



December 9, 2024

Meeting Date: December 10, 2024
Agenda Item No. 30
Distribution Date: December 9, 2024
Batch No. 03

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San Diego County Board of Supervisors
County Administration Center
1600 Pacific Highway, San Diego, CA 92101

cleantechsandiego.org

RE: Agenda Item 30 – New Requirements for Battery Energy Storage Systems (BESS) Projects in Unincorporated Areas, County of San Diego Board of Supervisors Regular Meeting, December 10, 2024

MISSION:
To accelerate clean technology innovation and promote the equitable deployment of sustainable solutions across the San Diego region for the benefit of the economy, the environment, and all members of the community.

Dear Chairwoman Vargas and Members:

On behalf of Cleantech San Diego, please accept this letter in response to the proposed new requirements for battery energy storage systems (BESS) in the unincorporated areas of the County of San Diego.

As background, Cleantech San Diego is a member-based business organization founded 17 years ago to position the San Diego region as a leader in the cleantech economy. We represent the renewable energy industry, a critical sector that employs close to 42,000 people in our region and has a \$9.9 billion impact on our regional economy.

Cleantech San Diego appreciates County Fire's continued work on this important issue. Safety of BESS projects throughout the county remains a top priority for Cleantech San Diego and our members.

After reviewing the proposed interim fire protection guidelines for BESS facilities, Cleantech San Diego believes that the adoption of certain guidelines as written will create a de facto moratorium on BESS projects in the county, which will negatively impact our ability to meet regional renewable energy and resiliency goals while also negatively impacting our regional economy.

Although we have concerns with a number of the interim guidelines, the requirements for a 100-foot setback from property lines for all BESS projects and 10 feet of separation between adjacent enclosures within the property would essentially prohibit the development of all BESS projects in the county. The justifications for these proposed limitations are not consistent with the national industry standards developed by fire officials. To that end, should the Board wish to move forward with the interim guidelines at this time, we respectfully request that before doing so, the Board modify these two sections to align with national standards, which will allow for the continued and safe development of BESS projects in the county.

Specifically, we request that the 10 feet of separation between adjacent enclosures be modified to 3 feet. We also request the 100-foot setback from property lines recommendation be modified to comply with National Fire Protection Association (NFPA) 855 requirements, which include specifications for setbacks and buffering between BESS and property lines, buildings, and other potential exposures. These distances do not follow a one-size-fits-all approach, but are based on type and size of the BESS, its energy capacity, and the surrounding environment, which appropriately allows for flexibility based on project size, type, and location.

Further, as highlighted in the comments submitted by the California Energy Storage Alliance, there are additional proposed recommendations that conflict with NFPA 855. We request that the Board direct County Fire to address these conflicting provisions by working with local industry, labor, and public safety stakeholders so that we can ensure BESS projects developed in the county comply with the latest national safety standards.

Thank you in advance for your consideration and for your continued commitment to our regional climate and renewable energy goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Anderson", with a long horizontal flourish extending to the right.

Jason Anderson
President and CEO
Cleantech San Diego



December 9, 2024

San Diego County Board of Supervisors
County Administration Center
1600 Pacific Highway, San Diego, CA 92101

RE: Via Email: ITEM 30 – NEW REQUIREMENTS FOR BATTERY ENERGY STORAGE SYSTEM (BESS) PROJECTS IN UNINCORPORATED AREAS

Dear Chairwoman Vargas and Board Members:

On behalf of the Large-Scale Solar Association (LSA), we write to respectfully request that Item 30, the Interim Fire Protection Guidelines for BESS facilities, be continued to a future agenda to allow stakeholders time to work with the county to refine the proposed guidelines. The guidelines were released one week ago and contain highly technical and detailed information. Furthermore, the proposal contains inaccuracies and dated references. Industry stakeholders, that have expertise in energy storage, need adequate time to work with county staff to provide meaningful input that will work to inform a more comprehensive and robust proposal.

The Large-scale Solar Association (LSA) is a non-partisan association of solar and battery storage developers that advocates appropriate policies to enable market penetration of utility-scale solar technologies in California and the Western United States. LSA's members are leaders in the utility-scale solar and storage industry with deep experience in all disciplines necessary to site develop, engineer, construct, finance and operate utility scale solar and battery storage systems. LSA's member companies are principally responsible for developing much of the operational and planned solar and storage capacity in California today.

Safety is a top priority for our members and is key to the deployment of solar and storage in California. In order to meet our state's climate and energy goals, California must add 145 GW of new zero-emitting resources to the grid by 2045, including 52 GW of energy storage. Constructing new clean energy infrastructure of this magnitude in such a short timeframe requires coordination with state, local and industry partners. We appreciate the opportunity to provide our feedback, and respectfully request that the Board of Supervisors delay action on the proposed guidelines, allowing stakeholders adequate time to provide meaningful input into this public process.

Should you have any questions, please contact me at eddyconsulting@gmail.com or 415-819-4285.

Sincerely,

A handwritten signature in black ink that reads "Shannon Eddy". The signature is written in a cursive, flowing style.

Shannon Eddy, Executive Director
Large-Scale Solar Association

December 9, 2024

VIA ELECTRONIC MAIL ONLY

Board of Supervisors
County of San Diego
1600 Pacific Highway
Room 310
San Diego, California 92101
E-Mail: publiccomment@sdcounty.ca.gov

Re: New Requirements for Battery Energy Storage Systems (BESS)

Dear Honorable Chair and Members of the Board:

These comments to the proposed County of San Diego (County) “New Requirements for Battery Energy Storage Systems (BESS)” are submitted on behalf of industry participants developing battery storage systems critical to meeting State and County renewable energy goals.

In particular, these comments address the County’s proposed “Interim Fire Protection Guidelines for BESS Facilities” (Guidelines), purporting to amend the San Diego County Fire Protection District (District) Technical Report Format and Content Requirements. As currently drafted, the proposed Guidelines incorrectly interpret the intent and rules adopted pursuant to the 2023 Consolidated Fire Code and exceed the authority of the Fire Code Official thereunder. Nor does the proposed adoption of the Guidelines meet the requirements of State law, Health & Safety Code section 17958 *et seq.*, for local amendments to the California Fire Code, which mandate express findings of fact that such amendments are necessary due to specified local conditions. Further, the Guidelines purport to institute zoning regulations as defined in Government Code section 65850, including but not limited to the establishment of setback lines, without following the procedures or providing notices as required by law. Moreover, the proposed Guidelines are contrary to the recommendations of the County’s own consultant study and as such are arbitrary, capricious, and entirely lacking in evidentiary support, and their adoption would constitute an abuse of discretion on the part of the County and District. Adoption of the Guidelines as proposed therefore subjects the Guidelines to appeal to the Regional Fire Appeals Board and both the County and District to a writ of mandamus. We urge your Board to reject the Guidelines as proposed and direct revisions consistent with the County’s consultant’s recommendations for best practices for construction of BESS facilities.

Specifically, as your Board is aware, the County previously directed preparation of a consultant study to review current fire safety standards and best practices for BESS. The “San Diego

BESS Best Practices” report was prepared by Jensen Hughes and dated November 8, 2024.¹ As summarized by the County itself², the “main takeaways” from the consultant study include:

- **Follow Fire Safety Codes:** BESS projects must follow all safety recommendations from the National Fire Protection Association (NFPA) and standards in the California Fire Code (CFC).
- **Install Fire Suppression Systems:** Each BESS project must include a proper fire suppression system to put out fires if they occur.
- **Keep Safe Distances:** BESS projects must be placed at a safe distance from nearby property lines—either 50 feet or 20 feet, depending on the specifics of the project.
- **Create a Fire Safety and Evacuation Plan:** Every project must have a plan in place to ensure the safety of people in the event of a fire, including a clear evacuation plan.
- **Model Fire Risks:** The study recommends that BESS projects include a detailed analysis of how fire or smoke might spread (called plume modeling) as part of their safety planning.
- **Study Hazards Thoroughly:** Projects must include a thorough analysis of potential fire risks, including how to handle fire, alarms, spacing between buildings, and protections against overheating or thermal runaway (when batteries can overheat and catch fire).

However, contrary to the recommendations in the consultant’s study, the proposed Guidelines include the following:

-General application of circulation and ventilation requirements the consultant study recommends only for specified installation types, including air circulation requirements applicable only to indoor installation and exhaust ventilation requirements specifically not applicable to lithium ion battery types.

-A requirement for at least 10 feet of separation “between adjacent enclosures” on the property. The consultant study makes no such recommendation, nor is any such requirement in any applicable standard or code, which only require 10-foot separation from adjacent exposure hazards (i.e., buildings), with further reductions dependent on the building’s exterior wall construction. As referenced in the consultant study, the NFPA and CFC require 3 feet of separation between enclosures.

¹ [fc4a2f318802218c3c6e9439c08e4cc4 Draft County of San Diego BESS Best Practices Guide.pdf](#)

² [Battery Energy Storage Systems \(BESS\) Best Practices Report | Engage San Diego County](#), emphasis added.

Moreover, separation distances for UL-listed energy storage systems are established pursuant to the requirements of UL 9540A (Standard for Safety of Energy Storage Systems and Equipment testing), which addresses electrical safety, thermal safety, mechanical safety, fire safety, system performance, system reliability, and system documentation. Therefore, the proposed changes to enclosure separation distances actually compromise safety certifications for energy storage systems.

-A minimum 100-foot setback from all property lines “to facilitate effective firefighting operations”. This requirement is purportedly based on the United Facilities Criteria (UFC) guidelines; however, the consultant study does not recommend use of UFC criteria, which it notes “are the minimum standards for Department of Defense (DoD) facilities” and “risk tolerance for DoD facilities is typically lower than what is acceptable for fire codes, as property protection and mission continuity are also necessary”. Rather, as noted in the County’s own summary of “main takeaways”, the consultant study recommends setbacks of 20-50 feet depending on site conditions. The Guidelines also cite “[t]he fire that occurred at the Gateway Energy Storage facility in Otay Mesa on May 15, 2024” and state that “[o]ne key takeaway from this event is the pressing need to implement a minimum 100-foot setback requirement for BESS facilities.” However, the Guidelines fail to explain the basis for this “takeaway”, which is not recommended by the consultant’s study³, nor the proposed general application of a 100-foot setback to all facilities including outdoor BESS facilities, whereas the Gateway incident involved an indoor BESS constructed in 2020 under pre-2022 fire codes.

-Additionally, the Guidelines provide that “[p]lume modeling may increase the setback distance.” The consultant study provides no basis for this requirement; on the contrary, it states that “significant health hazards have not been observed in the U.S. for BESS failures and current understanding is limited. A conservative approach to public health has led to evacuation procedures that may be unjustified. The evacuation of businesses, homes, and other nearby occupancies is taxing on the local community and a dispersion analysis may assist in reducing the disruption of the public[.]” (Emphasis added.)

-A “Hazardous Mitigation Analysis Failure Modes (HMA)” and “Hazard Identification Analysis (HIA)” may be required for “any utilities scale BESS facility”. In the contrary, a HMA is required by the CFC and NFPA only in the express circumstances outlined in the consultant study, including for technologies not identified in the CFC. The consultant study further recommends an HMA only “for any existing systems that do not have a UL 9540 listing.” An HIA is not referenced at all in the consultant study. The Guidelines also fail to reference the applicable requirements under State law (SB 38), referenced in the consultant’s study, which already require BESS facilities to provide an emergency response and emergency action plan.

-The Guidelines also require a “[c]ost recovery component to ensure that the financial burden of emergency response services, such as personnel, equipment, logistics, and other resources, is reimbursed by BESS facility owners or responsible parties.” This requirement is without any basis in the consultant’s study or otherwise and fails to justify both the rationale why

³ The Gateway fire is specifically referenced in the consultant’s study, which makes no recommendation for a generally applicable 100-foot setback from property lines.

cost is not adequately covered by revenues generated by BESS facilities (including tax revenues) and the disparate treatment of BESS facilities over any other type of facility that may also require emergency response.

The Guidelines purport to be based on the authority of the Fire Code Official to “determine requirements for matters that are not provided for in the existing fire code” (CFC §§ 102.8 [“Subjects Not Regulated by This Code”] and 102.9 [“Matters Not Provided for”].) This authority is expressly limited to “[r]equirements that are essential for the public safety of an existing or proposed activity, building or structure, or for the safety of the occupants thereof, that are not specifically provided for by this code”. (Emphasis added.) As documented in high detail in the consultant’s study, the CFC specifically provides requirements applicable to BESS facilities. Accordingly, this authority is not sufficient for the adoption of the Guidelines.

Moreover, pursuant to CFC § 102.8, “Where applicable standards or requirements are not set forth in this code, or are contained within other laws, codes, regulations, ordinances or bylaws adopted by the jurisdiction, compliance with applicable standards of the National Fire Protection Association or other nationally recognized fire safety standards, as approved, shall be deemed as *prima facie* evidence of compliance with the intent of this code.” As such, even where the CFC does not set applicable standards or requirements for a proposed BESS, compliance with NFPA standards, as recommended in the consultant study, is *prima facie* evidence of compliance. As such, the adoption of the proposed Guidelines which substantively deviate from the requirements of both the CFC and NFPA, as documented in the consultant study, exceeds the Fire Code Official’s authority under this section.

Nor has the County followed required procedures to authorize the adoption of the Guidelines as local amendments. As noted above, local amendments to the CFC are limited to those adopted pursuant to the procedures set forth in State law, which require express findings of fact that such amendments are necessary due to specified local conditions. The proposed Guidelines are not supported by any such findings. The Guidelines also impose requirements, including setbacks, meeting the definition of zoning regulations under Government Code section 65850, but the County has also failed to follow the required noticing, public hearing, and recommendation requirements under State law.

Based on all of the above, the proposed Guidelines (i) violate the intent and rules of the CFC, (ii) are proposed to be adopted in violation of the requirements and procedures for adoption of local amendments, including express findings of fact, (iii) propose zoning regulations without complying with the requirements of State law for adoption thereof and (iv) are arbitrary, capricious and entirely without evidentiary report as they are directly contrary to the recommendations of the County’s own consultant study. As such, the adoption of the Guidelines as proposed is subject to both appeal to the Regional Fire Appeals Board and a writ of mandamus for abuse of discretion.

In addition, the adoption of the Guidelines as proposed would hinder, not advance, County sustainability goals, including its 100% renewable energy goal. Overly expansive setbacks and internal separation requirements only serve to make each proposed BESS facility less efficient in providing the necessary battery storage to serve the community and provide a reliable grid.

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The amount of energy storage required to meet State and County goals does not change just because each facility is artificially made less efficient; it just means the number of BESS facilities in the County will have to be increased even more to meet the targets. There are limited BESS sites available in the County because BESS facilities require expensive gen-tie lines to connect the facility to a substation. Therefore, the BESS sites need to be located near substations. Therefore, as currently drafted, the County is attempting to set standards not backed by experts that work against the State's and its own goals for providing a green, renewable electrical grid. We need big, efficient BESS sites in the County, not hundreds of smaller, less efficient sites with unnecessary setbacks.

For all of these reasons, we urge the County to reject the Guidelines as proposed and direct revisions consistent with the recommendations of the consultant's study.

Sincerely,

A handwritten signature in black ink, appearing to read 'Miller', with a long horizontal flourish extending to the right.

Brooke Miller
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

From: [Lorrie J. LeLe](#)
To: [BOS, District1Community](#); [FGG, Public Comment](#); [Potter, Andrew](#)
Cc: [Andrew J. Graf](#)
Subject: [External] Agenda Item No. 30: New Requirements for Battery Energy Storage System (BESS) Projects in Unincorporated Areas and CEQA Findings (7447)
Date: Monday, December 9, 2024 4:20:24 PM
Attachments: [7447-007j - 2024-12-09 SD County IFP Guidelines BESS Comments.pdf](#)

On behalf of International Brotherhood of Electrical Workers Local 569, we submit the attached comments on Agenda Item No. 30 regarding the Battery Energy Storage System (BESS) projects.

Please respond to Andrew Graf with any questions or concerns.

Thank you,

Lorrie LeLe
Legal Assistant
Adams Broadwell Joseph & Cardozo

[Redacted signature block]

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