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Comment Received From: Neil Serr
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Why Is the California Energy Commission Not Giving Solano County Measure T the Weight It Deserves?

Additional submitted attachment is included below.

Why Is the California Energy Commission Not Giving Solano County Measure T the Weight It Deserves?

Dear California Energy Commission Commissioners and Staff:

I am asking the California Energy Commission to directly address the legal significance of Solano County Measure T and, specifically, how the Commission is applying or considering Measure T in its review of the Corby Battery Energy Storage System (BESS) Project, CEC Docket 24-OPT-05.

The Corby BESS project is proposed by North Bay Interconnect, LLC and Corby Energy Storage, LLC. The project would consist of a 300-megawatt, 1,200-megawatt-hour battery energy storage facility on approximately 40.3 acres southwest of Kilkenny Road and Byrnes Road in Solano County, together with a project substation and approximately 1.1 miles of 230-kV transmission facilities connecting to the PG&E Vaca-Dixon Substation.

The California Environmental Quality Act record identifies the existing land use at the project site as Agriculture / Exclusive Agriculture (A-40), Exclusive Agriculture (A-20) / Agriculture (AG), and the environmental review specifically identifies land use/planning and agricultural resources as issues requiring evaluation.

This raises a fundamental question regarding Measure T.

Measure T Was Approved by the Voters

In November 2008, Solano County voters approved Measure T, which amended the County's 1994 Orderly Growth Initiative and extended its protections through December 31, 2028.

Measure T established voter-approved protections for agricultural and open-space lands and required voter approval for certain changes involving agricultural lands, open space, watersheds, and marshlands when those changes would allow urban or municipal development.

The measure was not simply an administrative policy adopted by County staff. It was approved directly by the voters of Solano County.

The purpose was to protect agricultural land, prevent urban sprawl, and direct growth toward existing cities rather than allowing urban development to spread into rural agricultural areas.

The Corby BESS Project Makes This Question Immediate

The CEC's own environmental documentation identifies agriculture and land use as issues associated with the project

Therefore, I respectfully ask the Commission:

Does the CEC recognize that Measure T remains a valid, voter-approved component of Solano County's land-use framework through December 31, 2028?

Has the CEC determined whether Measure T applies to the Corby BESS project?

If the CEC has determined that Measure T does not apply to Corby BESS, what is the specific legal authority for that determination?

Where in the Corby Staff Assessment/Draft EIR does the CEC analyze the requirements and legal effect of Measure T?

Does the CEC consider the voter-approved Measure T requirement to be a relevant land-use consideration under CEQA and the CEC's Opt-In Certification process?

If Measure T requires a vote of Solano County residents before certain agricultural lands can be converted to urban or municipal development, how does the CEC reconcile that requirement with its consideration of the Corby BESS project on land identified as agricultural?

Does the CEC believe that an energy-storage facility can be approved through the state Opt-In process when the underlying land-use action would otherwise be subject to a voter-approval requirement under a valid county measure?

If the CEC believes that its state authority supersedes or overrides Measure T, please identify the exact California statute, regulation, or other legal authority that gives the CEC that power.

If the CEC believes that Measure T is preempted in this proceeding, when was that determination made, who made it, and where is that determination documented in the public record for Docket 24-OPT-05?

If Measure T has not been found to be preempted, why is the Commission proceeding with the Corby BESS project without requiring the public to understand how the project complies with the voter-approved Measure T protections?

What Does the Vote of the People Mean?

This is bigger than the Corby BESS project.

The people of Solano County went to the ballot box and voted overwhelmingly to preserve agricultural and open-space protections.

They did not give that authority to a developer.

They did not give it to a state agency.

They did not give it to the California Energy Commission.

They exercised that authority themselves through the ballot.

If a state agency can approve a project that results in development of protected agricultural land without addressing the requirements of a voter-approved land-use measure, then the public deserves to know exactly what legal principle allows that to happen.

Otherwise, what does a voter-approved land-use protection actually mean?

The CEC's Responsibility to the Public

I understand that the CEC has a state-level role and that the Commission's jurisdiction is different from that of Solano County.

However, the fact that the CEC has state jurisdiction does not answer the question of whether Measure T remains legally relevant.

Solano County itself has submitted comments concerning the Corby project, and the CEC docket contains numerous public comments raising land-use concerns.

Therefore, I am asking the Commissioners for a clear answer—not a general explanation of the CEC's jurisdiction.

What is the CEC's legal position regarding Measure T and the Corby BESS project?

And most importantly:

Does the CEC believe that the approximately 70 percent of Solano County voters who approved Measure T still have a meaningful say in whether protected agricultural land is converted to urban or industrial development before Measure T expires on December 31, 2028?

If the answer is yes, please explain exactly how the CEC is honoring that voter-approved protection in the Corby BESS proceeding.

If the answer is no, please explain to the people of Solano County why their voter-approved Measure T does not apply and identify the specific law that allows the CEC to disregard it.

Do the votes of Solano County citizens still count?

That is the question the Commission owes the public a direct answer to.

Thank you for your consideration and for providing a clear written response for the public record in CEC Docket 24-OPT-05, Corby Battery Energy Storage System Project.

Thank you Neil Serr