

DOCKETED	
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Docket Number: 24-OPT-05

Omission of Voter Approved Initiatives and Other EIR Deficiencies

See attached.

Additional submitted attachment is included below.



Dear CEC Commissioners and Staff,

The Solano Orderly Growth Committee (OGC) submits these formal legal and technical comments on the Draft Environmental Impact Report (DEIR) for the proposed Corby Battery Energy Storage System (BESS). For over four decades, Solano County voters have enacted strict, voter approved Orderly Growth Ordinances (Measure A and Measure T) to preserve our agricultural engine, prevent leapfrog industrialization, and direct utility-scale infrastructure into urban spheres and industrial zones. The Draft EIR's conclusion that converting 40.3 acres of Prime Farmland into an industrial BESS facility results in a "less than significant with mitigation" land use and agricultural impact is legally suspect under the California Environmental Quality Act (CEQA) and unsupported by substantial evidence in the administrative record.

To comply with CEQA and avoid legal defect, the CEC must reclassify Land Use Conflicts and Agricultural Conversions as Significant and Unavoidable Impacts, re-evaluate off-site alternatives, and recirculate the EIR pursuant to CEQA Guidelines § 15088.5 based on the following statutory grounds:

1. Direct Conflicts with Local Land Use Policies and Voter Initiative (CEQA Appendix G)

Omission of Measure T: The Corby BESS project site is located directly on protected, highly productive agricultural land. The project stands in direct violation of Solano County's long standing zoning regulations, land use ordinances, and local planning framework. Most critically, it directly conflicts with Measure T, the landmark, voter approved initiative that has protected Solano County's agricultural heritage and open spaces for decades. Despite Measure T being a cornerstone of local land use policy, the draft EIR fails to mention it anywhere within the entire document. Completely excluding the county's voter initiative to preserve agricultural land and open space severely undermines the legal adequacy of the review.

Inconsistency with General Plan Mandates: CEQA Guidelines Appendix G (Section XI) requires an EIR to evaluate direct conflicts with policies designed to mitigate environmental impacts. An industrial lithium-ion BESS located on exclusive agriculture land conflicts with Solano County's General Plan Agricultural Element and Measure T mandates.

Violation of Orderly & City-Centered Growth Principles: Solano County's foundational land use policies require high intensity, industrial scale development to stay within urban boundaries or established industrial parks (like Lambie Industrial Park). Putting a utility scale industrial project on 40 acres of farmland sets a precedent that undermines voter approved Orderly Growth policies. We note that Corby LLC has purchased adjacent property to extend

this BESS by another 40 acres. In addition, there are other similar projects planned nearby. This would be a piecemeal redesignation of the agricultural land to industrial land in violation of Measure T, and Solano County's general plan, land use policies and ordinances.

Risk of "Spot Industrialization" in Rural Zones: Permitting an industrial energy complex on rural farmland far from city infrastructure creates spot industrialization and sprawl, directly violating the County's mandate to maintain clear boundaries between urban centers and agricultural open space.

AB 205/SB 254 Limit: State permitting authority under AB 205 doesn't waive CEQA. Preempting local permitting authority doesn't relieve the CEC from its responsibility to analyze and address physical land use conflicts and sprawl. Nor does SB 254's law concerning superseding local laws allow CEC to ignore CEQA and significant impacts of the project.

2. Unlawful Farmland Conversion Analysis and Inadequate Mitigation (PRC § 21080)

Permanent Farmland Loss: Claiming a 20 to 30 year operational life makes this facility "temporary" defies reality. Decades of severe soil compaction, concrete pad installations, potential heavy-metal or chemical contamination, and topsoil stripping permanently disrupt agricultural viability long after decommissioning.

Inadequate Farmland Mitigation: Simply purchasing off-site agricultural conservation easements does not compensate for the direct net loss of prime or unique agricultural land. CEQA prioritizes on site avoidance first rather than treating off site easements as a substitute for preserving top tier farmland.

3. Flawed Off-Site Alternatives Analysis & Conclusory Override Findings (PRC § 21002)

Defective Evaluation of Lambie Industrial Park: Under PRC § 21002, the EIR must evaluate a genuine range of feasible off-site alternatives to avoid destroying Prime Farmland. Instead, the DEIR dismisses the industrial zoned Lambie Industrial Park using bare assertions, deferred unknowns, and artificially tight project objectives. The DEIR acknowledges that Lambie offers better public health protection by keeping industrial storage away from rural homes, yet fails to measure those benefits while speculatively claiming Lambie has visual tradeoffs without providing a single visual simulation.

Conclusory "No Feasible Alternatives" Overriding Statements: The draft Statement of Overriding Considerations relies on a bare finding that "no feasible alternatives exist" to reduce significant visual impacts while meeting project objectives. The document fails to disclose an alternatives screening matrix, explicit screening criteria, or specific evidence explaining why alternative site layouts, reduced footprints, or alternative locations were deemed infeasible. Most critically, the DEIR fails to evaluate the Lambie Industrial Park alternative paired with standard visual mitigation such as undergrounding gen-tie transmission lines which would substantially reduce or eliminate its off-site visual footprint. By neglecting to model Lambie with feasible visual mitigation and failing to weigh those manageable visual tradeoffs against the permanent,

irreversible destruction of Prime Farmland, the CEC staff's overriding findings lack the substantial evidence required by CEQA.

4. Unstudied Secondary Effects and Cumulative Footprint Impacts

Interference with Active Farming Operations: CEQA Guidelines § 15064(d) requires analyzing indirect environmental effects such as industrial BESS hazards like thermal runaway, toxic plumes requiring emergency response directly interfere with crop dusting, aerial spraying, and routine irrigation on surrounding farms. The Corby Project is an incompatible use of an agricultural zoned area, and will set a precedent allowing other similar projects to substantially redesignate the zoning of the area from agricultural to industrial.

Piecemeal Land Use & Cumulative Footprint Analysis: The assessment evaluates the parcel in isolation without analyzing the cumulative industrialization of agricultural land driven by multiple BESS and energy projects proposed in the immediate rural viewshed and agricultural corridors if the Corby project sets the precedent of overriding local zoning.

5. Green House Gas Reductions Based on Assumptions Shouldn't Grant Override to Develop Prime Agricultural Land

The California Energy Commission (CEC) cannot legally justify sacrificing prime agricultural land based on greenhouse gas (GHG) reductions that are entirely speculative. To issue a Statement of Overriding Considerations, which allows the CEC to approve a project despite unmitigated environmental impacts. The Commission must provide a clear analytical connection showing that concrete public benefits outweigh the permanent loss of farmland. However, the Staff Assessment claims the Corby Battery Energy Storage System (BESS) project will eliminate up to 220,599 metric tons of carbon emissions annually based on an unverified, best-case operational scenario. Because the assessment lacks project-specific modeling and imposes no binding operational mandates, the facility could easily charge during hours when fossil fuels power the grid, eliminating the promised carbon offsets. Relying on an unbacked, best case assumption to justify destroying high-quality agricultural soil violates basic environmental review standards.

Respectfully,

Wendy Breckon
Board of Directors
Solano Orderly Growth Committee

Enclosures: Solano County General Plan Policy Excerpts; Measure A/T Text; Candidate Off-Site Industrial GIS Map

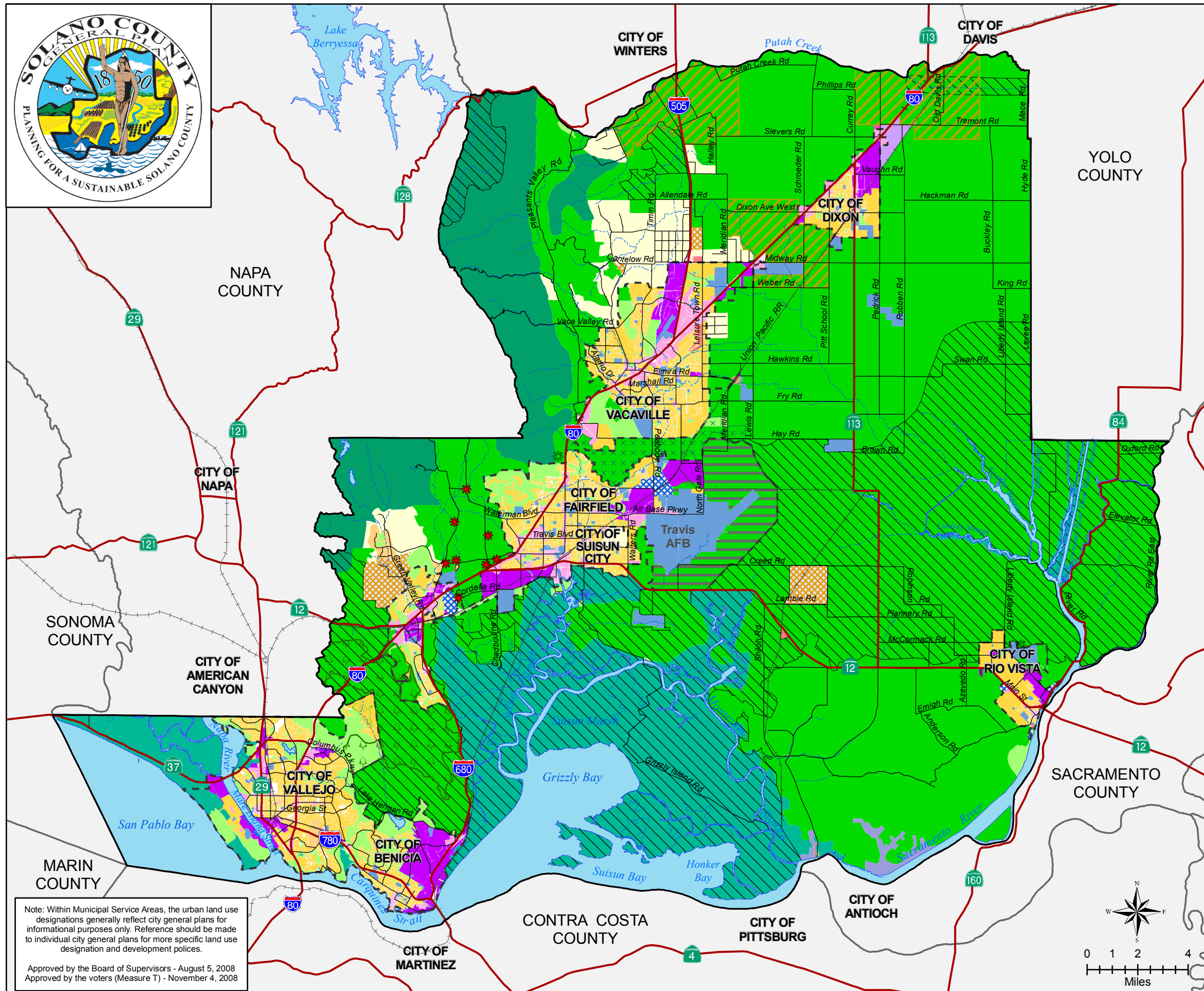
Contact: info@solanoorderlygrowth.org

Measure A—Orderly Growth Initiative

Solano County’s voters adopted Measure A in 1984. The provisions of Measure A were extended with the adoption of the Orderly Growth Initiative, in 1994. The purpose of the initiative is to continue to ensure protection of Solano County’s agricultural and open space resources by extending the following provisions:

1. Amending the General Plan to restrict redesignation of lands identified as Agriculture or Open Space on the Land Use and Circulation Map through December 31, 2010; and
2. Amending the General Plan to restrict the density of residential and other development of lands designated Agriculture or Open Space through December 31, 2010, preventing large scale residential or mixed use developments outside of municipal areas.

Under the provisions of the Orderly Growth Initiative, a popular vote is required in order to redesignate Agriculture or Open Space lands to another land use category, or to increase the density of development on designated Agriculture or Open Space lands.



Note: Within Municipal Service Areas, the urban land use designations generally reflect city general plans for informational purposes only. Reference should be made to individual city general plans for more specific land use designation and development policies.

Approved by the Board of Supervisors - August 5, 2008
Approved by the voters (Measure T) - November 4, 2008

Solano County General Plan

Figure LU-1

Land Use Diagram

Legend

Municipal Service Areas

General Plan Land Use Designations

Natural Resource Designations

- Water Bodies and Courses
- Park and Recreation
- Marsh

Agricultural Designations

- Watershed
- Agriculture

Public Designations

- Public/Quasi-Public

Residential Designations

- Rural Residential
- Traditional Community - Residential
- Traditional Community - Mixed Use
- Urban Residential

Commercial Designations

- Neighborhood Commercial
- Neighborhood Agricultural/Tourist Center
- Commercial Recreation
- Service Commercial
- Highway Commercial
- Urban Commercial

Industrial Designations

- General Industrial
- Limited Industrial
- Water Dependent Industrial
- Urban Industrial

Special Purpose Areas

- Joint Study Area
- Specific Project Area
- Urban Project Area

Overlays

- Vacaville-Fairfield-Solano Greenbelt
- Travis Reserve Area
- Agricultural Reserve Overlay
- Tri-City/County Cooperative Planning Area
- Resource Conservation Overlay

