DOCKETED	
Docket Number:	26-OIR-04
Project Title:	Emergency Rulemaking Amending the Opt-In Regulations
TN #:	273101
Document Title:	Michael McGrady Comments - Comments from the Field - Proposed Express Terms for Opt-In Certification
Description:	N/A
Filer:	System
Organization:	Michael McGrady
Submitter Role:	Public
Submission Date:	10/11/2026 8:38:01 PM
Docketed Date:	10/12/2026

Comment Received From: Michael McGrady
Submitted On: 10/11/2026
Docket Number: 26-OIR-04

Comments from the Field - Proposed Express Terms for Opt-In Certification

Additional submitted attachment is included below.

DOCKETED PROCEEDING: Docket No. 26-OIR-04
(Emergency Rulemaking Amending the Opt-In Regulations)
SUBMITTED BY: Michael McGrady, San Juan Capistrano, California

RE: Public Comments on Proposed Express Terms for the AB 205 Opt-In Certification Program

1. Introduction: Perspective from the Compass Proceeding
My name is Michael McGrady, and I write to you from San Juan Capistrano. For several years, I and many others were in the heart of the fight over the proposed Compass Energy Storage Project (Docket No. 23-OPT-01), an exhaustive proceeding that concluded when the developer formally withdrew its opt-in application.

Throughout that multi-year proceeding, I was an unyielding participant before the Commission and its staff. Our coalition pushed hard, challenged technical assumptions, scrutinized submittals, and applied intense pressure across every stage of the docket to defend our residential neighborhoods, open spaces, and local fire safety. I readily acknowledge my direct part in creating that friction and the heavy procedural burden it placed on staff, and I want to express my genuine appreciation for their patience with me throughout that process.

Now that the Compass application has been withdrawn, we share a valuable and hard-won vantage point. Looking closely at the proposed Express Terms, it is clear that Commission staff was paying close attention. You absorbed the contentious lessons forged in communities like San Juan Capistrano and Laguna Niguel and translated that experience into serious, practical regulatory safeguards. Consider this submission my next foray into assisting the CEC in its responsibilities, perhaps risking a little more well-intentioned friction, but aimed at validating the tremendous technical progress in your proposal while offering practical recommendations to strengthen these rules before final adoption.

2. Endorsement of Proposed Express Terms: Translating Experience into Standards
The proposed revisions to Title 20 and Appendix B directly resolve several critical vulnerabilities that created chaos during earlier opt-in reviews:

- **Mandatory Setbacks and Layout Transparency (Appendix B, § (b)(1)(E)(i)):** Requiring applicants to explicitly state and map setback distances to the nearest residential property line, roadway shoulder, and passenger rail line directly resolves a major flaw from past proceedings. For years, host communities had to decode ambiguous conceptual exhibits to determine how close high-voltage facilities would sit to commuter tracks and homes. Requiring scaled dimension drawings and 30% design-level engineering site plans upfront establishes essential transparency.

- **Worst-Case Toxic Air Dispersion Modeling (Appendix B, § (b)(9)(F)):** Staff deserves immense credit for mandating plume dispersion modeling under worst-case thermal runaway for toxic air contaminants, including hydrogen fluoride, hydrogen cyanide, phosphoryl fluoride, and benzene, and requiring applicants to demonstrate that the Acute Hazard Index will not exceed 1.0 at sensitive receptors. This replaces developer marketing assertions with verifiable, objective health standards.

- **Fire Testing Standards and Runoff Containment (Appendix B, § (b)(11)(D) and § (b)(19)(D)):** Mandating unit- and installation-level UL 9540A fire test reports, fleet-wide 5-year failure histories across an enclosure manufacturer's fleet, and containment plans for firefighting runoff that exceeds municipal stormwater capacity equips local fire authorities with the operational baseline needed to protect surrounding communities.

- **Administrative Off-Ramps and Early Termination (§ 1877.5):** Creating explicit off-ramps so the Commission can dismiss non-viable applications early, specifically for loss of site control, grid interconnection failure, or applicant bankruptcy, prevents speculative projects from lingering indefinitely and draining municipal resources.

- **Local Agency Reimbursement (§ 1878.1):** Establishing an enforceable procedure for host municipalities and fire agencies to recover technical review costs levels the playing field for local governments operating under tight public budgets.

- **Monetary Baselines for CBAs (§ 1879.5):** Establishing a quantitative floor of $550 per MWh of nameplate capacity for battery energy storage projects and requiring unredacted public docketing brings vital structure to Community Benefits Agreements.

3. Practical Considerations for Regulatory Refinement

To build on this solid foundation, staff should incorporate five practical refinements drawn directly from community and municipal experience:

Early Direct-Mail Postcard Notification: De-Risking Projects for All Parties

Under existing procedures, formal community awareness typically occurs only when the CEQA scoping meeting is convened or when staff assessments are published. In practice, this late timing creates an adversarial trap:

- **Developer Exposure:** By the time scoping occurs, a developer has already committed millions of dollars to preliminary engineering, environmental consultant retainers, site option leases, and CAISO transmission study deposits.

- **Neighborhood Reaction:** Discovering a mature, utility-scale industrial proposal on an adjacent boundary late in the game triggers instant neighborhood shock, institutional distrust, and reactive opposition.

Direct-mail postcard notifications, modeled on standard public hearing notices of that sort routinely issued by California municipalities for General Plan and zoning modifications, should be required early in the CEC process.

Mailing a simple first-class notification postcard to property owners within the surrounding area shortly after the Pre-Filing Consultation (§ 1876.5) or concurrently with the initial application filing (§ 1877) substantially de-risks the project for both the state and the developer. It alerts the neighborhood while project plans are still adaptable, surfaces fatal local land-use, evacuation, or wildfire constraints before capital is irrevocably spent, and provides residents with the CEC docket number, staff contacts, and instructions for submitting comments via the e-filing portal. Early awareness channels public energy into constructive technical review rather than political combat.

Dedicating an Enforceable Percentage of CBA Funding to the 5-Mile Impact Zone (§ 1879.5)
The $550 per MWh baseline in proposed § 1879.5 provides necessary financial certainty, but the regulation currently lacks an explicit geographic nexus. Without defined geographical parameters, CBA funding risks being captured by regional or statewide organizations that have no physical connection to the host area, leaving the immediate neighborhood to shoulder the facility's localized impacts without dedicated support.

To fulfill the mandate of Public Resources Code § 25545.10, the regulations should define a 5-mile radius from the project boundary as the primary impact zone. Furthermore, rather than relying on ambiguous statutory phrasing like a "majority" of funds, which invites administrative wrangling and paper maneuvers, the regulation should establish an explicit numerical baseline. Specifying a defined range, such as 60% to 75% of the total required CBA funding, ensures that the lion's share of resources remains anchored where the physical impacts occur. Establishing a clear, numerical allocation ensures that:

- Host neighborhoods receive guaranteed, predictable investments in specialized hazardous materials gear, local fire-suppression infrastructure, emergency response capabilities, and direct quality-of-life mitigations.

- The remaining percentage of funds remains available for broader regional initiatives, such as countywide workforce apprenticeships or regional conservation programs.

- Community-based organizations and local public entities representing residents within that 5-mile impact zone have an active, defined seat at the negotiating table.

Balancing Local Timelines and Life Safety in Fire Inspections (§ 1881.5(a)(2))
Proposed § 1881.5 takes an important step forward by requiring pre-operational coordination with the local fire department. It is completely understandable why staff included the 90-day provision in subdivision (a)(2). The Commission needs a mechanism to prevent a hostile or reluctant local jurisdiction from exercising a "pocket veto." If a local fire authority simply refuses to show up or deliberately sits on its hands, a state-approved clean energy project could be stalled indefinitely. The state has a valid interest in closing that loophole.

The problem is that the current remedy creates an even greater hazard. Solving local administrative foot-dragging by allowing an industrial-scale battery system to commence commercial testing or operation without any physical inspection is dangerous. If a facility is energized uninspected because a deadline lapsed, any undetected flaw in suppression piping, gas detection, or thermal barrier installations becomes an immediate threat to the surrounding community and first responders.

The Commission can prevent local pocket vetoes without ever bypassing the physical safety inspection:

1. **State Fire Marshal or Independent Expert Backstop:** If the local authority having jurisdiction fails or refuses to complete the inspection within the 90-day window, the regulation should authorize the Compliance Project Manager to immediately assign the inspection to the Office of the State Fire Marshal (OSFM) or a qualified third-party Fire Protection Engineer. The cost would be covered by the applicant under the existing reimbursement framework. This completely eliminates any local pocket veto, preserves the project timeline, and ensures an expert physical inspection occurs before high-voltage operation begins.

2. **Tolling for Documented Punch Lists:** The regulation should clarify that the 90-day clock tolls if the local fire department completes an initial inspection and issues a formal written notice of safety deficiencies or fire code non-compliance. The clock should resume only after the applicant formally certifies that those specific punch-list items have been corrected. A developer must not be allowed to run out the 90-day clock while actively sitting on unresolved life-safety violations.

Verifying Real Property Rights Rather Than Relying on Self-Affirmation (§ 1877(h))
Section 1877(h) requires an applicant to provide evidence of sufficient real property rights to access, build, and operate the facility, but includes the caveat that*: "Absent evidence to the contrary, an affirmation by the applicant of such rights and a description of those rights, shall be adequate evidence."*

It is easy to understand why staff framed it this way initially, likely hoping to prevent early paperwork logjams and avoid turning CEC staff into title officers. In practical execution, however, allowing an applicant to self-certify site control invites speculative filings and creates enormous administrative waste down the road.

A textbook example occurred during the review of the Compass Energy Storage Project. Well into that proceeding, the applicant submitted amended civil engineering drawings for lateral erosion mitigation and flood control infrastructure of Oso Creek that directly traversed two adjacent parcels. The applicant possessed zero legal agreement, no site control, and no easement across either parcel. Yet, because the process relied on broad assertions rather than verified real estate instruments, staff, local flood control authorities, and the public were forced to expend countless hours reviewing complex amended drainage and grading designs that were physically and legally impossible to construct as submitted.

When an application relies on unverified self-affirmations, the state and the community spend months evaluating engineering calculations, environmental setbacks, and safety plans predicated on phantom land rights.

At the same time, we must recognize legitimate commercial realities. Both the applicant and the underlying property owner have strong, valid business motivations not to see proprietary financial terms, lease rates, purchase options, or sensitive negotiations exposed to public scrutiny or industry competitors. The goal is not to compromise proprietary commercial data, but to confirm legal reality. Unless disclosure of specific terms is explicitly required by law or statute, the sensitive financial and business terms of these agreements should remain strictly confidential under standard Commission confidentiality procedures.

The regulations can easily verify real property rights while fully respecting private business confidentiality:

1. **Objective Commercial Verification with Protected Confidentiality:** Rather than relying on self-certification, the regulations should require standard, objective commercial instruments before an application can be deemed complete under § 1878(b). This verification should consist of recorded grant deeds, recorded memoranda of lease, a preliminary title report verified by a licensed title officer, or fully executed lease agreements submitted under confidential filing with proprietary financial figures redacted. Staff only needs to verify legal authority, parcel boundaries, access rights, and terms of control, not the commercial financial figures.

2. **Ancillary, Civil, and Drainage Footprints:** The verification requirement should explicitly cover all real property necessary for the facility's full civil design, including any amended drawings submitted during the review process. This must encompass not only the main battery yard, but also gen-tie lines, offsite access routes, points of interconnection, and any required offsite grading, lateral erosion mitigation, or flood control works. If a developer's engineering depends on land it does not legally control, the application is fundamentally incomplete and should not consume Commission staff hours.

Enabling Local Agencies to Retain Independent Technical Experts (§ 1878.1)
Proposed § 1878.1 provides an essential reimbursement mechanism that recognizes the real financial strain placed on host cities, counties, and local fire districts during an opt-in review. However, subdivision (a)(2) states that notices to local agencies will instruct them to provide information already within their knowledge and "state that they are not expected to perform studies or retain expert consultants." Furthermore, subdivision (b)(2) restricts reimbursable expenses strictly to information within staff's narrow request.

I can see why staff constructed the language this way. The Commission must ensure that applicant reimbursement funds are not treated as an open checkbook for local agencies to fund extraneous studies, conduct endless fishing expeditions, or hire adversarial consultants simply to obstruct the state permitting timeline. The state has a valid interest in keeping technical reviews disciplined and on schedule.

In practical execution, however, this restriction creates an insurmountable barrier for local agencies. Host municipalities and local fire protection districts do not employ in-house chemical engineers, toxicologists, battery safety analysts, or plume dispersion modelers.

The Commission's own proposed Express Terms significantly and appropriately raise the technical bar in Appendix B, requiring:

- Complex plume dispersion modeling for acute toxic air contaminants, including hydrogen fluoride, hydrogen cyanide, phosphoryl fluoride, and benzene,
- Highly technical installation-level UL 9540A test reports and fleet-wide failure data, and
- Specialized engineering calculations for hazardous fire-suppression water runoff containment.

Expecting a city planning department or a local fire district to review these sophisticated engineering submittals relying solely on "information already within their knowledge" effectively deprives them of meaningful participation. It forces local agencies either to accept complex developer calculations at face value, or to drain limited local taxpayer general funds to hire outside technical consultants to verify the numbers.

The Commission can easily resolve this dilemma by permitting expert assistance while maintaining strict administrative control:

1. **Reimbursable Third-Party Technical Reviews:** The regulations should clarify that reimbursable costs under § 1878.1 include retaining qualified, independent third-party experts (such as licensed Fire Protection Engineers, certified toxicologists, or specialized hydrologists) strictly to evaluate and verify the applicant's technical submittals under Appendix B.

2. **Pre-Approved Scope and Budget Caps:** To protect applicants and preserve staff's timeline, the regulation can require local agencies to submit a brief proposed scope of work and a reasonable budget cap to the Compliance Project Manager for upfront approval. This completely prevents bad-faith delays and unbounded costs while ensuring local fire authorities and city engineers have the specialized expertise required to verify site safety on behalf of their residents.

Conclusion

Thank you for your tireless public service and for the genuine diligence reflected throughout this rulemaking package. Translating years of intense public controversy into clear, enforceable standards is demanding administrative work, and Commission staff deserve immense credit for listening to communities and raising the bar on technical safety. I applaud your leadership in proposing these Express Terms, and I appreciate your consideration of these practical refinements as you finalize regulations that will protect both California's communities and its clean energy future.

Michael McGrady
San Juan Capistrano