

| <b>DOCKETED</b>         |   |
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| <b>Docket Number:</b>   | 24-OPT-05   |
| <b>Project Title:</b>   | Corby Battery Energy Storage System Project                         |
| <b>TN #:</b>            | 264220  |
| <b>Document Title:</b>  | CEC Response to Corby's Application for Confidentiality -<br>CNDDDB |
| <b>Description:</b>     | N/A   |
| <b>Filer:</b>           | Marianna Brewer   |
| <b>Organization:</b>    | California Energy Commission  |
| <b>Submitter Role:</b>  | Commission Staff  |
| <b>Submission Date:</b> | 6/13/2025 8:17:57 AM  |
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June 13, 2025

**Via Email**

Scott Galati  
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**Application for Confidential Designation: Corby Battery Energy Storage System  
Docket No. 24-OPT-05**

Dear Scott Galati:

On May 7, 2025, North Bay Interconnect, LLC and Corby Energy Storage, LLC, wholly owned subsidiaries of NextEra Energy Resources (applicant), submitted an application for confidentiality (TN 262943) to the California Energy Commission (CEC). The applicant is seeking confidential designation for the following documents:

- Appendix 3-B: Swainson's Hawk and BUOW Study Areas and Results
- Appendix 3-F: CNDDDB Special Status Plants Within a 3-Mile Radius of the Project Site (Replaces Appendix 4.4-B)
- Appendix 3-G: CNDDDB Special Status Wildlife Within a 3-Mile Radius of the Project Site (Replaces Appendix 4.4-C)

The applicant is requesting the documents be granted confidentiality in their entirety. Further, the applicant requests that confidentiality be granted indefinitely to protect the potential locations of certain biological resources. The applicant states that the documents are required to be submitted under confidential cover, referencing applicable requirements. (Cal. Code Regs., tit. 20, Appendix B(g)(2)(C).) The applicant also states that the public interest served by not disclosing this information clearly outweighs the public interest served by disclosure. (Gov. Code, § 7922.000.) According to the applicant, disclosure of the information contained in the Appendix 3-B, 3-F, and 3-G maps may enable the location of sensitive biological resources sites by entities conducting unauthorized collection or disturbance of such resources.

The applicant previously submitted an application for confidentiality for Appendix 4.4-B and Appendix 4.4-C CNDDDB maps, and the application was denied (TN 260923). The Appendix 3-F and Appendix 3-G CNDDDB maps, which replace Appendix 4.4B and 4.4-C, submitted with this application are different from the previously submitted maps.

**Confidentiality Claims**

A properly filed application for confidentiality shall be granted under California Code of Regulations, title 20, section 2505(a)(3)(A), "if the applicant makes a reasonable claim

that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential.”

The California Public Records Act provides for the nondisclosure of archaeological site information and records of Native American places, features, and objects and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency. (Gov. Code, §§ 7927.000, 7927.005.)

The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations on public lands must be protected to preserve them. (54 U.S.C. § 306131.)

California Government Code section 7922.000 provides that an agency may withhold information from disclosure where the public interest served by nondisclosure clearly outweighs the public interest of disclosure.

## **Discussion**

### Appendix 3-B: Swainson’s Hawk and BUOW Study Areas and Results

Appendix 3-B displays sensitive Swainson’s Hawk nest sites. Protection of these sites is of great importance, and the public interest served by nondisclosure is clearly outweighed by the public interest of disclosure. Confidentiality is granted for Appendix 3-B.

### Appendix 3-F: CNDDDB Special Status Plants

The Appendix 3-F CNDDDB maps are sourced from the California Department of Fish and Wildlife’s (CDFW) California Natural Diversity Database (CNDDDB). The CNDDDB contains language within the database that restricts public disclosure of data to the public without permission from CDFW unless it is displayed in a such a way that viewers cannot determine the precise location of the resources.

The CEC staff consulted with the CDFW regarding the maps in Appendix 3-F. The CDFW has recommended the release of Appendix 3-F maps with modifications.

The CDFW requests that species name labels be removed from individual polygons, and instead display a list of the species present at the site on the map. Standard CNDDDB symbology (red for animals, green for plants) should be used. Additionally, the CDFW requests that the following disclaimer be added to the maps:

- "CNDDDB version MM/YYYY. Please Note: The occurrences shown on this map represent the known locations of the species listed here as of the date of this version. There may be additional occurrences or additional species within this area which have not yet been surveyed and/or mapped. Lack of information in the CNDDDB about a species or an area can never be used as proof that no special status species occur in an area."

Due to the CDFW's recommendation for release, confidentiality is denied for Appendix 3-F.

Appendix 3-G: CNDDDB Special Status Wildlife

For the Appendix 3-G maps, the CDFW has noted that this version of the map, at a different scale than the previously submitted, could be used to locate nest trees or BUOW occurrences. As such, public interest in nondisclosure outweighs that of disclosure, as disclosure may enable the location of sensitive biological resources sites by entities conducting unauthorized collection or disturbance of such resources. Confidentiality is granted for Appendix 3-G.

**Executive Director's Determination**

The applicant has made a reasonable claim that Appendix 3-B and Appendix 3-G, which contain information on biological resources, can be maintained as confidential indefinitely. As such, the applicant's request for confidential designation of Appendix 3-B and 3-G is granted.

Per the CDFW's recommendation, Appendix 3-F may be released with modifications. As such, confidentiality is denied for Appendix 3-F. Please modify the Appendix 3-F: CNDDDB Special Status Plants maps per the CDFW's request and resubmit these maps to the docket.

You may request that the Commission determine the confidentiality of records for which the executive director denied confidential designation. You have 14 days to request that the Commission determine the confidentiality of the record. If you make such a request, the Commission will conduct a proceeding pursuant to the provisions in the California Code of Regulations, title 20, section 2508.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have questions, please email [confidentialityapplication@energy.ca.gov](mailto:confidentialityapplication@energy.ca.gov).

Sincerely,



Drew Bohan  
Executive Director