

| <b>DOCKETED</b>         |                                                                                                  |
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| <b>Project Title:</b>   | Corby Battery Energy Storage System Project                                                      |
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| <b>Document Title:</b>  | Wendy Breckon Comments - Measure T voter initiative prohibits redesignation of agricultural land |
| <b>Description:</b>     | N/A                                                                                              |
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| <b>Organization:</b>    | Wendy Breckon                                                                                    |
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*Comment Received From: Wendy Breckon  
Submitted On: 9/1/2026  
Docket Number: 24-OPT-05*

**Measure T voter initiative prohibits redesignation of agricultural land**

See attached

*Additional submitted attachment is included below.*

To: California Energy Commission  
715 P Street Sacramento, CA 95814

Re: Corby Battery Energy Storage System Project (24-OPT-05)

**Subject: Measure T (November 2008), the Solano County Land Use Voter Initiative, Prohibits Re-designation of Agricultural Land by CEC**

The California Energy Commission (CEC) Draft Environmental Impact Report (EIR) for the proposed Corby Battery Energy Storage System (BESS) project rests on a fundamentally flawed legal premise. Relying on Public Resources Code (PRC) Section 25545.1(b), the CEC asserts broad authority to supersede local laws and bypass Solano County's foundational land use voter initiative, Measure T (November 2008). However, this administrative interpretation overreaches the CEC's statutory authority. Under established California Supreme Court precedent, local voter initiatives enjoy a heightened constitutional status that cannot be casually set aside by an administrative agency. Because PRC Section 25545.1 lacks the explicit legislative intent required to preempt voter-enacted initiatives, Measure T remains fully binding on this site. By omitting any analysis of Measure T, the Draft EIR fails to evaluate a critical, non-waivable land use conflict, rendering the environmental review legally inadequate under California law.

In its draft EIR, the CEC did not consider the Voter Initiative, Measure T. Measure T is a principle organizing land use tool for the Solano County General Plan, and its implementing ordinances, to protect land designations, including agricultural land. CEC cites the following language in Public Resources Code section 25545.1(b) to give it license to ignore all local law:

“ . . . the issuance of a certificate by the commission for a site and related facility pursuant to this chapter shall be in lieu of any permit, certificate, or similar document required by any state, local, or regional agency, or federal agency . . . for the use of the site and related facilities, and *shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency . . .*” (italics added for emphasis)

The above statutory language does not include superseding voter initiatives.

**a. PRC Section 25545.1 (SB 242) lacks the requisite intent to restrict local voter initiatives**

Under California law, local residents can use the power of initiative or referendum guaranteed to them by the California Constitution for a range of functions relevant to land use, including to alter the general plan for their municipality. (*DeVita v. County of Napa*, 9 Cal.4th 763, 777-784, 38 Cal.Rptr.2d 699, 889 P.2d 1019 (1995)). Local voter initiatives enjoy a heightened constitutional status, and therefore superseding or pre-empting voter initiatives requires a more demanding showing than pre-empting an ordinary ordinance. That is, the California Supreme court requires a "clear showing" or "definite indication" of legislative intent to restrict the initiative power. See *City of Morgan Hill v. Bushey*, 5 Cal. 5th 1068, 423 P.3d 960 (2018). Courts must jealously guard the referendum and initiative powers, liberally construing those powers so they are "not improperly annulled". *Id.* Under this framework, the referendum or initiative power is only preempted by state law where there is a "definite indication" or a "clear showing" that the Legislature intended to restrict those rights. *Id.* There must be clear legislative intent to supersede the initiative. *Mission Springs Water Dist. v. Verjil*, 218 Cal. App. 4th 892, 160 Cal. Rptr. 3d 524 (2013). A state statutory scheme does not restrict or pre-empt the power of an initiative simply because it includes some elements of statewide concern. *Id.* Rather, there must be a clear showing of the Legislature's intent to exclude the operation of the initiative power. *Id.* Finally, the statewide concern doctrine is a prerequisite to—but not sufficient for pre-emption of a local initiative. See *City of Morgan Hill v. Bushey*, *supra*.

The most definitive preemption of a local initiative occurs through explicit statutory language targeting the initiative power. In *AIDS Healthcare Found. v. Bonta*, 101 Cal. App. 5th 73, 320 Cal. Rptr. 3d 39 (2024), the court upheld Senate Bill 10's preemption of local housing density caps enacted by voter initiative because the statute explicitly granted local legislative bodies the power to act "[n]otwithstanding any local restrictions ... including ... restrictions enacted by local initiative." PRC Section 25545.1 does not include the requisite language that allows for superseding a voter initiative.

**Solano County Voter Initiative, Measure T (November 2008), amended the Solano County General Plan, and restricted the redesignation and development of Agricultural Land for industrial purposes**

LU-31 of the General Plan states,

“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.”

A Solano County General Plan Amendment, labeled on the ballot as **Measure T**, was approved by the voters on the [November 4, 2008 ballot](#) in [Solano County, California](#) ballot. The voters approved Measure T, and Board of Supervisor Ordinance No. 2008-01, that amended Solano County's 1994 Orderly Growth Initiative and General Plan that updated certain land use provisions of the Solano County General Plan, including those relating to agriculture, open space, land use designations ,and the Land Use Diagram in the 2008 Solano County General Plan. Measure T extended the amended initiative until December 31, 2028.

This voter initiative provides that the designation of land as “Agriculture,” “Watershed,” “Marsh,” “Park & Recreation,” or “Water Bodies & Courses” on the Solano County Land Use Diagram, remains in effect until December 31, 2028. There are a number of General Plan provisions protecting these uses. Specifically, AG.P-29 states, “[s]upport the unique agricultural uses found in the interior valleys (Suisun, Pleasants, Vaca, and Lagoon) and encourage the development of complementary agritourism, processing, and commercial uses in these regions.

There are strict limitations on development in these land areas due to the cornerstone land use concept that development should occur within city limits, and lands outside city limits should be preserved. However, lands designated as “agriculture” may be redesignated pursuant to the procedure specified in Agricultural Policies, AG P-32 through AG P-36. These procedures require the Board of Supervisor (BOS) to make specific findings to change the designation of agricultural land. This Voter Initiative is promulgated in LU P-3 of the General Plan. LU P-3 is a key policy that states that lands designated as “Agriculture” may only be redesignated to a more intense agricultural designation or a rural designation under restrictive conditions such as the land is unsuitable for agriculture and the Board of Supervisors must find that approval will not constitute a piece-meal conversion from a large Agricultural area to a noni-agricultural use (See AG.P-32 of Solano General Plan). In addition, it restricts the type of industrial uses that can be created on agricultural land.

LU-P.28a, provides “[l]ocate and develop industrial uses in a manner that does not conflict with adjacent and surrounding agricultural activities and protects water quality and marshland and wetland habitats.” It should be noted that AG.I-4 and other agricultural policies indicated that industrial uses are to be limited, and related to agriculture by serving local farmers, or supporting agri-tourism, including restaurants, bed -and -breakfasts, and similar tourist - oriented services. See e.g. General Plan, AG -16 and AG-17. We note that conversion to non-agricultural land that interferes or conflicts with agricultural land is also prohibited for public parks & Recreation uses. See AG.P-34.

The State’s certification would in effect re-designate the Corby LLC property as industrial, and would violate the plain meaning of Measure T. Clearly, commercial battery energy storage is an industrial use. The risk of harm would interfere with and conflict with adjacent and surrounding agricultural activities. By their nature, lithium-Ion BESS facilities are inconsistent with and harm agricultural land. This use would permanently change the nature and character of the agricultural land where the BESS is located. In the case of thermal runaway, it is likely to contaminate adjacent agricultural land and waterways with heavy metal ash<sup>1</sup>. Lithium -Ion Battery Storage facilities are inherently unstable, and have a record of

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<sup>1</sup> Press Release San Jose State University Moss Landing Marine Laboratory shows heavy metal contamination. <https://www.countyofmonterey.gov/home/showdocument?id=138175>

thermal runaway<sup>2</sup> and explosions.<sup>3</sup> This could make land unsuitable for agriculture due to the heavy metals deposited in these incidents. The process of thermal runaway emits gases that pose health risks to the general public and farmers<sup>4</sup>. These gases when emitted could cause shortness of breath, severe eye and skin irritation<sup>5</sup> and thus are entirely inconsistent with safe farming practices. The applicant energy company's assurances concerning the safety of its new technology are unproven and due to the short time-frame involved and lack any significant safety record.

### **A popular vote is Required to re-designate agricultural land to industrial use in Solano County**

In this case, there are 40 acres of agricultural land to be converted to an industrial use (industrial size BESS) for the first phase of the Corby project, and 40 acres of agricultural land that have been purchased on an adjacent site for the second phase. This land consists of prime agricultural land and agricultural land of state significance that will be permanently developed. This amounts to a defacto re-designation from agricultural land to industrial use lands by CEC's approval of Corby's certification for BESS use, and bypasses the Measure T County processes to do so.

“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. . . .” See LU-P.31. Thus, to re-designate this agricultural land to industrial use, a popular vote is required. Without a popular vote, the State Certification will conflict with the Solano County Voter Initiative, Measure T. Even if a commercial lithium-ion BESS could be characterized as “intensive agricultural”, this designation could only be made if the Board of Supervisors makes findings for re-designation in accordance with AG.P-32, including no piecemeal conversion, no prime agricultural land, that the land is unsuitable for agriculture, that the project will be compatible with agricultural uses, there are adequate public services, and annexation is not appropriate or possible. Therefore, the CORBY BESS project conflicts with Measure T's re-designation controls.

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<sup>2</sup>**EPRI BESS Failure Database** [energystorage.epri.com/hub/public/en/failure-incident-database.html](http://energystorage.epri.com/hub/public/en/failure-incident-database.html)

<sup>3</sup> **UL Research Insititute Report: Four Firefighters injured in Lithium-ion Battery Storage System Explosion - Arizona** [fsri.org/research-update/report-four-firefighters-injured-lithium-ion-battery-energy-storage-system](http://fsri.org/research-update/report-four-firefighters-injured-lithium-ion-battery-energy-storage-system)

<sup>4</sup> **A California Battery Plant Burned. Residents Have Gotten Sick, and Anxious** [www.nytimes.com/2025/02/10/us/california-battery-plant-fire.html](http://www.nytimes.com/2025/02/10/us/california-battery-plant-fire.html)

<sup>5</sup> **CDC NIOSH Guide -Hydrogen Fluoride** [www.cdc.gov/niosh/npg/npgd0334.html](http://www.cdc.gov/niosh/npg/npgd0334.html)

## **Conclusion**

In conclusion, State certification of the Corby Battery Energy Storage System (BESS) project would be legally invalid, representing an unlawful exercise of administrative authority and an abuse of discretion. The California Energy Commission (CEC) relies on Public Resources Code (PRC) Section 25545.1 (enacted under SB 242/SB 254) to ignore local law, but this statute does not supersede Measure T. Under settled California Supreme Court jurisprudence (*DeVita v. County of Napa*; *City of Morgan Hill v. Bushey*), the local initiative power is a constitutional right reserved by the voters, requiring a "clear showing" or "definite indication" of legislative intent to restrict or preempt. Preemption occurs only when statutory language explicitly targets local initiatives—a standard reaffirmed in *AIDS Healthcare Foundation v. Bonta* (2024)—and PRC Section 25545.1 contains no such specific language.

Because state law fails to override Measure T, the CEC's proposed certification constitutes an unlawful, *de facto* re-designation of 80 acres of prime agricultural land that illegally bypasses Solano County's mandatory voter initiative procedures. Specifically, it violates General Plan policy LU-P.31 (promulgated under the 1994 Orderly Growth Initiative and extended by Measure T), which strictly requires a popular vote to re-designate agricultural land for industrial use, as well as the mandatory Board of Supervisors findings under AG.P-32.

Furthermore, commercial lithium-ion BESS facilities carry inherent risks of thermal runaway, toxic heavy metal soil contamination, and hazardous gas emissions. These physical threats directly conflict with General Plan policies (LU-P.28a, AG.P-29) designed to protect agricultural operations and surrounding water resources.

Given federal, state, and local policies protecting prime agricultural land, the constitutional status of local voter initiatives, and the clear lack of statutory intent to supersede Measure T, issuing a certificate for the Corby project would violate the rule of law and leave any agency approval vulnerable to immediate judicial challenge. **For these reasons, the CEC must correct its Draft EIR and deny the Corby BESS project certification application.**