

DOCKETED

Docket Number:	24-OPT-05
Project Title:	Corby Battery Energy Storage System Project
TN #:	272363
Document Title:	Sherry Burke Comments - Corby Scenic Vista
Description:	N/A
Filer:	System
Organization:	Sherry Burke
Submitter Role:	Public
Submission Date:	9/8/2026 1:51:56 PM
Docketed Date:	9/8/2026

*Comment Received From: Sherry Burke
Submitted On: 9/8/2026
Docket Number: 24-OPT-05*

Corby Scenic Vista

See attached....

Additional submitted attachment is included below.

September 8, 2026

California Energy Commission
Docket Unit - Docket No. 24-OPT-05
715 P Street
Sacramento, California 95814

Re: Comments on Scenic Vista Analysis - Corby Battery Energy Storage System Project Staff Assessment; Visual Resources 5.15

Dear California Energy Commission:

I submit these comments regarding the scenic-vista analysis in Section 5.15 of the July 2026 Staff Assessment for the Corby Battery Energy Storage System Project. These comments are directed to a discrete deficiency: Staff acknowledges that Solano County's agricultural landscapes offer scenic vistas and repeatedly identifies orchards, row crops, open agricultural fields, rural residences, tree windbreaks, and panoramic open views in the project setting, yet concludes that the Corby project would have a less-than-significant impact on scenic vistas without meaningfully analyzing whether that agricultural landscape itself constitutes or contributes to a scenic vista.

The record contains substantial evidence sufficient, at minimum, to support a fair argument that the project's conversion of the existing agricultural landscape to an industrial BESS facility may substantially adversely affect a scenic vista. Because the Staff Assessment already functions as a draft EIR, the fair-argument standard is not the ultimate judicial standard for reviewing the adequacy of a certified EIR. Nevertheless, it is highly relevant here because it establishes that the record contains enough facts and reasonable inferences to require a meaningful, evidence-based analysis of this potential significant aesthetic effect rather than a conclusory less-than-significant determination. See Pub. Resources Code, §§ 21068, 21082.2; CEQA Guidelines, §§ 15064(f), 15382, 15384; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 926-929; *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1138-1139.

1. Staff's Own Scenic-Vista Standard Requires Consideration of the Combined Landscape

Staff asks the Appendix G question whether the project would "have a substantial adverse effect on a scenic vista." (Staff Assessment, p. 5.15-8.) Staff acknowledges that neither CEQA nor the CEQA Guidelines defines "scenic vista," and therefore relies on a CEC formulation describing a scenic vista as "a distant view of high pictorial quality perceived through and along a corridor or opening." (Staff Assessment, p. 5.15-9.) Staff further explains that a scenic vista derives from the "combination of components within and surrounding it" that creates a distinct visual character and a unified impression. (Ibid.)

That methodology does not support evaluating only a mountain, ridgeline, marsh, or other isolated object. By Staff's own formulation, the scenic character may arise from the combined landscape. Here, the relevant combined landscape includes agricultural fields, orchards, rural roads, scattered rural residences and associated tree windbreaks, open sky, and distant hills and mountains.

2. Staff Acknowledges the General Plan Identifies Agricultural Landscapes as Scenic Vistas, but Does Not Analyze That Category

The central analytical gap appears on Staff Assessment page 5.15-11. Staff expressly states that the Solano County General Plan provides that the County's "agricultural landscapes, the delta and marshlands, and the oak and grass covered hills offer an abundance of scenic vistas." Staff then acknowledges that "[t]he project site is agricultural in character." (Staff Assessment, p. 5.15-11.) Yet Staff's explanation for rejecting scenic-vista significance focuses on the absence of "delta, marshlands, or oak and grass-covered hills" on or around the project site. (Ibid.)

That reasoning does not address the first category identified by the General Plan: agricultural landscapes. The omission is material because the project site and its surroundings are precisely the type of agricultural landscape Staff acknowledges exists here. Staff further notes that the Agricultural Reserve Overlay seeks to maintain "scenic agricultural landscape resources" along the I-80 corridor. (Staff Assessment, p. 5.15-11.) The fact that the project parcel itself is outside that overlay does not answer the separate Appendix G question whether the actual public view is a scenic vista or whether the project would substantially adversely affect it.

3. Staff's Key Observation Point Findings Supply Substantial Evidence Supporting a Fair Argument of Scenic-Vista Impact

KOP 1 - Kilkenny Road at I-80 (pp. 5.15-17 to 5.15-18). Staff describes the public view as including agricultural row crops and orchards, an agricultural access road, and a more distant aggregation of trees forming a windbreak around a rural residence. Staff nevertheless states that no "object of aesthetic significance" is visible. Staff then characterizes the surroundings for purposes of visual quality as including open agricultural fields and rural residential development patterns.

KOP 2a - Byrnes Road/Kilkenny Road (pp. 5.15-18 to 5.15-19). Staff describes row-crop agricultural fields, tall trees, and distant hills, then finds that the BESS enclosures would be prominently visible and that the project's magnitude of change would be "prominent." Staff concludes that the project would significantly degrade the existing visual character or quality of the public view.

KOP 2b - Byrnes Road/Kilkenny Road (pp. 5.15-19 to 5.15-20). Staff describes an open agricultural field backed by distant trees and the Vaca Mountains. It finds that the open agricultural field would be converted to an industrial-appearing facility containing an expansive BESS array, tall gen-tie poles, and a visually dominant 15-foot sound barrier. Most significantly, Staff states that the sound barrier would "obstruct the open, panoramic views to the south." Staff rates project prominence as severe, visual absorption as low, and magnitude of change as dominant, and finds a significant impact on the public view.

KOP 5a and 5b - Kilkenny Road (pp. 5.15-22 to 5.15-24). Staff expressly identifies the adjacent orchard and the open field as major components of the public view. It concludes that the upper portions of the substation and gen-tie structures would be prominently visible above the orchard and that vegetative screening would not eliminate visual access to the project. At KOP 5b, Staff finds that the sound barrier would partially obstruct more distant open views and rates the project's prominence as severe and its magnitude of change as dominant.

These are not generalized expressions of personal preference. They are Staff's own factual descriptions, measurements, KOP ratings, simulations, and significance determinations. Taken together, they constitute substantial evidence - facts and reasonable inferences predicated on facts - supporting a fair argument that the project may substantially adversely affect a scenic vista comprised of the existing agricultural landscape. See CEQA Guidelines, § 15384(a)-(b); Protect Niles, *supra*, 25 Cal.App.5th at pp. 1138-1139; Pocket Protectors, *supra*, 124 Cal.App.4th at pp. 926-929.

4. Staff's Repeated Reference to the Absence of an 'Object of Aesthetic Significance' Does Not Resolve the Scenic-Vista Question

Staff repeatedly states that it did not identify an "object of aesthetic significance" at various KOPs. (See, e.g., Staff Assessment, pp. 5.15-17, 5.15-18, 5.15-19, 5.15-22, 5.15-23.) That finding is analytically different from the Appendix G scenic-vista inquiry. A scenic vista is a view or landscape composition; it need not depend upon a single isolated "object." Staff's own definition recognizes that the scenic distinction may arise from the combination of landscape components forming a unified impression. (Staff Assessment, p. 5.15-9.)

Further, Staff's general aesthetics methodology recognizes that an undesignated but popularly used or appreciated area may qualify as an object of aesthetic significance. (Staff Assessment, p. 5.15-5.) Accordingly, even Staff's separate "object" concept does not justify excluding an undesignated agricultural landscape from substantive consideration.

5. The Less-Than-Significant Scenic-Vista Conclusion Is Internally Inconsistent with Staff's Other Visual Findings

Staff concludes on page 5.15-12 that scenic-vista impacts would be less than significant because the project would not affect any "designated scenic vistas," locally valued sensitive views are already affected by existing energy infrastructure, and project structures would not obstruct or eliminate public views of scenic resources. (Staff Assessment, p. 5.15-12.)

Yet elsewhere Staff finds that the project would convert an open agricultural field to an industrial-appearing facility; obstruct open panoramic views; create severe project prominence and dominant magnitude of change at certain KOPs; and significantly degrade the visual character or quality of public views. (Staff Assessment, pp. 5.15-19 to 5.15-24.) In the Executive Summary, Staff concludes that project components would introduce "considerable industrial character" contrasting with the "natural forms, lines, and textures of the existing rural, agricultural landscape character of the site and the surrounding agricultural lands," producing a significant and unavoidable visual-resources impact. (Staff Assessment, p. 1-11.)

The existence of transmission lines or other infrastructure does not, by itself, eliminate scenic quality. Nor does Appendix G limit scenic vistas to formally designated vistas. Staff's own analysis recognizes that the agricultural landscape remains visually distinct notwithstanding existing infrastructure. The record therefore supports at least a reasonable inference that the project may substantially adversely affect the scenic agricultural vista even if distant mountain ridgelines remain technically visible.

6. The Fair-Argument Evidence Is Especially Strong Because It Comes from Staff's Own Record

Under the fair-argument standard, "substantial evidence" means enough relevant information and reasonable inferences from that information to permit a fair argument supporting a conclusion, even though other conclusions might also be reached. (CEQA Guidelines, § 15384(a).) Facts, reasonable assumptions predicated upon facts, and fact-supported expert opinion qualify. (Id., § 15384(b).) Protect Niles describes this as a "low threshold" and confirms that fact-based observations concerning aesthetics can constitute substantial evidence. (Protect Niles, *supra*, 25 Cal.App.5th at pp. 1138-1139, 1144-1146; see also Pocket Protectors, *supra*, 124 Cal.App.4th at pp. 926-929, 936-939.)

Here, the evidence does not depend solely on lay opinion. It includes the County General Plan language quoted by Staff, Staff's descriptions of existing conditions, the identified orchards and agricultural fields, the KOP simulations, the predicted obstruction of panoramic views, and Staff's own findings of severe prominence, dominant change, and significant degradation of public views. Contrary evidence does not erase that evidence for fair-argument purposes. See Protect Niles, *supra*, 25 Cal.App.5th at pp. 1138-1139.

7. The Draft EIR Must Meaningfully Disclose and Analyze the Scenic-Vista Effect

Because an EIR has already been prepared, the CEC must also satisfy the informational requirements governing EIR adequacy. An EIR must contain enough detail to enable persons who did not participate in its preparation to understand and meaningfully consider the environmental issues raised by the project. *Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655, 670. In its aesthetics analysis, *Save Our Capitol!* held that an EIR was inadequate where decisionmakers and the public lacked sufficient information to understand and meaningfully consider how the project would alter a scenic vista. (Id. at pp. 689-691.) CEQA Guidelines section 15151 likewise requires adequacy, completeness, and a good-faith effort at full disclosure.

The Corby Staff Assessment cannot meaningfully disclose the scenic-vista effect if it recognizes that agricultural landscapes are scenic, recognizes that this site is agricultural, documents open panoramic agricultural views, and documents significant industrial intrusion into those views, but never actually analyzes whether those agricultural views are scenic vistas.

Applicable CEQA Case Law - Aesthetic Impacts and the Fair-Argument Standard

Pocket Protectors v. City of Sacramento (2004) 124 Cal.App.4th 903, 937-940. The court emphasized that aesthetic effects are cognizable CEQA impacts and that fact-based observations may constitute substantial evidence. It stated: "the opinions of area residents, if based on direct observation, may be relevant as to aesthetic impact and may constitute substantial evidence in support of a fair argument; no special expertise is required on this topic." The court further held that the residents' observations "suffice to raise the potential of a significant aesthetic impact from the proposed project." It also explained that disagreement by agency staff did not render that evidence insubstantial; contrary evidence was insufficient to defeat a fair argument.

Protect Niles v. City of Fremont (2018) 25 Cal.App.5th 1129, 1138-1139, 1144-1146. The court confirmed that the fair-argument test is deliberately protective at the threshold stage and held that substantial evidence supported a fair argument of a significant aesthetic impact. It explained that CEQA expressly protects "objects of historical or aesthetic significance" and concluded: "substantial evidence clearly supported a fair argument the Project would have an adverse aesthetic impact." The court further emphasized that preparation of an EIR serves CEQA's informed decision-making and public-participation functions.

Save Our Capitol! v. Department of General Services (2023) 87 Cal.App.5th 655, 689-691. In evaluating a scenic-vista analysis in an EIR, the court held that the environmental document must provide sufficient information for decisionmakers and the public to meaningfully understand the visual change. The court found the analysis inadequate where the EIR did not provide an adequate depiction of the altered vista, explaining in substance that the missing information prevented meaningful consideration of the project's impact on the scenic view. This authority is particularly relevant here because the issue is not merely whether some distant feature remains visible, but whether the Staff Assessment adequately discloses and evaluates the transformation of the agricultural vista itself.

9. Requests for Specific Responses in the Updated Staff Assessment / Final EIR

- Please identify the substantial evidence supporting Staff's determination that the agricultural landscape surrounding the Corby site - including orchards, row crops, open fields, rural residences, tree windbreaks, open sky, and panoramic agricultural views - does not constitute or contribute to a scenic vista.
- Please explain how Staff reconciles its less-than-significant scenic-vista conclusion with the Solano County General Plan statement quoted on Staff Assessment page 5.15-11 that the County's "agricultural landscapes" offer an abundance of scenic vistas.
- Please explain why the analysis on page 5.15-11 addresses the absence of delta, marshlands, and oak- and grass-covered hills, but does not separately analyze the agricultural-landscape category expressly identified in the same General Plan language.
- Please identify the CEQA authority supporting reliance on the absence of a "designated scenic vista" as a basis for a less-than-significant determination under Appendix G criterion I(a), which asks whether the project would have a substantial adverse effect on a scenic vista without limiting the inquiry to formally designated vistas.
- Please explain why repeated findings that no single "object of aesthetic significance" is visible resolve the separate issue of whether the complete agricultural landscape and public view constitute a scenic vista.

- Please identify whether Staff evaluated the orchard, open agricultural fields, rural development pattern, tree windbreaks, distant hills, and open sky as a combined visual composition or unified scenic view, consistent with Staff's own scenic-vista methodology on page 5.15-9.
- Please explain how the less-than-significant scenic-vista finding is reconciled with Staff's findings that the project would obstruct open panoramic views (p. 5.15-20), would produce severe project prominence and dominant magnitude of change at KOP 2b (p. 5.15-20), and would substantially degrade public views at multiple KOPs (pp. 5.15-19 to 5.15-24).
- Please explain how Staff reconciles the scenic-vista conclusion with its Executive Summary finding that the project's industrial forms would contrast with the existing rural agricultural landscape and cause a significant and unavoidable visual-resources impact (p. 1-11).
- If Staff continues to conclude that scenic-vista impacts are less than significant, please identify the methodology, evidence, planning authority, and CEQA authority supporting that conclusion and address the substantial contrary evidence identified above.

Conclusion

The present record contains substantial evidence supporting a fair argument that the Corby project may substantially adversely affect a scenic vista composed of Solano County's existing agricultural landscape. That evidence is unusually strong because it appears throughout Staff's own analysis. The Updated Staff Assessment / Final EIR should directly analyze that evidence and explain, with substantial evidence and a coherent methodology, whether the agricultural landscape is a scenic vista and what effect the project's conversion of that landscape to a large industrial BESS facility would have upon it. A conclusion based principally on the absence of formally designated vistas, delta or marshlands, or oak-covered hills does not answer the scenic-vista question presented by this record.

Respectfully submitted,

Sherry Burke, Ed. D.

Solano County Resident

Authorities cited: Pub. Resources Code §§ 21060.5, 21068, 21082.2; CEQA Guidelines §§ 15064(f), 15125(a), 15126, 15151, 15382, 15384; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903; *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129; *Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655.