

DOCKETED

Docket Number:	08-AFC-08A
Project Title:	Hydrogen Energy Center Application for Certification Amendment
TN #:	207006
Document Title:	Lorelei H. Oviatt Comments: Kern County HECA 08-AFC-8A Applicant request to Reinstate
Description:	N/A
Filer:	System
Organization:	Lorelei H. Oviatt
Submitter Role:	Public Agency
Submission Date:	12/14/2015 1:41:09 PM
Docketed Date:	12/14/2015

Comment Received From: Lorelei H. Oviatt

Submitted On: 12/14/2015

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Kern County HECA 08-AFC-8A Applicant request to Reinstate

Additional submitted attachment is included below.

Lorelei H. Oviatt, AICP, Director
2700 "M" Street, Suite 100
Bakersfield, CA 93301-2323
Phone: (661) 862-8600
Fax: (661) 862-8601 TTY Relay 1-800-735-2929
Email: planning@co.kern.ca.us
Web Address: <http://pcd.kerndsa.com/>



**PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT**

Planning
Community Development
Administrative Operations

December 14, 2015

File: Hydrogen Energy, California (HECA)
Zone Map No. 120

California Energy Commission
Attn: Hearing Committee Members
1516 9th Street, MS-15
Sacramento, CA 95814-5512

**RE: Hydrogen Energy California – Amended Application for Certification (08-AFC-8A)
Applicants Request to Reinstate the AFC**

California Energy Commission Representatives:

Kern County is in receipt of the notice from the California Energy Commission regarding the November 30, 2015 Motion to the Committee to request to Reinstate AFC Proceedings. These comment pertains to the amended application submitted to the California Energy Commission (CEC) on May 2, 2012 for the Hydrogen Energy California. LLC (HECA) Project.

The November 30, 2015 filing by the applicant includes a section on Compliance with County General Plan and Zoning Ordinance that states "HECA hereby confirms that it will limit the manufacture of products to those for agricultural use only." That statement does not conform to the allowed uses in the zoning ordinance. The important factor is manufacture of fertilizer for agricultural use not the "manufacture of products for agricultural use only." The request is that HECA be held to the allowed zoning ordinance language for the A (Exclusive Agriculture) Zone District which is to restrict its manufactured products of urea or other chemicals for use in " **Fertilizer manufacture and storage for agricultural use only** " as shown in Section 19.12.030 as requiring a Conditional Use Permit.

The filing now also states that instead of utilizing the CO2 for Enhanced Oil Recovery, the proposal is to "... permanently sequester CO 2 beneath the Project site utilizing Class VI wells permitted by the U.S Environmental Protection Agency (EPA). " While the previous component of CO 2 movement to an oil field operation and use in Enhanced Oil Recovery was determined to be accessory to the oilfield operation and an allowed use, the use of a Class VI well for injection of CO2 under the property site is not an allowed use in the zoning ordinance in the A (Exclusive Agriculture) zone district. The injection of CO 2 into the ground, even with Federal EPA Class VI well regulations, should be consistent with a county zoning ordinance determination. Neither the project, the well or the land itself will be owned or leased by the Federal government and, therefore, Federal preemption of land use authority does not apply.

The applicant has had no meetings or discussions with the department on this matter or any other zoning matters. The Zoning Ordinance provides in Section 19.08.030 through 19.08.030 Determination of Similar Use that a request, with appropriate fees, may be made to the Planning Director for an official determination that any proposed use not expressly authorized or permitted is similar to a use listed in the ordinance. The presentation of information to make the case for a Determination of Similar Use is the responsibility of the applicant.

Please take this information into account when considering the request to terminate the application and in further processing to ensure a public process that has integrity and respect for local government authority.

Kern County appreciates our long relationship with the California Energy Commission and appreciates the public transparency of the process.

Should you have any questions, please contact me at the contact information listed above. You may also contact the Planner coordinating County review of this project, Craig Murphy at Cmurphy@co.kern.ca.us.

Sincerely,

Lorelei H. Oviatt, AICP, Director
Kern County Planning & Community Development Plant

CC: County Counsel
Clerk of the Board
Congressman Kevin Mc Carthy, Senate Majority Leader
Congressman David Valado
Hydrogen Energy California, LLC c/o Latham and Watkins LLP
California Energy Commission – John Heiser