

**CALENDAR ITEM
C53**

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**CONSIDER APPROVAL OF MEMORANDUM OF AGREEMENT WITH CALIFORNIA
ENERGY COMMISSION REGARDING THE COORDINATION OF POWER PLANT
PERMITTING ACTIVITIES**

PARTIES: California Energy Commission
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 Sacramento, CA 95814-5504

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 California State Lands Commission
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BACKGROUND

Staff of the California State Lands Commission (SLC) has received several applications to lease school and/or lieu lands under the Commission's jurisdiction for the installation and operation of renewable energy projects. Staff anticipates that similar applications will continue to be received in the future, as utilities strive to meet the State's aggressive yet important renewable energy goals.

The California Energy Commission (CEC) has exclusive authority to certify thermal power plants with a generating capacity of 50 megawatts or more. Some project proposals received by SLC staff exceed this threshold; others do not. Approval of the proposed agreement will provide a helpful framework for staff of the SLC and CEC to perform their respective roles and share relevant information for all such project proposals, both above and below the CEC's exclusive jurisdictional threshold.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 CCR § 15061), the staff has determined that this activity is

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exempt from the requirements of the CEQA because this activity is not a "project" as defined by the CEQA (PRC § 21065) and the State CEQA Guidelines (14 CCR § 15378).

2. The Executive Director of the CEC has already executed the agreement. Upon Commission approval of this item, CEC staff will bring the executed agreement to the office of the SLC for execution by the SLC's Executive Officer.

PERMIT STREAMLINING ACT:

N/A

EXHIBITS:

- A. Memorandum of Agreement between The California Energy Commission and The California State Lands Commission regarding The Coordination of Power Plant Permitting Activities

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA BECAUSE IT IS NOT A "PROJECT" AS DEFINED BY THE PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.
2. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE THE MEMORANDUM OF AGREEMENT BETWEEN THE CALIFORNIA ENERGY COMMISSION AND THE CALIFORNIA STATE LANDS COMMISSION REGARDING THE COORDINATION OF POWER PLANT PERMITTING ACTIVITIES.

EXHIBIT A

MEMORANDUM OF AGREEMENT between The California Energy Commission and The California State Lands Commission regarding The Coordination of Power Plant Permitting Activities

Purpose

The purpose of this agreement is to ensure timely and effective coordination between the Energy Commission and the California State Lands Commission (CSLC) during the Energy Commission's review of an Application for Certification (AFC) of a proposed thermal power plant and related facilities (jurisdictional power plants) (Public Resources Code section 25120) on lands under CSLC's jurisdiction ("CSLC Lands"); and during the issuing of leases by the CSLC for non-jurisdictional power plants on CSLC lands. The agreement recognizes the exclusive authority of the Energy Commission to certify sites and related facilities subject to the siting and timing requirements of the Warren-Alquist State Energy Resources Conservation and Development Act. (Pub. Resources Code, § 25500 et seq.) The agreement also recognizes the CSLC's role in AFC proceedings as described in the Warren-Alquist Act, Public Resources Code section 25519; and its authority to issue leases for non-jurisdictional power plants that are proposed to be located on CSLC lands. (Pub. Resources Code §§ 6216, 6301, and 6501.1 et seq.)¹

This agreement describes the manner in which the two Commissions and their staffs will coordinate during AFC reviews and during consultation on non-jurisdictional power plants under the CSLC's jurisdiction:

- I. Notification of AFCs for jurisdictional power plants and related facilities to be located on CSLC lands
- II. Consultation during AFC proceedings
- III. Request for comments regarding proposed jurisdictional power plants and related facilities
- IV. Review and assessment of a project's environmental impacts
- V. Comments on Energy Commission staff's Preliminary Staff Assessment
- VI. Participation in Energy Commission hearings
- VII. Comments on Presiding Member's Proposed Decision

¹ The CSLC's application guidelines can be found at:
http://www.slc.ca.gov/Online_Forms/Surface_Leasing_Application_Home_Page.html

- VIII. Use of Energy Commission's Decision or other supporting environmental documents by a responsible agency
- IX. Consultation on siting or compliance issues related to non-jurisdictional power plants under CSLC jurisdiction

This agreement additionally establishes the process for resolving disagreements between the two Commissions and staffs and describes the process for canceling the agreement. It also includes the attached Energy Commission Power Plant Permitting Timeline.

WHEREAS:

- I. Pursuant to requirements of the Warren-Alquist Act, the Energy Commission has exclusive authority to certify thermal power plants with a generating capacity of 50 megawatts or more and certain electric transmission lines. The AFC process may or may not be preceded by a Notice of Intention (NOI) process to determine an appropriate site for a proposed facility. During the NOI and AFC processes, Energy Commission staff acts as an independent party and is responsible for conducting an assessment of the environmental effects, safety, and reliability of the facility, and the facility's conformity with applicable laws, ordinances, regulations and standards. The AFC timeline is described in Attachment A.
- II. Pursuant to the requirements of Public Resources Code sections 6216, 6301, and 6501.1, the CSLC has the exclusive authority to issue leases for all facilities to be located on CSLC lands, including, but not limited to power plants and related facilities. No facilities may be located on CSLC lands without first having obtained a lease from the CSLC.
- III. Pursuant to requirements of Public Resources Code sections 25519 (g) et seq., the CSLC, as a state agency, is required to be notified and provided a copy by the Energy Commission of any AFC for a thermal power plant that is proposed to be located on CSLC lands. For any such AFCs, the CSLC is further provided the opportunity to provide comments to the Energy Commission on the proposed facility, on the Energy Commission Staff's assessment of the proposed facility, and on the Energy Commission's findings regarding the proposed facility's compliance with applicable laws, ordinances, regulations and standards.
- IV. Pursuant to the requirements of Public Resources Code section 25519 (c), the Energy Commission is the lead agency, as provided in section 21165, for all projects that require certification pursuant to section 25517 and for projects that are exempted from such certification pursuant to section 25541. In addition, any other public agency that must make a subsequent decision on such a project shall use the document or documents prepared by the Energy Commission in the

same manner as they would use an environmental impact report or negative declaration prepared by the lead agency.

- V. Each Commission believes it is in the best interest of the state and in the mutual interest of both Commissions to complete the necessary AFC review in a manner that is both timely and comprehensive in order to assure the compliance of each Commission with its respective statutory and regulatory requirements.
- VI. Staff of each Commission have interacted in past and current AFC reviews to help each Commission fulfill its respective responsibilities, and have developed a common understanding of the statutory and regulatory requirements of each Commission during the AFC review. Both the Energy Commission and the CSLC have recognized this relationship in past AFC decisions.
- VII. Each Commission believes it is useful to enter into this Memorandum of Agreement to ensure a shared understanding of their respective roles and responsibilities during the AFC review, to maintain clear communication and expectations between the two Commissions and their staffs, and to assure that the reviews and analyses necessary during an AFC review are completed in a thorough and timely manner.
- VIII. Each Commission further recognizes the benefits of the Energy Commission staff providing expertise in consulting on siting issues that may arise during the CSLC's issuance of leases for non-jurisdictional power plants proposed on CSLC lands; in providing comments on related CSLC administrative draft environmental documents; and in addressing compliance issues that may arise once a lease has been issued.

THEREFORE:

The Energy Commission and the CSLC agree to the following:

I. Notification of applications for power plants and related facilities to be located on CSLC lands

The Energy Commission and CSLC staffs shall notify each other of any major proposed power plants where any part of the facility or any part of any related facility that is part of the proposed project may be located on CSLC lands, and shall inform each other of any significant pre-filing meetings and correspondence regarding such proposals. Such notifications will be sent to the Energy Commission's Deputy Director for Siting, Transmission and Environmental Protection, and to the CSLC's Chief of Land Management and the Chief of Environmental Planning and Management.

In accordance with Public Resources Code section 25519(g), the Energy Commission shall transmit to the CSLC a copy of any AFC for jurisdictional thermal power plants proposed where any part of the plant or related facilities would be located on CSLC lands.

II. Consultation during AFC proceedings

The AFC review process includes a number of steps during which it would be mutually beneficial for the two staffs to coordinate, exchange information, or discuss issues. This coordination includes early notice from Energy Commission staff to CSLC staff about preliminary AFC submittals, requests by both staffs for additional information as needed during the discovery phase of the AFC review process, and ongoing involvement by CSLC staff as feasible and necessary during the various phases of the Energy Commission's AFC process.

CSLC staff will keep Energy Commission staff informed of the status of their data requests and any other matters related to a proposed project. Energy Commission staff will include such information in its monthly status reports to the AFC committee. In the case of delinquent data responses, the staffs of the two Commissions will confer about whether to file a motion to compel responses.

Energy Commission staff will ensure that CSLC staff is timely informed of significant project changes that occur or are proposed during Energy Commission review. CSLC staff will advise whether changes to the proposed project are substantial enough to require their supplemental review of the AFC.

III. Request for comments regarding proposed power plants and related facilities

For projects proposed to be located on CSLC lands, the Energy Commission will request, and the CSLC staff shall provide, as per section 25519 (h), their comments and recommendations on the design, operation, and location of the project regarding factors on which they may have expertise within 180 days of the date of acceptance of the application. Consistent with the Energy Commission's regulations, Title 20, section 1744, subdivision (b), the CSLC's comments should assess the adequacy of the applicant's proposed compliance measures to determine whether the facility will comply with applicable CSLC mandates. Comments and recommendations provided by the CSLC on matters within its jurisdiction shall be given due deference by the Energy Commission Staff during their review of the AFC. (Cal. Code Regs., tit. 20, § 1744, subd. (e).)

IV. Review and assessment of project's environmental impacts

Following the Energy Commission's acceptance of the AFC as complete, the Energy Commission staff will coordinate with the CSLC staff on a review of the AFC and assess whether its list of environmental impacts is complete and accurate, whether the mitigation plan is complete and effective, and whether additional or more effective mitigation measures are reasonably necessary, feasible, and available. (Cal. Code Regs., tit. 20, § 1742, subd. (b).)

V. Comments on Energy Commission staff's Preliminary Staff Assessment

On request, the Energy Commission staff will provide to the CSLC staff a copy of sections of the administrative draft of the Preliminary Staff Assessment (PSA) for timely review and comment. The administrative draft of the PSA is exempt from public disclosure and should be treated as confidential. In addition, consistent with Title 20, section 1742.5, the Energy Commission staff will notify the CSLC upon publication of the PSA and request comments on it, including the CSLC staff's participation in a staff workshop on the PSA.

VI. Participation in Energy Commission hearings

Pursuant to Public Resources Code, section 25521, the Energy Commission will conduct hearings to provide a reasonable opportunity for the public, agencies, and all parties to the proceeding to comment upon the AFC and the Energy Commission staff's Final Staff Assessment (FSA). When appropriate, the Energy Commission staff will request that the CSLC staff provide a witness to testify on the relevant findings of the FSA regarding the applicant's proposed measures to comply with laws or regulations within the CSLC's jurisdiction. (Cal. Code Regs., tit. 20, § 1744, subds. (b), (c), and (d).)

VII. Comment on Presiding Member's Proposed Decision

At the conclusion of the hearings, the Energy Commission's presiding member, in consultation with the other committee member, shall prepare a proposed decision on the AFC based upon evidence presented in the hearings on the AFC; shall provide public notice of its availability; and shall provide copies of the proposed decision to interested agencies and parties to the proceeding. (Cal. Code Regs., tit. 20, § 1749, subd. (a).) Written comments can be filed on the Presiding Member's Proposed Decision for a period of 30 days from the date of its distribution. (Cal. Code Regs., tit. 20, § 1749, subd. (b).)

VIII. Use of Energy Commission's Decision or other supporting environmental documents by a responsible agency

Pursuant to the requirements of Public Resources Code, section 25519 (c), the Energy Commission is the lead agency, as provided in section 21165, for all projects that

require certification pursuant to section 25517 and for projects that are exempted from such certification pursuant to section 25541. If the CSLC must make a subsequent decision on such a project, it shall use the document or documents prepared by the Energy Commission in the same manner as it would use an environmental impact report or negative declaration prepared by the lead agency, unless a subsequent or supplemental environmental impact report is appropriate pursuant to Public Resources Code section 21166 or section 15162 of the CEQA Guidelines. Furthermore, if, in preparing the document or documents for a project, the Energy Commission does not meet the criteria provided under section 15253(b) of the CEQA Guidelines, the CSLC, as provided under section 15253(c) of the CEQA Guidelines, shall act as lead agency and shall prepare an EIR or negative declaration for the project.

IX. Consultation on siting or compliance issues related to power plants under CSLC jurisdiction

At the request of the CSLC staff, the Energy Commission staff will consult with and provide advice to the CSLC staff on siting and compliance issues related to power plants outside the Energy Commission's jurisdiction proposed to be located on CSLC lands for which the CSLC is considering or has issued a lease. In addition, the Energy Commission staff may review and provide comments on the administrative draft environmental documents prepared by or for the CSLC on power plant projects under its jurisdiction. When requested by the CSLC staff, the Energy Commission will provide an expert witness to testify at CSLC meetings concerning power plants not under the Energy Commission's jurisdiction.

X. Resolving disagreements

If there are disagreements between the two Commissions or their staffs regarding the provisions of this agreement, representatives of each staff will meet to discuss the issues in dispute and shall work towards agreement.

If agreement is not reached within twenty-one days of this initial meeting, the Executive Director of the Energy Commission and the Executive Officer of the CSLC, or their representatives, shall confer to attempt to resolve the disagreement.

XI. Amendments

This agreement may be amended by mutual agreement of the two Commissions.

XII. Duration of agreement

This MOA shall become effective upon signature by the Commissions and shall be in effect for five years following the date of its approval.

XIII. Cancellation

Either Commission may request cancellation with a 30-day written notice to the other.

XIV. General provisions

Nothing in this MOA is intended to or shall be construed to limit or affect in any way the authority or legal responsibilities of the Energy Commission or the CSLC.

Nothing in this MOA binds the Energy Commission or the CSLC to perform beyond their respective authorities.

Nothing in this MOA requires the Energy Commission or the CSLC to assume or expend any funds in excess of available appropriations authorized by law.

The mission requirements, funding, personnel, and other priorities of either the Energy Commission or the CSLC may affect their ability to fully implement all the provisions identified in this MOA.

Specific activities that involve the transfer of money, services, or property between or among the Commissions may require execution of separate agreements or contracts.

Nothing in this MOA is intended to or shall be construed to restrict the Energy Commission, the CSLC, or the State of California—whether through the Energy Commission, the CSLC or other agencies or departments—from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

Any information furnished between the Commissions under this MOA is potentially subject to the Freedom of Information Act, 5 U.S.C. § 552, et seq. (FOIA) and the California Public Records Act, Gov. Code § 6250, et seq. (CPRA). The Commissions agree to execute mutually agreeable confidentiality agreements when requested by either Commission; to consult one another prior to releasing potentially privileged or confidential documents, or documents exempt from public disclosure; and to cooperate in good faith to assert all such privileges and exemptions permitted by FOIA and CPRA.

Each and every provision in this MOA is subject to the laws of the State of California, the laws of the United States of America, and to the delegated authority assigned in each instance.

All cooperative work under the provisions of this MOA will be accomplished without discrimination against any employee because of race, sex, creed, color, or national origin.

CONCURRENCE

The Energy Commission and the CSLC agree to the terms of this agreement, as evidenced by the signatures of their representatives below.

Signed,

Melissa Jones, Executive Director
Energy Commission

Date: _____

Paul D. Thayer, Executive Officer
State Lands Commission

Date: _____