DOCKETED	
Docket Number:	26-OIR-04
Project Title:	Emergency Rulemaking Amending the Opt-In Regulations
TN #:	273444
Document Title:	Michael McGrady Comments - Workshop 11-02-2026
Description:	N/A
Filer:	System
Organization:	Michael McGrady
Submitter Role:	Public
Submission Date:	11/9/2026 9:48:09 AM
Docketed Date:	11/9/2026

Comment Received From: Michael McGrady
Submitted On: 11/9/2026
Docket Number: 26-OIR-04

Michael Comments from Workshop 11-02-2026

Additional submitted attachment is included below.

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Emergency Rulemaking: Proposed Amendments to the Opt-In Certification Regulations
California Code of Regulations, Title 20, Article 4.1 and Appendix B
California Energy Commission (CEC)

Opening Acknowledgments and Public Participation

I want to thank Commissioner Noemí Gallardo, Senior Attorney Jared Babula, Attorney Bryan Boersma, Commissioner Advisor Jimmy Qaqundah, and the entire Energy Commission staff for hosting the November 2 pre-rulemaking workshop and for extending the public comment window to November 10. Opening this dialogue before formally submitting an emergency package to the Office of Administrative Law shows a sincere commitment to hearing from all stakeholders.

During the workshop, Commissioner Gallardo and industry representatives discussed the possibility of bifurcating this rulemaking, separating the required statutory updates (from SB 254 and SB 283) from discretionary, more complex policy proposals. If the Commission chooses to split the rulemaking, I strongly urge you to make sure that host communities, local residents, and neighborhood associations remain active participants in every subsequent workshop and working group. Clean energy policy cannot be shaped solely through conversations between state agencies and project developers. Those of us living in host communities bring years of direct, practical experience dealing with opt-in applications on the ground, and our perspective is vital to making these rules work in the real world.

Defining Real Site Control: A Practical Community Perspective

At the end of the workshop, Senior Attorney Jared Babula noted that site control is a new statutory requirement and invited public comments on how to define it, specifically asking about existing models like the California Independent System Operator (CAISO) interconnection standards.

Speaking as a neighborhood advocate rather than a regulatory attorney, this is the single most critical issue facing communities asked to host these facilities.

The Risk of Relying on Self-Affirmation

The current draft rules propose that an applicant's unverified affirmation will be accepted as sufficient proof of site control unless someone else proves otherwise. In practice, this creates a major loophole for speculative applications.

In our own neighborhood's experience with the Compass Energy Storage Project in San Juan Capistrano, the developer submitted civil engineering plans showing extensive grading, retaining walls, and lateral erosion mitigation along Oso Creek on property owned by adjacent third parties.

The applicant held no recorded deeds, leases, easements, or legal agreements for those neighboring parcels. Accepting an applicant's unverified word shifts an unfair burden onto local residents, volunteer HOA leaders, and local agency staff, forcing us to scrutinize civil drawings, cross-reference boundary lines, and sound the alarm on fundamental flaws that should have stopped the application from being accepted in the first place.

Understanding the CAISO Model in the Right Context

Industry representatives suggested that the CEC adopt the CAISO definition of site control. While CAISO's rules provide a helpful reference, there is a fundamental difference between entering a preliminary electrical grid study and applying for a binding state development permit.

In its interconnection procedures, CAISO defines site control through demonstrable legal instruments:

1. Proof of ownership or a valid leasehold interest.
2. An executed option to purchase or lease the property.
3. An exclusive business agreement giving the applicant the legal right to develop the site.

CAISO requires these rights to cover the full operational life of the project (not just a temporary entry permit to do soil tests or surveys), and requires the applicant name to match the property documents.

While CAISO has sometimes allowed exploratory projects to post a cash deposit instead of proving land rights during early transmission studies, the CEC opt-in process is completely different. This is a formal, state-level environmental review and land-use certification. A cash deposit or an unverified promise does not belong here.

A Common-Sense Solution for Both Sides

We recognize that developers cannot commit full capital to purchase land or execute long-term leases before receiving permit approval. However, standard commercial real estate already resolves this without relying on an honor system. Developers routinely execute binding options to lease or purchase, and record a simple memorandum with the County Recorder to establish enforceable site control on the public record while protecting private financial terms. If unrecorded agreements are submitted to the Commission, proprietary figures can easily be redacted or protected under existing CEC confidentiality rules.

Accepting a bare assertion that a developer "controls" the site, or allowing them to propose off-site mitigation on parcels they have no agreement to touch, ties up state staff, exhausts community resources, and fuels neighborhood distrust.

A Layman's Suggestion for the Rule Language

I might suggest that staff revise the language in Section 1877(h) around a few clear, objective principles:

- Require tangible documentation at the time of application, such as a recorded grant deed, an executed lease, a binding option to lease or purchase, or recorded easements for access and off-site mitigation.

- Make it clear that a bare statement of intent or self-affirmation is not enough.

- Allow developers to protect sensitive financial details through standard redactions or existing CEC confidentiality processes.

- Clarify that if an application proposes physical improvements, grading, or environmental mitigation on land where the developer holds no legal property interest or written consent, the filing is considered incomplete.

Balancing Early Termination with Financing Certainty

Clean energy groups argued during the workshop that giving the Executive Director authority to terminate applications early for significant deficiencies introduces financing risk.

It is completely fair to recognize that lenders need predictability before funding expensive energy projects. However, leaving the State without a clear exit ramp when a project is fundamentally non-viable creates an equal and opposite problem for everyone else. Speculative or flawed applications trap state planners and volunteer community members in endless reviews for projects that can never be built.

The solution is not to eliminate early termination, but to establish clear, objective ground rules:

- Early termination should never be arbitrary. It should be triggered by specific, fatal, and unfixable issues, such as failing to prove site control within a set cure period, lacking legal road access, or unresolvable public safety hazards identified by local fire authorities.

- Clear rules provide certainty for good projects to secure financing while allowing the Commission to promptly dismiss projects that simply do not work.

Community Benefits Agreements (CBAs): Direct Value and Continuity
The proposed 120-day submission timeline and minimum funding formula are positive steps, but two areas need careful attention:

1. **Direct Value for the Host Neighborhood:** CBAs must provide tangible, visible benefits to the actual residents and emergency services living next to the project. They should not become private deals that merely fund non-profit administrative overhead or rely on uncertain installment payments that disappear if a project runs into financial trouble. Funding should focus on real neighborhood infrastructure, roadway safety, fire department equipment, and local utility relief.

2. **Commitments Must Stay with the Project:** When energy projects change hands, community commitments must not get lost in the shuffle. The final rules under Section 1882 (Change of Ownership) must explicitly require that all approved community benefit obligations transfer automatically to any new owner or operator as a binding condition of the permit.

Conclusion
The opt-in certification process was designed to help California reach its clean energy targets faster, not to lower the bar on basic land-use standards and property rights. Requiring verifiable proof of site control, setting predictable standards for early dismissal of flawed projects, and ensuring community benefits deliver real and lasting local value will build a permitting process that respects both the state's energy goals and the communities hosting this infrastructure.

Respectfully submitted,

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