulatory text changes and associated rationale set forth above and that these comments be

We respectfully request that our comments be included in the rulemaking record and receive a substantive written response.

Sincerely,
Nina Audino
Stop Lithium BESS in Santa Cruz County