

**COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS - LAND USE
WEDNESDAY, SEPTEMBER 11, 2024**

MINUTE ORDER NO. 5

**SUBJECT: NOTICED PUBLIC HEARING:
RETURN BACK ON OPTIONS RELATED TO BATTERY ENERGY
STORAGE SYSTEM (BESS) PROJECTS IN UNINCORPORATED AREAS,
INCLUDING OPTIONS TO ADOPT URGENCY ORDINANCES
ESTABLISHING A MORATORIUM ON NEW BESS APPLICATIONS OR
NON-CONTAINERIZED USES AND CEQA FINDINGS (DISTRICTS: ALL)**

OVERVIEW

On July 17, 2024 (8), the San Diego County (County) Board of Supervisors (Board) provided recommendations and directed the Chief Administrative Officer (CAO) to work with in-process battery energy storage system (BESS) project applicants to align their submittals with the development siting standard recommendations, to the extent feasible. The Board also directed the CAO to, at the next possible meeting, bring back options to incentivize safety while development siting standards are being created, including but not limited to an ordinance temporarily pausing (45 days, plus potential extensions) any new BESS project applications from being accepted, mandatory review of battery BESS projects by the Board, interim standards within six months, and any other options for stopgap measures.

Today's return to the Board outlines options developed by Planning & Development Services (PDS) staff, with input from other County departments and agency partners (e.g., San Diego County Fire Protection District, Valley Center Fire Protection District, County Counsel, Department of Environment Health and Quality, Office of Sustainability and Environmental Justice, Office of Emergency Services, and the Department of General Services) related to the three Board directives: 1) a temporary pause (moratorium) on new BESS applications where the County has jurisdiction, 2) a mandatory review of BESS applications by the Board, and 3) stopgap measures for the Board to consider. The establishment of interim standards within six months and ordinance amendments to establish development standards are longer-term efforts that will be reported back to the Board at a future hearing.

Within the action presented today, the Board has the following options:

- **Continue fire suppression technical reports:** direct the continued requirement of the new technical study prepared by a fire protection engineer which details proposed fire safety properties of the design, operation and use for proposed BESS projects (Recommendation #3); and,
- **Include new disclosure requirements:** direct that the new technical study and any other project detail or measure that goes above and beyond current code requirements be disclosed in new BESS project applicant packages and have that information be made available to the public (Recommendation #3).

Additionally, the Board can select one of the following:

- **Temporary pause:** adopt a temporary pause of the acceptance of new BESS applications where the County has jurisdiction (Recommendation #4); or,

- **Urgency ordinance:** adopt an urgency ordinance requiring new BESS facilities to use modular designs within an enclosure and require these projects to follow the National Fire Protection Association 855 (2023) guidelines (Recommendation #5).

These items are in addition to the previous Board direction, which includes establishing development standards for siting BESS facilities, development of interim standards, and working with BESS project applicants to align their submittals with the development standard recommendations. Additionally, the Board provided funding to San Diego County Fire to engage a fire protection engineer to research best practices for fire suppression and safety standards in BESS projects. San Diego County Fire anticipates the analysis to be completed by the end of the 2024 calendar year, with recommendations to be analyzed for inclusion in a future fire code update.

1. Temporary Pause (moratorium)

Regarding the Board's first directive to explore a temporary pause on new BESS applications, in some cases, State law protects specific categories of solar and energy storage from local ordinances that create barriers or potentially slow the permitting of such projects. While the Board directed exploring options for temporarily pausing all new BESS applications, State law prohibits the County from regulating BESS under the jurisdiction of the California Public Utilities Commission (CPUC) or projects that apply directly to the California Energy Commission (CEC) for a permit. Additionally, individual home and business battery units, or similar, are protected by the Solar Rights Act. However, the Board can adopt a temporary pause on all BESS facilities that the County has jurisdiction over (Recommendation #4). A temporary pause would not impact ongoing or future energy storage efforts initiated by the County at County owned facilities as those projects could be exempt from permitting. Separately, those projects would also be protected by the Solar Rights Act and are not subject to discretionary review.

PDS initiated an outreach and engagement effort on this directive, consulting with industry professionals, labor unions, fire protection districts, environmental stakeholders, community members, and others. Feedback varied, with some supporting a pause due to safety concerns, such as fires at BESS facilities in the unincorporated area. Others opposed a pause, citing concerns about the potential impact on local climate goals, loss of jobs, including union jobs created by BESS projects, and reductions in the resiliency of the grid by limiting energy storage capabilities. Additional details on public feedback can be found in the Background - Public Input section.

2. Mandatory Review of BESS Projects by the Board of Supervisors

Regarding the Board's second directive, by law, once a project application is deemed complete, it must be reviewed per the regulations in effect at that time. This means that changes to the review process for projects already under consideration are not allowed. Discretionary BESS projects reviewed by the County currently go through permit processes depending on the size, a property's zoning use regulations, and project details, ranging from site plans to major use permits. Site plans are reviewed by the PDS Director and can be appealed to the Planning Commission, and minor use permits are reviewed by the Zoning Administrator and can be appealed to the Planning Commission, and major use permits are reviewed by the Planning Commission and can be appealed to the Board.

Therefore, only projects approved or denied by the Planning Commission can be appealed and elevated to the Board for review based on the merits of the project according to the current County regulations. In the past, one BESS project was heard by the Planning Commission. The Board can appeal any Planning Commission's permit decision to *themselves*. Additionally, appeals citing violations of the California Environmental Quality Act (CEQA) are heard by the Board of Supervisors, but the Board review is limited to the CEQA documentation used for the project.

3. *Additional Stopgap Measures*

The Board's third directive was to identify any stopgap measures pertaining to the safety of BESS projects. Since the Board's direction on July 17, 2024, San Diego County Fire has implemented a new requirement as an immediate measure, in coordination with regional fire agencies, to promote safety and consistency under State authority to protect health and safety. As of July 22, 2024, San Diego County Fire began requiring a new type of technical study for all BESS project applications in San Diego County that is prepared by a fire protection engineer and which details proposed fire safety properties of the design, operation and use for the proposed BESS project.

The Board can direct the continued requirement of these technical reports, which have been implemented under the administrative discretion of San Diego County Fire, and require all BESS project applicants to disclose all safety measures they are implementing that are above and beyond code, including these new technical studies, to advance public transparency (Recommendation #3). These disclosures would be a part of project applicant packages and can be made available at public hearings and on the project website. These options can be used in the interim until full development standards are established.

An additional stopgap measure the Board can take is to enact an urgency ordinance to require all future BESS facility applicants to use a modular design with enclosures (i.e., containerized facilities) and for these projects to follow the National Fire Protection Association (NFPA) 855 Standard for the Installation of Stationary Energy Storage Systems 2023 guidelines (Recommendation #5). BESS facility regulations, technology, and best practices have evolved since 2018, when the Gateway Energy Storage facility, which experienced a prolonged fire incident in East Otay Mesa, was approved. One of the most notable changes is that BESS facilities are now largely using a modular design and are contained within enclosures (i.e., containerized facilities). This separates the battery units so that, should a fire occur, it is less likely to spread to other battery modules in the facility (i.e., thermal runaway propagation). This has reduced some of the fire risks of BESS facilities. Unlike container battery projects, all the Gateway Energy Storage facility batteries were inside one rectangular warehouse building, allowing the fire to spread within the building and last for about 17 days. By contrast, the BESS facility in Valley Center, which included a modular design with enclosures to inhibit thermal runaway, had a fire that lasted around 45 minutes.

In response to Board direction, PDS staff have met with current BESS applicants as an additional stopgap measure to provide information on the Board's recommendations regarding siting, screening, and additional safety measures to gain voluntary compliance with their existing applications. These meetings occurred after the Board direction on July 17, 2024, and in many instances, PDS has seen early success in gaining voluntary compliance with many BESS applicants that are voluntarily agreeing to provide project safety features beyond what is required by current codes and regulations. These safety features include BESS decommissioning plans, a new fire suppression study, and following best practice safety guidelines identified in the National Fire Protection Association (NFPA) 855 - Standard for the Installation of Stationary Energy Storage Systems. After today's hearing PDS will continue

engaging industry and applicants to identify additional and emerging safety project features that will be rolled into the next phase of proposed ordinance amendments for BESS siting and development standards.

Staff requests that the Board receive and review the report back on BESS projects (Recommendation #2), provide direction to continue to require a new technical study prepared by a fire protection engineer which details proposed fire safety properties of the design, operation and use for the proposed BESS projects and to include new disclosure requirements for BESS discretionary project applicants (Recommendation #3); and provide direction on an ordinance temporarily pausing acceptance of new BESS applications (Recommendation #4) or an urgency ordinance requiring modular designs with enclosures and have these projects to follow the National Fire Protection Association 855 (2023) guidelines (Recommendation #5).

If the Board elects to adopt an ordinance, then the action today would require two steps. On September 11, 2024, it is requested that the Board set a hearing for October 23, 2024, and provide public notice of the hearing. If the Board takes actions on urgency ordinances for September 11, 2024, then on October 23, 2024, after making the necessary findings, the Board is requested to approve a 1-year extension of any urgency ordinances adopted on September 11, 2024.

RECOMMENDATION(S)
CHIEF ADMINISTRATIVE OFFICER

On September 11, 2024:

1. Find that the proposed actions are not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed project may have a significant effect on the environment.
2. Receive an update on the evaluation of mandatory Board of Supervisors review of BESS projects; actions taken by San Diego County Fire in response to recent fires at BESS facilities in the unincorporated area, including a new technical study requirement that details proposed fire safety properties of the design, operation and use; and the work with battery energy storage system projects currently under review and the efforts to align those projects with the development standards recommendations provided by the Board of Supervisors on July 17, 2024.
3. Direct the continued requirement of the recently implemented new technical study prepared by a fire protection engineer which details proposed fire safety properties of the design, operation and use, and require these studies to be included in project applicant packages for new discretionary BESS facilities along with any other project details and measures that go above and beyond current code requirements.
4. If the Board elects to adopt an ordinance, then find, pursuant to Government Code Section 65858, that the current pause on accepting new battery energy storage system applications is an urgency measure to protect public health, safety, and welfare.
 - a. If action is taken on item 4, then adopt an ordinance entitled **URGENCY MORATORIUM ORDINANCE TEMPORARILY PAUSING ACCEPTANCE OF NEW BESS APPLICATIONS (Attachment A)**.

Or,

5. If the Board elects to adopt an ordinance, then find, pursuant to Government Code Section 65858, the prohibition of new non-containerized battery energy storage system facilities and battery energy storage system facilities that do not follow the National Fire Protection Association 855 (2023 or more stringent) guidelines is an urgency measure to protect public health, safety, and welfare. **(4 VOTES)**

- a. If action is taken on item 5, then adopt an ordinance entitled URGENCY MORATORIUM ORDINANCE AMENDMENT PROHIBITING NON-CONTAINERIZED BESS FACILITIES AND PROJECTS INCONSISTENT WITH 2023 NFPA 855 STANDARDS FOR THE INSTALLATION OF STATIONARY ENERGY STORAGE SYSTEMS (Attachment B).

If on September 11, 2024, the Board takes action on Recommendation 4, then on October 23, 2024:

1. Find that the proposed actions are not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because the action is an administrative action that does not commit the County to a specific project and will not have a reasonably foreseeable direct or indirect effect on the environment.
2. Pursuant to Government Code Section 65858, find the current pause on accepting new battery energy storage system applications is an urgency measure to protect public health, safety, and welfare. **(4 VOTES)**
3. Adopt an Ordinance entitled: 1-YEAR URGENCY MORATORIUM ORDINANCE TEMPORARILY PAUSING ACCEPTANCE OF NEW BESS APPLICATIONS (Attachment C). **(4 VOTES)**

If on September 11, 2024, the Board takes action on Recommendation 5, then on October 23, 2024:

1. Find that the proposed actions are not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because the action is an administrative action that does not commit the County to a specific project and will not have a reasonably foreseeable direct or indirect effect on the environment.
2. Pursuant to Government Code Section 65858, find the prohibition of new non-containerized battery energy storage system facilities and battery energy storage system facilities that do not follow the National Fire Protection Association 855 (2023 or more stringent) guidelines is an urgency measure to protect public health, safety, and welfare. **(4 VOTES)**
3. Adopt an Ordinance entitled: URGENCY MORATORIUM ORDINANCE AMENDMENT PROHIBITING NON-CONTAINERIZED BESS FACILITIES AND PROJECTS INCONSISTENT WITH 2023 NFPA 855 STANDARDS FOR THE INSTALLATION OF STATIONARY ENERGY STORAGE SYSTEMS (Attachment D). **(4 VOTES)**

EQUITY IMPACT STATEMENT

Battery energy storage systems (BESS) facilities have the potential to impact communities both positively and negatively, including communities disproportionately impacted by environmental burdens. While BESS facilities are helping to modernize the electricity grid and transition California

to energy sources that create less pollution, there are health and safety risks associated with such facilities. As development standards are created, considerations of equity and environmental justice will be evaluated, discussed with stakeholders, and presented to the Board of Supervisors for consideration.

One notable positive impact of the increased BESS projects locally is the reduction of reliance on fossil fuel power plants. The utility grid relies on natural gas “peaker plants” regionally to help moderate energy demand. Based on CalEnviroScreen 3.0 mapping, of the eleven peaker plants in San Diego County, three are in disadvantaged communities. Low-income communities and communities of color often bear a disproportionate burden of pollution and associated health risks based on legacy decisions that place industrial or polluting uses next to these communities. BESS facilities can help reduce reliance on natural gas peaker plants by providing a renewable alternative to storing electricity needed to be used at peak hours. The proposed actions before the Board today advance both sustainability and public safety, as the County has an opportunity to demonstrate how changes to the requirements for BESS facilities can make a difference in the lives of people, communities, and the environment.

SUSTAINABILITY IMPACT STATEMENT

This action aligns with County sustainability goal #3: transition to a green, carbon-free economy, reduce greenhouse gas emissions, support green job creation and workforce development, and prepare for the impacts of a changing climate. Battery Energy Storage Systems (BESS) facilities contribute to the County’s sustainability goals, such as strengthening grid reliability, increasing energy efficiency, and improving our ability to rely on intermittent renewable energy sources. As the generation of electricity continues to move from fossil fuels to renewable energy sources, BESS will play an integral role in helping the County meet its greenhouse gas emissions reduction targets. While a temporary pause on new BESS applications would not stop the discretionary review of in-process projects, it could impact the County’s and the region’s ability to meet climate action goals identified in the draft 2024 Climate Action Plan and Regional Decarbonization Framework.

FISCAL IMPACT

There is no fiscal impact associated with today’s recommended actions. Funds for the Battery Energy Storage System project establishing development standards for siting battery energy storage systems and performing the Gateway Energy after-action review are included in the Fiscal Year (FY) 2024-25 Operational Plan in Planning & Development Services (\$1.0 million) and San Diego County Fire (\$0.25 million). The funding source is one-time General Purpose Revenue. There will be no change in net General Fund cost and no additional staff years.

BUSINESS IMPACT STATEMENT

There was limited time for engagement between the Board direction on July 17, 2024, and this return. During this time, staff engaged industry stakeholders seeking input to help identify and understand the potential economic and business impacts a pause on applications for battery energy storage systems (BESS) would have. In summary, power providers and distributors (i.e., San Diego Community Power, San Diego Gas & Electric) and BESS project developers indicated that a temporary pause would impact the ability of BESS systems to provide increased grid resiliency and would also impact the ability to meet decarbonization goals. San Diego Community Power also stated that if the pause is elongated, it could potentially impact consumer pricing. BESS project developers, the International Brotherhood of Electrical Workers, and the Chambers of Commerce were concerned about a potential slowdown in employment opportunities. The 2022 San Diego County Regional Decarbonization Framework Technical Report, developed in cooperation with the University of California San Diego School of Global Policy and Strategy and the University of San Diego (USD) Energy Policy Initiatives Center,

examined levels of job creation in the San Diego region associated with \$5.1 billion in average annual spending on energy supply investments between 2021 - 2030. Approximately \$630 million annually (12.3%) is spent on clean renewables. BESS projects are a part of the clean renewables. A pause would slow spending on BESS projects and correspond to fewer employment opportunities regionally.

ACTION 5.1:

A motion was made by Supervisor Lawson-Remer, seconded by Supervisor Anderson, for the Board of Supervisors to take the following actions:

1. Find that the proposed actions are not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed project may have a significant effect on the environment.
2. Receive an update on the evaluation of mandatory Board of Supervisors review of BESS projects; actions taken by San Diego County Fire in response to recent fires at BESS facilities in the unincorporated area, including a new technical study requirement that details proposed fire safety properties of the design, operation and use; and the work with battery energy storage system projects currently under review and the efforts to align those projects with the development standards recommendations provided by the Board of Supervisors on July 17, 2024.
3. Direct the continued requirement of the recently implemented new technical study prepared by a fire protection engineer which details proposed fire safety properties of the design, operation and use, and require these studies to be included in project applicant packages for new discretionary BESS facilities along with any other project details and measures that go above and beyond current code requirements.
4. Direct the Chief Administrative Officer to have the County Fire Chief analyze appropriate residential buffer distances based on plume modeling and develop a plan for Battery Energy Storage Systems (BESS) facilities. Report back to the Board in 45 days with an interim update and return to the Board by December 11, 2024 with a plan.

(A substitute motion was introduced.)

ACTION 5.2:

A substitute motion was made by Supervisor Desmond, for the Board of Supervisors to take the following actions:

1. Find that the proposed actions are not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed project may have a significant effect on the environment. (Ref. Board Letter Recommendation No. 1)
2. Receive an update on the evaluation of mandatory Board of Supervisors review of BESS projects; actions taken by San Diego County Fire in response to recent fires at BESS facilities in the unincorporated area, including a new technical study requirement that details proposed fire safety properties of the design, operation and use; and the work with battery energy storage system projects currently under review and the efforts to align those projects with the development standards recommendations provided by the Board of Supervisors on July 17, 2024. (Ref. Board Letter Recommendation No. 2)

3. Direct the continued requirement of the recently implemented new technical study prepared by a fire protection engineer which details proposed fire safety properties of the design, operation and use, and require these studies to be included in project applicant packages for new discretionary BESS facilities along with any other project details and measures that go above and beyond current code requirements. (Ref. Board Letter Recommendation No. 3)
4. Direct the Chief Administrative Officer to have the County Fire Chief analyze appropriate residential buffer distances based on plume modeling and develop a plan for Battery Energy Storage Systems (BESS) facilities. Report back to the Board in 45 days with an interim update and return to the Board by December 11, 2024 with a plan.
5. Pursuant to Government Code Section 65858, the prohibition of new non-containerized battery energy storage system facilities and battery energy storage system facilities that do not follow the National Fire Protection Association 855 (2023 or more stringent) guidelines is an urgency measure to protect public health, safety, and welfare. Adopt an Ordinance entitled: URGENCY MORATORIUM ORDINANCE AMENDMENT PROHIBITING NON-CONTAINERIZED BESS FACILITIES AND PROJECTS INCONSISTENT WITH 2023 NFPA 855 STANDARDS FOR THE INSTALLATION OF STATIONARY ENERGY STORAGE SYSTEMS. (Ref. Board Letter Recommendation No. 5)

(Motion failed due to lack of a second.)

ACTION 5.3:

ON MOTION of Supervisor Lawson-Remer, seconded by Supervisor Anderson, the Board of Supervisors closed the Hearing and took the following actions:

1. Found that the proposed actions are not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed project may have a significant effect on the environment.
2. Received an update on the evaluation of mandatory Board of Supervisors review of BESS projects; actions taken by San Diego County Fire in response to recent fires at BESS facilities in the unincorporated area, including a new technical study requirement that details proposed fire safety properties of the design, operation and use; and the work with battery energy storage system projects currently under review and the efforts to align those projects with the development standards recommendations provided by the Board of Supervisors on July 17, 2024.
3. Directed the continued requirement of the recently implemented new technical study prepared by a fire protection engineer which details proposed fire safety properties of the design, operation and use, and require these studies to be included at the earliest planning review stage for project applicant packages for all discretionary BESS facilities, and acceptance of the technical study recommendations for all BESS facilities, along with any other project details and measures that go above and beyond current code requirements. The technical study shall include considerations of setbacks from residential uses, as well as best practice safety standards, including 2023 NFPA 855.

4. Directed the Chief Administrative Officer to have the County Fire Chief analyze appropriate residential buffer distances based on plume modeling and develop a plan for Battery Energy Storage Systems (BESS) facilities. Report back to the Board in 45 days with an interim update and return to the Board by December 11, 2024 with a plan.

AYES: Vargas, Anderson, Lawson-Remer, Montgomery Steppe
NOES: Desmond

State of California)
County of San Diego)

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER
Clerk of the Board of Supervisors



Signed
by Andrew Potter