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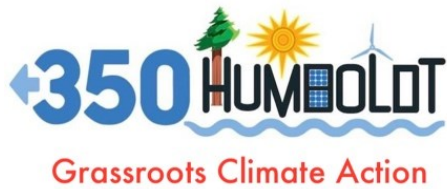
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Final Comments on AB 525 Permitting Conceptual Framework

Please see attached PDF with comments.

Additional submitted attachment is included below.



COMMENTS ON THE AB 525 “CONCEPTUAL FRAMEWORK” FOR PERMITTING

Summary of Our Comments

The core proposal in the conceptual framework is that existing permitting processes be used but coordinated by MOUs between the many agencies that have a defined relationship to offshore wind permitting. We understand the appeal of this process for persons who have been part of the coordinated permitting alliances cited in the report. However, for permitting huge amounts of offshore wind over the next 20 plus years, we believe there is considerable evidence that the process should follow these principles:

- *Permitting should be centralized one-stop shopping.*
- *The permitting team at CEC should use AB205 and the REPowerEU Action Plan to reformulate a process appropriate to the urgency of the need.*
- *In order to expedite and consolidate permitting that will be used for the next 22 years at least, we believe legislation is necessary to centralize the permitting authority and limit the permitting time to one year in most cases and a maximum of two years.*
- *The permitting analysis should include ports and transmission with a goal of an integrated permitting process.*
- *Adopt language like REPowerEU that offshore wind development is of “overriding public interest.” **And** commit to a swift and just transition achieved with inclusive planning that is grounded in social equity considerations.*
- *Address any conflict between rapid permitting and local involvement by state funding of community organizations for advocacy, and by extensive adaptive management incorporated into permits.*

Reasons why we believe the proposed MOU-based permitting is inadequate to the establishment of a very large offshore wind industry.

Rather than draw primarily on permitting processes that focused on projects that are unrelated to offshore floating wind, we propose that the permitting process be based on what has been learned in European countries in permitting offshore and floating offshore wind. The Economic Benefits report contains this sentence: “Denmark had success in building its offshore wind industry, with local job creation, by investing in its ports and centralizing the permitting process for offshore wind plants. From decades of experience with offshore wind, the Danish Energy Agency highlights the importance of local hiring provisions and local support for projects.” This

reinforces points made in a webinar by Jana Ganion, who represents the Blue Lake Rancheria, who went on a trip to Europe this past summer. She reported that industry representatives her group interviewed said that the industry is open to many provisions, including community benefits agreements, but requests that they have only one agency to deal with and clearly defined expectations. The MOU-based approach is virtually the opposite of what developers are looking for.

Note that BOEM itself has committed to permitting reform:

The U.S. Department of the Interior will reform its regulations for the development of wind energy facilities on the country's outer continental shelf to help meet crucial climate goals, it said in a statement on Thursday [January 17, 2023]. The proposed rule changes would save developers a projected \$1 billion over a 20-year period by streamlining burdensome processes, clarifying ambiguous provisions, and lowering compliance costs, the statement said.¹

We believe that the California process for offshore wind should be very similar to the newly legislated provisions (AB 205, 2022) for land-based wind and solar which authorizes a centralized permit process through the CEC. The Conceptual Framework tentatively suggests the California State Lands Commission as the lead CEQA agency, which is a good start since the lead agency should not be local agencies as these are decisions of statewide (and worldwide) significance. However, as in AB 205 there should be prescribed ways for local agencies to indicate their concerns and be reimbursed for compiling these. APPENDIX 1 contains a summary of this legislation.

The CEO of the largest offshore wind company in the world has suggested that no permitting process should extend beyond a year. This is no longer unreasonable, and is in fact now the rule for new projects in Europe. As of April, 2021, offshore wind projects in Europe had somewhat similar permitting timelines to the United States. Permitting averaged 5 years and could be as long as 9 years. In May 2022, in response to climate catastrophes and the urgency of ending dependence on Russian oil because of the invasion of Ukraine by Russia, the European Commission tackled the permitting roadblocks that slowed down expansion of wind and solar through the REPowerEU Action Plan. It defined renewable development as of “overriding public interest” and delineated best practices for reducing permitting time. In certain defined areas and for new projects, permitting is expected to be complete in one year. In other areas, permitting time is two years. The Commission has published a detailed guidance for

¹ <https://www.reuters.com/business/environment/us-simplify-offshore-wind-regulations-meet-climate-goals-2023-01-12/>; and, <https://static1.squarespace.com/static/5d87dc688ef6cb38a6767f97/t/63c6ed0b5a5a6761e78d8b9b/1673981195701/Recharge%2B-%2BUS%2Boffshore%2Bwind%2Bregulator%2Bsees%2Bnew%2Bpermitting%2Brefor%2Bms%2Bsaving%2Bsector%2B%241bn%2B%26%2Bspurring%2Bgrowth%2B1-13-23+%281%29.pdf>; <https://www.doi.gov/pressreleases/interior-department-finalizes-offshore-wind-safety-and-environmental-responsibilities>

governments on simplifying permitting rules and procedures.²

Recommendation: The permitting team at CEC should use AB205 and the REPowerEU Action Plan to reformulate a process appropriate to the urgency of the need with a one to two year limit on the timeframe for permitting.

Besides responding to the urgency of these decisions, there are two other considerations that the MOU process might not resolve. a) There should be no possibility of different agencies making conflicting demands on the developer and b) there should be no possibility of sequential permitting where agencies have to wait for approvals from other agencies before acting, if such waits would extend the process beyond one year.

Finally, the Conceptual Framework sees it as advantageous that legislation is not required by their roadmap. We disagree.

Recommendation: In order to expedite and consolidate permitting that will be used for the next 23 years at least, we believe legislation is necessary to centralize the permitting authority and limit the permitting time to a year.

AB 205 also contains some strong provisions for protecting local interests. These include community benefit agreements. The text of these provisions are presented in APPENDIX 2 of these comments.

The permitting process should include ports and transmission

It is unclear why the permitting process framework showed such little ambition and urgency. It is this urgency that requires the state to institute an overriding one-stop shop for permitting, instead of traditional permitting that gives every jurisdiction the opportunity to stop a project. For a wind project in Humboldt County, for example, dozens of local jurisdictions from the Bay to the Central Valley could be involved. However, the need for prompt permitting contrasts with the additional complication involved in the three major investments necessary in offshore wind.

The Conceptual Framework must consider not only (1) wind turbines, but also (2) transmission and (3) ports. No component of a project can be accomplished without the other two. Presumably applicants for permits will have done comprehensive economic analysis that includes these three issues, but the permitting agency should consider all three as a package because an applicant for one cannot just assume that the other two issues will also be permitted. Legislation will be required to do this.

² A summary is at: "Europe Puts Fast Permitting of Renewables at the Heart of its Energy Security Plan." WindEurope, May 2022.
<https://windeurope.org/newsroom/press-releases/europe-puts-fast-permitting-of-renewables-at-the-heart-of-its-energy-security-plan/>

Transmission planning and permitting is especially difficult. Without legislative authorization of rapid permitting it is likely to hold up the whole process, especially if the CEC, CAISO and CPUC are assuming a long permitting process for the other components of the offshore wind process.

We note the difficulty of assembling all components of an application along with requirements for community benefits. “Early coordination of permitting agencies and engagement with stakeholders will be a vital step so that impacts can be avoided, minimized, and mitigated.”³ While this quote pertains to the Central Coast, it is equally applicable to the North Coast.

Recommendation: Include ports and transmission in a rapid, one-stop permitting process. Seek special expedited permitting for ports and transmission lines from the Legislature. If this is not possible or only partially possible, the conceptual framework should explicitly address how these critical components will be related and a timeframe for doing so.

There is uncertainty about communications and relationships with Tribal Nations that the Conceptual Framework for Permitting notes but does not address.

Here are the three processes the Conceptual Framework documents that include requirements for communicating with engaging with Tribal Nations:

- “...the PACW-1 FSN lease documents require each lessee to develop a Native American Tribes Communications Plan (NATCP) that describes the strategies that the lessee intends to use for communicating with Tribes that have cultural and/or historical ties to the Lease Area. The purpose of the NATCP is to ensure early and active information sharing, focused discussion about potential issues, and collaborative identification of solutions to ensure that Tribes have an early and active role in providing input to the Lessee before it makes decisions that may impact their cultural, economic, environmental, and other interests.” [This plan has to be finished within 120 days of the lease and must cover the next 39 years of communications.]
- “The state would also initiate government to government consultation pursuant to Assembly Bill 5243 with California Native American tribes – this process could be coordinated with BOEM’s “section 106” consultation process undertaken pursuant to the National Historic Preservation Act, to ensure consistency, reduce duplication, and reduce the burden on tribal governments to fully engage. The state and BOEM may also, with consent of consulting tribes, wish to engage in a programmatic level consultation that encompasses multiple lessees and their projects (e.g., one for the

³ <https://reachcentralcoast.org/wp-content/uploads/Waterfront-Infrastructure-Report-121522.pdf> page 14

central coast WEA and one for the north coast WEA) as a means of increasing efficient engagement and consistent outcomes/agreements.”

- “Conceptual framework also envisions providing a venue for tribes and stakeholders to publicly engage with agency staff and principals to provide input into the agency processes (separate from and in addition to legally required tribal consultation and public process). As feasible, utilize the efforts of lessees to meet the requirements of their leases with BOEM to implement their NATCP, FCP, and other required outreach and engagement activities. Look to models of early public engagement, such as the CSLC approach to engagement in their environmental review of offshore wind projects being proposed in state waters.”

Our concern is that having three (or more) avenues for communication will have drawbacks both for Tribal Nations *and* permitting bodies *and* the developers.

Recommendation: We request that this issue be raised at the CEC and CPUC En Banc Meeting on March 2, 2023: Advancing Clean Energy in Partnership with California Native American Tribes

G. Permitting must encompass the needs of Tribal Nations and stakeholders while assuring that the outcome of the permit process is a rapid “yes.” This is a delicate balance to achieve but one that is crucial to meeting the compelling need in the right way. The urgency of the climate crisis cannot be overstated. As Secretary -General of the United Nations stated, “we are sleepwalking to climate catastrophe.” We want to make sure that the long term, global consequences are front and center in all elements of the BOEM permitting process. Realizing this requires putting concerted effort into making the process as rapid as possible, especially prioritizing immediate engagement and consultation with Tribal Nations and stakeholders.

Climate justice: Renewable energy technologies have the potential to advance several goals related to social equity, including improved health benefits, energy resilience and job creation. However, the development of energy technology has traditionally been shaped by existing power structures and social norms, which has disproportionately disadvantaged some communities.⁴ Many existing projects involve and benefit groups that are already in privileged positions or have the time and resources to advocate for their well-being. Therefore, there is a need for community engagement processes that have been established with the specific goal of including marginalized and impacted groups in the planning and implementation of energy-related projects.

In efforts to establish distributive justice (the fair distribution of costs and benefits in society), planning and decision-making must include voices from local tribes, rural, low-income, and other marginalized communities.⁵ These efforts are especially crucial when development occurs

⁴ Johnson, O. W., Han, J. Y-C., Knight, A-L., Mortensen, S., Aung, M. T., Boyland, M. Resurrección, B. P. 2020. Intersectionality and energy transitions: A review of gender, social equity and low-carbon energy. *Energy Research & Social Science*, 70, 101774, <https://doi.org/10.1016/j.erss.2020.101774>.

⁵ Cowell, R., Bristow, G., and M. Munday. 2012. Wind Energy and Justice for Disadvantaged Communities. *Joseph Rowntree Foundation, JRF, York*.

in rural or coastal areas (such as Humboldt County) that are relatively vulnerable in terms of economic or environmental impacts.⁶ Inclusion of the interests of Indigenous nations through the community engagement process must be prioritized, as industrial encroachment and development has historically occurred at the expense of these communities and without adequate respect for their sovereignty over unceded ancestral lands.⁷ It is important to acknowledge that Indigenous nations are not a monolith, and act accordingly—each Indigenous nation has its own customs, practices and goals which may influence their decisions. To support robust and responsible project development, the process must incorporate interdisciplinary perspectives and prioritize strategies from local Indigenous nations which are stakeholders in the project outcome.⁸

Community benefits from renewable energy projects must seek to establish distributive justice and serve the long-term resilience of our local community, which would ultimately be living with the offshore wind development.⁹ Concerns from the local community must be addressed in order to focus on issues of justice around wind energy developments and their host locations.¹⁰ Renewable energy is crucial to mitigating the climate crisis but technology itself is just one piece of the puzzle.

With rigorous commitment to consultation and negotiation with stakeholders, off shore wind can proceed with the efficiency and speed appropriate to the risk we all face. Broadening the permitting scope to a more far-sighted vision and hastening the process clearly requires that all participants join in a strong collaborative partnership. Coalition building must be central in every step to keep the process moving forward.

*Recommendation: Adopt language like REPowerEU that offshore wind development is of “overriding public interest.” **And** commit to a swift and just transition achieved with inclusive planning that is grounded in social equity considerations.*

The apparent conflict between swift permitting and robust local engagement can be resolved.

While a rapid and comprehensive permitting process is required, preferably with a single state agency as the contact point for developers and local communities, there are ways to be sure community and environmental concerns are also fully developed, heard and acted upon. Here are two:

- 1) The permitting framework should include many opportunities outside of and prior to the legal channels for local communities to organize their views, present them to

⁶ Cowell, Wind Energy

⁷ Johnson, Intersectionality

⁸ Leonard, K., Aldern, J. D., Christianson, A. C., Ranco, D., Thornbrugh, C., Loring, P. A., Coughlan, M. R., Jones, P., Mancini, J., May, D. Moola, F., Williamson, G. and C. R. Stoof. 2020. Indigenous Conservation Practices Are Not A Monolith: Western cultural biases and a lack of engagement with Indigenous experts undermine studies of land stewardship. *EcoEvoRxiv* <https://doi.org/10.32942/osf.io/jmvqy>

⁹ Cowell, Wind Energy

¹⁰ Cowell, Wind Energy

decision-makers, and ensure these concerns are addressed. A classic way this occurs is through public hearings. There have already been a significant number of public hearings, but this approach needs to be included in the conceptual framework.

Recommendation 1: Include in the permitting conceptual framework multiple opportunities prior to and outside the legal structure to be used.

Recommendation 2: Provide state funding for assisting community groups in their efforts to stay on top of a fast moving process, to develop their interests, and to be sure decision-makers hear them.

- 2) With a rapid permitting process there is a greater likelihood that unanticipated problems will arise during the development and operation of the wind farms. Including ample provisions for adaptive management at key points throughout the process will allow these problems to be dealt with creatively, whether environmental or economic or community related. At this point it is not possible to foresee all of the ways in which offshore wind development will affect fisheries, wildlife, and local communities. Adaptive management should be built into all components of the permitting process. One issue worth mentioning here is that while permits will require a decommissioning plan, in fact, it is highly likely that wind turbines will be operating for a great many years into the future. The permitting should take account of this probability by including the end-of-project or permit extension process as part of adaptive management.

Recommendation: Ameliorate unanticipated problems by building into the permitting process a robust system of adaptive management.

Thank you for the opportunity to comment on the Conceptual Framework.

350 Humboldt Steering Committee and Offshore Wind Committee
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Climate Action Campaign
Sue Y Lee

Redwood Chapter Sierra Club, North Group
Gregg Gold, Ph.D., Chair

APPENDIX 1: LEGISLATIVE COUNCIL DIGEST OF AB 205 ON SOLAR AND ONSHORE WIND PERMITTING

This bill would establish a new certification process for a solar photovoltaic, terrestrial wind electrical generation powerplant, or thermal powerplant that does not use fossil or nuclear fuels, with a generating capacity of 50 megawatts or more, an energy storage system capable of storing 200 megawatthours or more of electricity, an electric transmission line from those generating or storage facilities to a point of junction with an interconnected electrical transmission system, or a facility for the manufacture, production, or assembly of energy storage systems or their components, wind systems or their components, solar photovoltaic systems or their components, or specialized products, components, or systems that are integral to renewable energy or energy storage technologies with a capital investment of at least \$250,000,000 over a period of 5 years. The bill would authorize a person proposing to construct those facilities, no later than June 30, 2029, to file an application for certification with the Energy Commission. The bill would require the Energy Commission to review the application, as provided, and to determine whether to issue the certification within a specified time period. The bill would require the Energy Commission to forward the application to a local government having land use and related jurisdiction in the areas of the proposed site and related facility and would require the local agencies to review the application and submit comments on the application, as provided, thereby imposing a state-mandated local program. The bill would authorize local agencies to request a fee from the Energy Commission to reimburse the local agency for the actual and added costs of the review by the local agency. The bill would prohibit the Energy Commission from issuing the certificate unless the Energy Commission makes certain findings. The bill would, except as provided, specify that the issuance of the certification is in lieu of any permit, certificate, or similar document required by a state, local, or regional agency, or federal agency, to the extent permitted by federal law, for those facilities. The bill would designate the Energy Commission as the lead agency for purposes of CEQA in regards to the certification decision. The bill would specify procedures by which the Energy Commission is to conduct the environmental review for its certification decision. The bill would provide that a facility certified under these provision is a certified leadership project under the Jobs and Economic Improvement Through Environmental Leadership Act of 2021, without the need for any action from the applicant or the Governor, if the commission makes certain findings and takes certain actions. The bill would require the Judicial Council to adopt a rule of court to establish procedures that require actions or proceedings related to the certification of an environmental impact report or the issuance of the certification for any site and related facility to be resolved within 270 days, and, if the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 is inoperative or repealed, would require those procedures to become operative.

APPENDIX 2. LANGUAGE IN AB 205 TO ENSURE LOCAL CONCERNS ARE REPRESENTED

The [California Energy] commission shall not certify a site and related facility under this chapter unless the commission finds that the construction or operation of the facility will have an overall net positive economic benefit to the local government that would have had permitting authority over the

site and related facility. For purposes of this section, economic benefits may include, but are not limited to, any of the following:

- (a) Employment growth.
- (b) Housing development.
- (c) Infrastructure and environmental improvements.
- (d) Assistance to public schools and education.
- (e) Assistance to public safety agencies and departments.
- (f) Property taxes and sales and use tax revenues.

25545.10. (a) The commission shall not certify a site and related facility under this chapter unless the commission finds that the applicant has entered into one or more legally binding and enforceable agreements with, or that benefit, a coalition of one or more community-based organizations, such as workforce development and training organizations, labor unions, social justice advocates, local governmental entities, California Native American tribes, or other organizations that represent community interests, where there is mutual benefit to the parties to the agreement. The topics and specific terms in the community benefits agreements may vary and may include workforce development, job quality, and job access provisions that include, but are not limited to, any of the following:

- (1) Terms of employment, such as wages and benefits, employment status, workplace health and safety, scheduling, and career advancement opportunities.
- (2) Worker recruitment, screening, and hiring strategies and practices, targeted hiring planning and execution, investment in workforce training and education, and worker voice and representation in decision-making affecting employment and training.
- (3) Establishing a high road training partnership, as defined in Section 14005 of the Unemployment Insurance Code.

(b) The topics and specific terms in the community benefits agreement may also include, but not be limited to, funding for or providing specific community improvements or amenities such as park and playground equipment, urban greening, enhanced safety crossings, paving roads and bike paths, and annual contributions to a nonprofit or community-based organization that awards grants to organizations delivering community-based services and amenities.