

<b>DOCKETED</b>	
<b>Docket Number:</b>	24-OPT-05
<b>Project Title:</b>	Corby Battery Energy Storage System Project
<b>TN #:</b>	267686
<b>Document Title:</b>	Comment concerning Scoping Review for study of Corby BESS project, cumulative impact of foreseeable BESS projects, alternatives
<b>Description:</b>	*** THIS DOCUMENT SUPERSEDES TN 267612 ***
<b>Filer:</b>	System
<b>Organization:</b>	Wendy Breckon
<b>Submitter Role:</b>	Public
<b>Submission Date:</b>	11/20/2025 12:52:07 PM
<b>Docketed Date:</b>	11/18/2025

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*Submitted On: 11/20/2025*

*Docket Number: 24-OPT-05*

**Comment concerning Scoping Review for study of Corby BESS project, cumulative impact of foreseeable BESS projects, alternatives**

*Additional submitted attachment is included below.*

Dear Commissioners and CEC Staff,

This letter serves as a formal request to the California Energy Commission (CEC), as the lead agency under the California Environmental Quality Act (CEQA) for this BESS project, to conduct an analysis of the following significant impacts and any potential mitigation in the EIR.

A comprehensive cumulative impacts analysis that considers the combined effects of the NextEra Phase 1 (0141-030-090), NextEra Phase 2 (APN 0141030100), and Middle River Power BESS projects (APN 0133060060) and any associated parcels affected by the gen-tie lines must be considered due to the proposed extensive development of Prime Agricultural land and Agricultural land of state-wide importance into a foreseeable industrial area composed of at least several BESS facilities. Corby's proposal is in direct conflict with local protections for farmland and agricultural land (including Measure T and the General Plan), as well as all local zoning provisions and the County's BESS ordinance, and the CEC is responsible for studying the impact of superseding local authority and the reasons these local laws are in place.

The development of these projects in proximity to one another means their individual effects may be collectively significant. A focused, integrated analysis is essential for the CEC to make a fully informed decision that protects public health, safety, and the environment. We request that the CEC include this analysis in the Draft EIR.

In addition to Farmland, this area is the home of rural residents, adjacent to I-80 and I-505, and near a Kaiser hospital, and a senior assisted living facility. It is also close to several suburban neighborhoods.

We urge the CEC to specifically evaluate the cumulative impacts. The EIR must comprehensively study the Appendix G environmental topics, with particular emphasis on agricultural land resources and public safety, including fire, hazardous materials, air quality, noise, emergency response, and cumulative impacts, as outlined below.

- A. Aesthetics: The combined visual impact of multiple BESS facilities and associated infrastructure on the landscape and viewsheds, particularly in the context of emerging industrial development. I note a wall will be erected from one direction. How will adequate measure be used to mitigate the significant impacts from industrial views from all directions?
- B. Agriculture and Forestry Resources: The potential for conversion of agricultural land needs to be considered, and impacts on adjacent agricultural operations, due to the concentration of these facilities and the surrounding industrial growth.

Prime Farmland Status and Mapping. The EIR should identify and map farmland classifications using NRCS soil surveys and FMMP designations, including Prime Farmland, Farmland of Statewide Importance, and Unique Farmland within and adjacent to the site. These Farmlands cannot be replaced, and the soil takes 50

to 100 years to replenish if removed, as Corby states it will do at the end of the project.

Also, the project's conversion of agricultural land may need to be mitigated by means other than the use of agricultural conservation easements. As noted in [King & Gardiner Farms, LLC v. County of Kern, 45 Cal.App.5th 814 \(2020\)](#), agricultural easements do not actually offset the conversion of farmland. Because the project's conversion of agricultural land may not be reduced to a less than significant level, the EIR address other proposed mitigation measures, including the clustering of wells when feasible, for reducing the project's conversion of agricultural land. See *Id.*

In addition, the cumulative impacts on agricultural resources needs study due to heavy trucks and truck traffic on rural roads. I note that one commissioner was stuck in the mud on these roads. What measures will be used to mitigate significant impacts from truck traffic associated with the Project.

Scale, Land Use Efficiency, and Cumulative Land Demand:

- Land Demand for Curtailment Capture. Given curtailment magnitudes, the EIR should contextualize the land footprint implications of scaling lithium-ion storage to capture multi-million MWh of curtailed energy, including alternatives that reduce land conversion and cumulative land-use conflicts. Illustrative calculations based on a 300 MWh facility on 40 acres indicate hundreds of thousands of acres could be implicated at scale, warranting robust alternatives analysis that reduces agricultural and community impacts. In particular, would longer term storage batteries be a more realistic and sustainable option given the State's goal of 0 greenhouse gas emissions?
- C. Air Quality: The cumulative air emissions during the construction phases of all projects, potential emissions from BESS thermal events (fires) and associated emergency responses, and the potential impact on local air quality standards in a newly developing industrial zone. What measures will be used to mitigate significant impacts from toxic emissions from thermal runaway on the surrounding community. Note that the North Village neighborhood is deemed a disadvantaged community (Census tract 2904) and an Environmental Justice zone, due in part to, existing air quality impacts from the freeways.

**Emissions** from foreseeable thermal runaway incidents must be considered. This includes plume modeling in all directions, as the wind can blow up to 60 miles per hour in any direction there, and with all containers burning. The impacts to sensitive receptor exposure and foreseeable evacuation/road closure contingencies must be analyzed.

D. Biological Resources: This includes studying the impact on both humans and animals.

**Noise.** BESS facilities generate persistent noise from cooling fans, compressors, inverters (tonal humming), and transformers, with reported equipment-proximate levels up to 92 dBA; the EIR should include a stand-alone, neighbor-focused noise analysis addressing 24/7 operations, nighttime tonal character, impacts on human and animals, feasible mitigation, independent peer review, and cumulative buildup scenarios. The application materials referenced to date do not address chronic exposure to nearby residents; this gap must be cured in the EIR.

**Hazards and Hazardous Materials;** Public Services; Transportation. The EIR must analyze lithium-ion thermal runaway risks, off-gassing (e.g., hydrogen fluoride, hydrogen cyanide, and other toxic compounds), high-temperature fires, potential shrapnel/violent venting, contaminated runoff to waterways, including the creek on the property, and potential contamination from ash to agricultural land, including crops and livestock, as well as other neighboring properties and whether wells for drinking water could continue to be used.

The cost of cleanup should be projected as well as studying what parties will be responsible for the costs. What mitigation measures will Corby LLC put in place to ensure that the neighbors, community, City of Vacaville, and the County will not be responsible for cleanup?

- Thermal Runaway Risk. The EIR must examine initiating causes (manufacturing defects, overcharging/overheating, extreme ambient temperatures, power-loss scenarios, cyber vulnerabilities, external heat sources) and container design performance in containing flammable gases and withstanding external heat, supported by third-party testing or pre-approval demonstrations.
- Battery Chemistry/Technology Alternatives. The EIR should study non-lithium technologies (e.g., iron-air, other alternative chemistries) and other lower-hazard storage options identified in the record, comparing hazard risk, emergency response requirements, environmental footprint, and lifecycle replacement/quality control considerations.
- Emergency Planning and Community Protection. The EIR should evaluate ERAP adequacy, unified command coordination, responder training needs, specialized apparatus, protective equipment replacement, and evacuation planning and who will be responsible for this cost.
- National Security Interface. If within potential influence of sensitive military facilities (e.g., Travis AFB), the EIR must analyze plume/runoff impacts on flight operations and base missions, and require results from relevant federal siting reviews. Cyberattacks on the BESS CORBY Facility should also be

studied. Evaluate the need for FAA "Determination of No Hazard" and military concurrence.

**Animals:** In addition to total habitat fragmentation, the impact on sensitive species and ecosystems from the collective footprint of the facilities and the new industrial development. Noise, vibration, and toxic emissions must be considered. The CEC can look to the Moss Landing BESS explosion/Fire to study how animals were impacted by the deposits of heavy metals and toxics in the soils. In addition, toxics from the BESS facility were detected in the agricultural soils within a 2 mile radius. Is that agricultural land suitable to continue to grow food for human consumption? If that data is not yet available, a comprehensive study cannot be accomplished, and the CEC would be approving further Science Fiction experiments on our vital agricultural land without knowing the results.

Cumulative Impacts. The EIR must address cumulative risks and nuisances, including project expansion phases and regional clustering of BESS assets that could compound the aesthetic impact and noise, air, hazard, and service-demand impacts.

**BESS Impacts to Water Resources that would harm sensitive species:** Ground water is shallow in the area of the project, and there is also limited water resources available. The toxins that would flow into the groundwater after a thermal runaway event would go into the groundwater and the creek on the property. Neighbors use their own wells for drinking water, and the City of Vacaville use wells for drinking water for the entire City. Studies must be conducted to determine the extent to which well water, drinking water, and other water resources would be impacted from a minor event and a major catastrophic event where all lithium-ion batteries are on fire.

As to water supplies, the mitigation measures for the project's significant impacts to water supplies should not defer formulation of the measures or delay the actual implementation of the measures. Mitigation measures must be adequate so that the community's water resources are protected. See for example, [King & Gardiner Farms, LLC v. County of Kern, 45 Cal.App.5th 814 \(2020\)](#).

**Monitoring Programs for water resources need to be studied:** CEQA requires adoption of monitoring and reporting programs to ensure compliance with mitigation measures during project implementation. [CA PUB RES § 21081.6](#) These programs must be "designed to ensure compliance during project implementation" and may be prepared by responsible agencies with jurisdiction over affected natural resources. [CA PUB RES § 21081.6](#)

- E. Cultural Resources: The combined effect on historical or unique cultural resources in the area, considering the entire footprint of the multiple projects.
- F. Energy: The cumulative demands on local energy infrastructure during construction and operation, and how these projects interact with regional energy plans in the context of a new industrial area.
- G. Geology and Soils: The cumulative impacts of extensive grading and construction on soil stability, erosion, and potential geological hazards across the larger, combined development area.

**Public Safety and Emergency Response.** In addition, the EIR should evaluate the adequacy of an Emergency Response and Action Plan (ERAP) coordinated with local agencies, incident communication/evacuation protocols, specialized equipment and training needs, and financial mechanisms to cover response and cleanup, recognizing the policy focus on BESS safety planning even if AB 205 does not require ERAP for application completeness. For a complete analysis, there is a need to study extended first-responder commitments by Vacaville Fire Department, the County's volunteer fire departments, as well as Dixon Fire. Furthermore, roadway and highway I-80 and I-505 closures, and associated community disruption caused by potential evacuations of neighborhoods, Kaiser hospital, and other facilities need to be analyzed and a plan put in place. The cost of these responses should be projected as well as who covers the costs.

**Water Supply Inadequate for Emergencies:** BESS fires can burn for days, and adequate water supply is necessary to cool down the batteries that haven't yet burned, as well as to contain the fire from spreading. Corby LLC has stated that it will have less water on site than recommended (see public comments at scoping public hearing). Water supply availability for emergencies must be studied for adequacy in the case of a worst-case scenario thermal runaway event.

**Alternative locations within Solano County:** Alternative locations should be studied extensively for feasibility. The CEC should not rely on Corby's conclusory statements that safer, non-Agricultural land alternatives, are not available. The County has provided an alternative location at Lambie industrial area that would be more suitable.

**Federal Funding:** In addition, to the extent that Corby, NextEra, Marin Clean Energy or SF Clean Power receives Federal funding through loans, grants, or other Federal assistance, please study whether a NEPA review is also necessary. Corby LLC is an entity of NextEra and cannot be artificially separated from any Federal assistance. In addition, MCE and SF Clean Power have power purchase agreements with Corby, and thus to the extent that Corby receives any federal funding through these agreements, NEPA should be considered. Please note that this means that the Farmland Protection Policy Act may require other requirements for the destruction of Farmland.

A project becomes Federal when federal assistance is received. If the project converts farmland conversion, then the Farmland Protection Policy Act (FPPA) is applicable. The

FPPA requires federal agencies to minimize conversion of farmland to nonagricultural uses and consider alternatives that could lessen adverse effects on prime agricultural land. See 7 USCA section 4201. Congress was concerned that continued decrease in the Nation's farmland base may threaten the ability of the United States to produce food and fiber in sufficient quantities to meet domestic needs and the demands of our export markets. Congress chose to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland.

The FPPA defines "Federal program" to include only activities involving "(A) undertaking, financing, or assisting construction or improvement projects; or (B) acquiring, managing, or disposing of Federal lands and facilities.

Lithium-ion battery storage systems can access federal assistance through various programs.

### **Federal Assistance for Lithium-Ion Battery Storage Systems**

#### **Funding Programs**

- **Battery Manufacturing and Recycling Grants**
  - **Funding Amount:** \$3 billion
  - **Focus:** Supports domestic manufacturing and recycling of batteries.
  - **Eligible Recipients:** Institutions of higher education, national laboratories, private entities, and state/local governments.
- **Battery Materials Processing Grants**
  - **Funding Amount:** \$3 billion
  - **Focus:** Enhances domestic capabilities in battery materials processing and manufacturing.
  - **Eligible Recipients:** Similar to the Battery Manufacturing Grants.

#### **Tax Incentives:**

- **Investment Tax Credit (ITC)**
  - **Credit Rate:** 30% for battery storage systems installed after December 31, 2021, and before January 1, 2026.
  - **Eligibility:** Standalone battery storage systems now qualify, previously required pairing with solar.

#### **Additional Support:**

- **Direct Pay Provision**
  - Available for tax-exempt organizations, allowing them to receive the value of the tax credit as a cash payment.
- **Performance-Based Incentives**
  - Programs that compensate businesses based on their battery systems' contributions to grid stability, such as demand response programs.

Energy companies constructing lithium-ion battery storage systems can access significant federal funding and tax incentives to support their projects. These programs aim to enhance domestic manufacturing capabilities and promote energy resilience.

In addition, BESS projects requiring federal permits, financing, or interconnection approvals could trigger FPPA consultation requirements. If so, Federal agencies must use established criteria to "identify and take into account the adverse effects of Federal programs on the preservation of farmland" and "consider alternative actions, as appropriate, that could lessen such adverse effects" **7 USCA § 4202**.

In this case, the applicant's representation that this would be a temporary conversion of farmland to nonagricultural uses is false. Instead, this project would result in an irreversible conversion of farmland to nonagricultural uses. The Corby Battery Energy Storage System would permanently convert this prime farmland into an industrial site. Once soils are compacted under concrete pads, access roads, and heavy infrastructure, their natural structure, microbial life, and water-holding capacity are destroyed. After a 20- or 30-year project cycle, proponents may suggest the land could be "returned" to agriculture. But the science is clear: recovery of prime soils after industrial disturbance can take **50 to 100 years or longer**, and even then, full restoration is rarely achieved. Furthermore, removal of the topsoil after decommissioning would prevent any agricultural purpose. In the event of a BESS fire, toxic compounds could contaminate nearby fields and pastures. It is not economically feasible that a farmer could decontaminate their soil, certify their crops or livestock as safe, or convince buyers their products are uncontaminated. Even the perception of contamination hurts Solano's agricultural brand. There is no mitigation strategy that can erase that risk. No compensation package can restore consumer confidence once doubt enters the food chain. And no economic offset can replace the generational loss of farmland that underpins Solano's \$1.66 billion agricultural economy.

In addition, this conversion is also unnecessary. The County has issued an ordinance which provides for the permitting of BESS facilities in industrial areas. According to Solano County Supervisor Mashburn (see EIR Scoping Hearing), the applicant indicated it could locate a BESS in the Lambie Industrial area, but it would be more expensive and require upgrades. When Supervisor Mashburn indicated they could use community benefit money to fund the cost as stated by the applicant, the applicant walked away from the meeting.

Thus, if the project qualifies as a Federal project, the FPPA is triggered, as the prime agricultural land will be irreversibly converted. Thus, the next step is will the project be compatible with State and local law. This project is not consistent with local law, as the ordinance provides that BESS cannot be constructed on agricultural land. The ordinance is consistent with Measure T, a voter initiative, which has strict zoning requirements for projects on agricultural land.

#### Evaluation Process and Criteria

Federal agencies must use specific criteria established in 7 C.F.R. § 658.5 to evaluate farmland conversion. 7 CFR § 658.5 The evaluation includes two components: land evaluation criteria provided by NRCS (0-100 points representing relative agricultural value) and site assessment criteria scored by the federal agency (up to 160 points). 7 CFR § 658.5 The 12 site assessment factors examine surrounding land use, farming history, protection status, proximity to urban areas and utilities, farm size, impact on remaining farmland, availability of farm services, on-farm investments, effects on support services, and compatibility with surrounding agriculture. 7 CFR § 658.5

### Procedural Requirements

FPPA regulations require agencies to coordinate with the Natural Resources Conservation Service and consider alternatives that could lessen adverse effects on farmland. 7 CFR § 658.4 Agencies should conduct evaluations "early in the planning process before a site or design is selected" and integrate FPPA evaluations with National Environmental Policy Act (NEPA) processes when possible. 7 CFR § 658.4 Federal agencies must report annually to the NRCS Chief on implementation progress until full compliance is achieved. 7 CFR § 658.7 However, the Act includes a balancing test allowing conversion when agencies determine that "other national interests do not override the importance of the protection of farmland nor otherwise outweigh the benefits of maintaining farmland resources."

**Conclusion:** Thank you for your attention to the important issue of studying the cumulative impacts of the Corby project, and the associated foreseeable projects, and thoroughly studying alternatives to the project. In addition, the issue of whether the Corby project is a Federal project must be considered due to the additional analysis required, as described above.