

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2625 (Ting) – As Amended April 26, 2022

SUBJECT: Subdivision Map Act: exemption: electrical energy storage system.

SUMMARY: This bill exempts from the Subdivision Map Act (SMA) certain types of leases and easements in conjunction with the financing, erection, and sale or lease of an electrical energy storage system (EESS). Specifically, **this bill:**

- 1) Adds the leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of an EESS on the land to the list of land transactions that are exempt from the SMA if either of the following conditions are met:
 - a) The project is subject to review under other local agency ordinances regulating design and improvement.
 - b) The project is subject to discretionary action by the advisory agency or legislative body.
- 2) References an existing definition in the Public Utilities Code to define “energy storage system” to mean a commercially available technology that is capable of absorbing energy, storing it for a period, and thereafter dispatching the energy. An energy storage system is a system that complies with all of the following:
 - a) Specifies that an energy storage system shall be cost effective and either reduce emissions of greenhouse gases (GHGs), reduce demand for peak electrical generation, defer or substitute for an investment in generation, transmission, or distribution assets, or improve the reliable operation of the electrical transmission or distribution grid.
 - b) Specifies that an energy storage system may be centralized or distributed, and may be either owned by a load-serving entity or local publicly owned electric utility, a customer of a load-serving entity or local publicly owned electric utility, or a third party, or jointly owned by two or more of these entities.
 - c) Specifies that an energy storage system shall do one or more of the following:
 - i) Use mechanical, chemical, or thermal processes to store energy that was generated at one time for use at a later time.
 - ii) Store thermal energy for direct use for heating or cooling at a later time in a manner that avoids the need to use electricity at that later time.
 - iii) Use mechanical, chemical, or thermal processes to store energy generated from renewable resources for use at a later time.
 - iv) Use mechanical, chemical, or thermal processes to store energy generated from mechanical processes that would otherwise be wasted for delivery at a later time.

EXISTING LAW:

- 1) Planning and Zoning Law requires every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a land use element.
- 2) Requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans.
- 3) Requires, under the California Environmental Quality Act (CEQA), lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or an environmental impact report (EIR) for this action, unless the project is exempt from CEQA.
- 4) Provides, pursuant to the SMA, the following related to the subdivision of land:
 - a) Requires a city or county to require a tentative and a final map for all subdivisions of land creating five or more parcels, except for subdivisions which meet specified conditions.
 - b) Requires a city or county to require a parcel map for subdivisions meeting specified conditions.
 - c) Allows a city or county to require a tentative map where only a parcel map is required.
 - d) Limits the improvements a city or county may require for a subdivision of land that is less than five parcels.
 - e) Requires a legislative body of a city or county to deny approval of a tentative map or a parcel map if it makes any of the following findings:
 - i) That the proposed map is not consistent with applicable general and specific plans.
 - ii) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
 - iii) That the site is not physically suitable for the type of development.
 - iv) That the site is not physically suitable for the proposed density of development.
 - v) That the design of the subdivision or the proposed improvements are likely to cause environmental damage, injure wildlife, or are likely to cause serious public health problems.
 - vi) That the design of the subdivision or the type of improvements will conflict with certain easements providing access through or use of property within the proposed subdivision.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill exempts land divisions associated with EESS projects from the SMA if the project is either subject to a separate local ordinance regulating design and improvement, or subject to discretionary approval by the local agency.

According to the author, "The Subdivision Map Act (SMA) regulates and controls the design of land divisions by a city or county. Current law exempts certain renewable energy devices, including wind, solar and biogas projects, from the requirements of the SMA. Despite the existing exemptions for these renewable resources, stand-alone energy storage projects are still subject to SMA requirements. AB 2625 would expand this exemption to include land uses for stand-alone energy storage devices, allowing these projects to come online in a timelier manner. In doing so, this bill aligns energy storage development projects with the existing SMA exemptions for renewable resources and ensures the state can achieve our energy reliability needs."

- 2) **Growth in Battery Energy Storage.** California is increasingly relying on new and emerging energy storage technologies to support electric service reliability and help achieve the state's ambitions GHG reduction goals. Energy storage technology offers opportunities for balancing intermittent increasing volume of renewable energy (such as solar and wind energy), allowing for the storage of energy during times when production is high but demand is lower and discharging during times when production from renewable resources is more limited or not available. In particular, lithium-ion stationary energy storage development in California is accelerating rapidly. In 2019, 250 megawatts (MW) of utility-scale lithium-ion battery systems operated and participated in the state's wholesale power markets. In 2021, the total installed capacity increased to 2,647 MW. 4,316 MW is planned for operation by the end of 2022. The California Public Utilities Commission anticipates growth in total battery storage installed from about 2.6 gigawatts (GW) today to almost 15 GW in 2032. Most of this is likely to be lithium-ion batteries.
- 3) **The Subdivision of Land.** The SMA establishes a statewide regulatory framework for controlling the subdividing of land, which generally requires a subdivider to submit a tentative map to the city or county where the land is situated. Cities and counties approve tentative maps that are consistent with their general plans, attaching scores of conditions. Once subdividers comply with those conditions, local officials must issue final maps. Approving tentative maps is a discretionary action. However, once the conditions of a tentative map are met, a final map is typically approved ministerially.

For smaller subdivisions (lot splits), the level of improvements local governments can require for the subdivisions are statutorily limited and local officials issue parcel maps rather than tentative and final maps. Parcel maps may be approved ministerially, as well as through a one-step discretionary process at the local level. However, local governments may, at their discretion, require a tentative parcel map followed by final parcel map for these subdivisions.

- 4) **SMA Exemptions.** The SMA defines a subdivision as the division of land for the purpose of sale, lease, or financing. About a dozen types of land divisions are exempt from the SMA, including leases and easements for wind powered electrical generation devices, provided that the project is subject to local discretionary approval. The SMA also exempts land divisions including leases and easements for solar electrical generation and certain biogas projects,

provided that the project is subject to local discretionary approval or a local ordinance regulating design and improvement.

- 5) **CEQA and Ministerial Review.** CEQA requires the state and local agencies to study and mitigate, to the extent feasible, the environmental impacts of discretionary actions taken by the agency, providing a key protection for the environment and residents of California. Ministerial approvals are not discretionary and therefore not subject to CEQA. As noted above, under the SMA local agencies may establish a ministerial approval process for smaller land subdivisions (parcel maps), but larger subdivisions are typically subject to a discretionary approval process (tentative and final map), which triggers CEQA.

Exempting specified categories of land divisions from the SMA may ultimately exempt those projects from CEQA if the local ordinance implementing the SMA represents the only phase of the review process where the local agency exercises discretion over the approval of the project. This bill exempts land divisions associated with development of an EESS from the SMA. To the extent that a local agency previously adopted an ordinance establishing a ministerial parcel map approval process for these projects, some of these projects could already be exempt from CEQA. However, the action adopting the local ordinance that creates the ministerial approval process for EESS land divisions is a discretionary action and therefore would trigger CEQA at its adoption.

- 6) **Policy Considerations.** The Committee may wish to consider the following: Local ordinances regulating design and improvement could involve discretionary approvals by the local agency; however, these ordinances may only require compliance with objective standards and therefore only require ministerial review and approval. Under this bill, an EESS qualifying for an SMA exemption due to the project being subject to a local ordinance regulating design and improvement may proceed without discretionary action by the local agency and therefore not trigger CEQA. While smaller EESS projects could already be exempt from CEQA through a local parcel map process under current law, this bill could create a CEQA exemption for larger projects where a parcel map cannot be used.
- 7) **Committee Amendments.** To address the policy consideration noted above, the Committee may wish to amend the bill to align the language for SMA exemptions for EESS projects with SMA exemptions for wind powered projects (Subdivision (i) of Section 66412 of the Government Code). Specifically the amendment would amend proposed subdivision (n) of Section 66412 of the Government Code to read:

“(n) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of an electrical energy storage system on the land, ~~if the project is subject to review under other local agency ordinances regulating design and improvement or~~ if the project is subject to discretionary action by the advisory agency or legislative body. For the purposes of this subdivision, “energy storage system” has the same meaning as defined in Section 2835 of the Public Utilities Code.”

- 8) **Previous Legislation.** AB 1510 (Plescia), Chapter 658, Statutes of 2008, exempted solar and biogas projects from the requirements of the SMA under specified conditions.
- 9) **Arguments in Support.** The California Energy Storage Alliance writes in support, “Providing a Subdivision Map Act exemption to energy storage does not undercut or undermine other important goals or processes, such as local permitting or CEQA. Importantly, AB 2625 only applies this exemption if the project is subject to review by a local or state agency, which provides assurances that there will be oversight for all projects. At the local level, except for in unusual circumstances, lead agencies require that storage projects receive discretionary development permits, which allow for review of project design and triggers CEQA oversight.”
- 10) **Arguments in Opposition.** The California Coalition of Utility Employees is opposed unless amended position and writes, “This bill would take away an agency’s control over making sure subdivisions involving energy storage projects are compatible with the agency’s land use plans and the project’s environmental and public health impacts are mitigated pursuant to the California Environmental Quality Act (CEQA). This is very poor policy. Energy storage projects pose fire risks and other environmental and public health and safety impacts. Therefore, the bill should be rejected unless it is amended to ensure that these projects’ impacts are analyzed and mitigated pursuant to CEQA.”

REGISTERED SUPPORT / OPPOSITION:

Support

AYPA
Bay Wa R.e Solar Projects LLC
California Energy Storage Alliance
California Wind Energy Association
Ess Tech INC.
Esvolta
Fluence
Independent Energy Producers Association
Qcells
Recurrent Energy, LLC
Rejoule
Rev Renewables
Strata Clean Energy
Viridity Energy Solutions

Opposition

California Coalition of Utility Employees (unless amended)

Analysis Prepared by: Hank Brady / L. GOV. / (916) 319-3958