

DOCKETED	
Docket Number:	24-OPT-05
Project Title:	Corby Battery Energy Storage System Project
TN #:	272458
Document Title:	Linda Geller Comments - SOLANO COUNTY MEASURE T, AB 205 PREEMPTION, AND THE CORBY BESS STAFF ASSESSMENT
Description:	N/A
Filer:	System
Organization:	Linda Geller
Submitter Role:	Public
Submission Date:	9/9/2026 4:04:55 PM
Docketed Date:	9/10/2026

*Comment Received From: Linda Geller
Submitted On: 9/9/2026
Docket Number: 24-OPT-05*

**SOLANO COUNTY MEASURE T, AB 205 PREEMPTION, AND THE
CORBY BESS STAFF ASSESSMENT**

Additional submitted attachment is included below.

September 10, 2026

California Energy Commission
715 P Street
Sacramento, California 95814

Re: Staff Assessment/Draft Environmental Impact Report, TN 271468
Corby Battery Energy Storage System Project (24-OPT-05)

COMMENTS REGARDING SOLANO COUNTY MEASURE T, AB 205 PREEMPTION, AND THE CORBY BESS STAFF ASSESSMENT

My comment addresses whether the Corby Staff Assessment adequately identifies, analyzes, and discloses the Project's relationship to the voter-approved Orderly Growth provisions of Solano County Measure T before relying on Public Resources Code section 25545.1(b)(1) to overcome local land-use requirements.

I. The Staff Assessment Recognizes Measure T, but Does Not Analyze Its Voter-Approved Legal Status

The Staff Assessment states that the Solano County General Plan governs unincorporated lands including the proposed BESS site. It describes the Land Use Element as directing growth toward existing cities and preserving rural character, and the Agriculture Element as preserving high-quality farmland and discouraging premature conversion to non-agricultural uses. Staff identifies the Project site south of I-80 as being within the Elmira/Maine Prairie agricultural region. (Staff Assessment, p. 5.8-12.)

The Staff Assessment's source list further expressly acknowledges that the 2008 Solano County General Plan was approved by Solano County voters as Measure T on November 4, 2008. (Staff Assessment, p. 5.6-79.) Yet the Land Use and Agriculture analysis does not separately analyze the legal effect of Measure T as a voter-enacted initiative. Instead, Staff analyzes selected General Plan policies and the County's later BESS zoning ordinance and states that CEC certification would supersede local zoning inconsistencies under Public Resources Code section 25545.1(b)(1). (Staff Assessment, pp. 5.8-25 to 5.8-26, 5.8-32.)

II. Measure T Protects Agricultural and Open-Space Land Through the Voters' Initiative Power

Solano County materials describe Measure T as the 2008 extension and amendment of the County's Orderly Growth Initiative. The initiative's purpose is continued protection of Solano County agricultural and open-space resources and direction of urban growth toward municipal areas. County planning materials identify voter-protected provisions including LU.P-3 and AG.P-31 through AG.P-36 and state that those provisions remain in the General Plan through December 31, 2028 unless earlier repealed or amended by County voters.

Policy LU.P-3 preserves specified Agriculture, Watershed, Marsh, Park & Recreation, and Water Bodies & Courses designations through December 31, 2028, subject to the procedures and exceptions identified in the initiative. County materials further state that LU.P-3 and AG.P-31 through AG.P-36 must remain in the General Plan until that date unless earlier repealed or amended by County voters. Thus, Measure T is not merely an ordinary zoning policy adopted by the Board of Supervisors; Ordinance No. 2008-01 was adopted by the electorate through the local initiative power protected by Article II, Section 11 of the California Constitution.

These protections are directly relevant because Staff states that the proposed 40.3-acre BESS parcel is designated and zoned for agriculture (Exclusive Agricultural [A-40]) and that the Project does not conform with County Ordinance No. ZT-25-02, which prohibits front-of-the-meter BESS facilities in the A-40 zoning district. (Staff Assessment, p. 5.8-32.) Staff also acknowledges that the Project's conversion of Important Farmland and conflict with agricultural zoning would be significant before mitigation. (Staff Assessment, Executive Summary, p. 1-15.)

II.A. The Threshold Question Is Whether Corby Actually Displaces a Measure T-Protected Restriction

Measure T protects specified General Plan land-use designations, including Agriculture. The Staff Assessment states that the Corby parcel would remain designated Agriculture even though the proposed BESS is inconsistent with the A-40 agricultural zoning district. This raises an important question the Staff Assessment does not answer: does CEC certification simply leave the property's voter-protected Agriculture designation in place while allowing an industrial BESS use that the County itself could not approve under its existing land-use rules? Or would certification effectively override, waive, or make inapplicable a land-use protection established by Measure T?

These comments do not assume the answer. The problem is that the Staff Assessment does not address the question. Staff relies on section 25545.1 to overcome the Project's acknowledged conflict with local land-use requirements, but it does not determine whether Measure T is actually implicated. If Measure T is implicated, Staff also does not separately address the significance of the fact that Measure T was enacted by the voters rather than adopted by the Board of Supervisors. The Project's conflict with the County's later BESS zoning ordinance does not, by itself, establish that the Project conflicts with Measure T or that section 25545.1 resolves both issues in the same way.

II.B. Article II, Section 11 Protects the Local Initiative Power; It Does Not Confer Preemption Authority on the CEC

Article II, Section 11 of the California Constitution protects the right of city and county voters to enact laws through the initiative process. Measure T was adopted by Solano County voters through that constitutionally protected process. California courts have therefore required a "clear showing" or "definite indication" of legislative intent before a state law will be interpreted to displace a voter-enacted local initiative. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 775-776; *City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1079; *AIDS Healthcare Foundation v. Bonta* (2024) 101 Cal.App.5th 73.)

The Staff Assessment does not address whether Public Resources Code section 25545.1 meets that standard as applied to Measure T.

III. The Staff Assessment Does Not Analyze Whether Section 25545.1 Reaches Voter-Enacted Measure T Protections

Public Resources Code section 25545.1(b)(1) states that issuance of a CEC certificate for an eligible opt-in facility is in lieu of specified permits and similar approvals and "shall supersede any applicable statute, ordinance, or regulation" of a state, local, or regional agency, subject to specified exceptions. The Staff Assessment relies on this provision to address the Project's inconsistency with local zoning. (Staff Assessment, pp. 5.8-25 to 5.8-26, 5.8-32.)

The Staff Assessment does not address whether Corby would actually override or displace any voter-approved Measure T protection. It also does not explain whether the Project can be approved while the property's Measure T-protected Agriculture designation remains legally intact. If approval of the Project would override a Measure T protection, a separate legal question arises: whether section 25545.1 gives the CEC authority to override a land-use restriction enacted by the voters. The Staff Assessment does not address that question either.

Measure T was enacted by the electorate and restricts amendment of specified General Plan provisions without voter approval. The administrative record therefore needs to disclose which, if any, of those voter-protected provisions Corby implicates. A generalized statement that section 25545.1 supersedes local zoning does not answer that antecedent question.

IV. DeVita v. County of Napa Requires a Clear Showing of Legislative Intent

DeVita v. County of Napa (1995) 9 Cal.4th 763 is directly relevant to the governing standard. *DeVita* recognized the constitutionally reserved local initiative power and held that, absent a clear showing of contrary legislative intent, local legislative decisions are presumed subject to initiative and referendum. (Id. at pp. 775-776.) *City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1079 reaffirmed that local initiative or

referendum power is preempted only upon a "definite indication" or "clear showing" that restricting those rights was within the Legislature's purpose.

AIDS Healthcare Foundation v. Bonta (2024) 101 Cal.App.5th 73, 89 likewise confirms that although the Legislature may preempt a voter-enacted local law, the required clear showing or definite indication of legislative intent remains applicable. The Staff Assessment does not apply that standard to Measure T.

V. Staff's Existing Land-Use Analysis Does Not Resolve the Measure T Question

Staff's land-use analysis states that relevant County General Plan policies direct growth toward cities and preserve agriculture and acknowledges that the proposed BESS would be prohibited in the County's agricultural zoning district. Staff then concludes that agricultural easement mitigation reduces the environmental effect of farmland conversion and that section 25545.1(b)(1) allows certification despite inconsistency with local zoning. (Staff Assessment, pp. 5.8-25 to 5.8-26.)

The Staff Assessment also states in Table 5.8-4 that the proposed BESS parcel is designated and zoned for agriculture and does not conform with Ordinance No. ZT-25-02, but again relies on section 25545.1(b)(1) to state that certification would authorize the facility despite local zoning. (Staff Assessment, p. 5.8-32.)

The Staff Assessment does not identify Measure T's voter-protected status in its land-use analysis, does not determine whether the Project conflicts with the specific Measure T-protected policies applicable to the parcel, and does not provide the separate legal analysis necessary to support any conclusion that section 25545.1(b)(1) supersedes those voter-enacted protections.

VI. Agricultural Mitigation Does Not Answer the Measure T Question

COC LAND-1 requires agricultural conservation easements to mitigate conversion of Important Farmland. That may address a CEQA impact from physical farmland conversion. It does not itself answer whether the Commission possesses statutory authority to disregard or supersede voter-protected General Plan restrictions, nor does it convert an inconsistent use into one consistent with Measure T. A mitigation measure and a legal preemption determination perform different functions.

VII. CEQA Requires Disclosure of Applicable General Plan Inconsistencies and a Reasoned Response

CEQA Guidelines section 15088 requires the lead agency to evaluate comments on environmental issues and provide a written response addressing significant environmental issues raised. A generalized statement that section 25545.1 supersedes local zoning would not respond to the distinct Measure T issue raised here.

This issue also bears directly on the adequacy of the environmental document. CEQA Guidelines section 15125(d) requires an EIR to discuss inconsistencies between a proposed project and applicable general plans, specific plans, and regional plans. Because Staff itself identifies the Solano County General Plan as governing the site and acknowledges Measure T in its source materials, the Final Staff Assessment should identify the applicable voter-protected General Plan provisions and explain whether the Project is inconsistent with them. The legal consequence of an inconsistency may ultimately depend on preemption, but the environmental disclosure obligation is analytically distinct from the ultimate preemption determination.

VIII. Questions Requiring a Response in the Administrative Record

- Does the Corby Project conflict with, displace, or render inapplicable any voter-protected provision of Measure T/Ordinance No. 2008-01? If so, identify the affected provision.
- If Staff concludes that section 25545.1 supersedes a voter-enacted Measure T restriction, what legal authority supports that conclusion under the initiative-preemption standard recognized in DeVita, City of Morgan Hill, and AIDS Healthcare Foundation v. Bonta?
- Does Staff distinguish between the Project's acknowledged conflict with County Ordinance No. ZT-25-02 and any conflict with voter-enacted Measure T? If not, what is the basis for treating them as legally equivalent?

IX. Requested Treatment in the Final Staff Assessment and Commission Decision

The final environmental document and any Commission decision should not treat Measure T as subsumed within the analysis of ordinary zoning. The current record does not establish whether Corby actually implicates a voter-protected Measure T restriction or, if it does, whether section 25545.1 supersedes that restriction. The Staff Assessment presently resolves neither issue.

A general statement that AB 205 supersedes local zoning does not answer the separate question presented by Measure T. Measure T was not simply adopted by the County as an ordinary land-use ordinance; it was enacted by Solano County voters through the initiative process. The Staff Assessment does not address whether AB 205 allows the CEC to override land-use protections that the voters themselves enacted.

These comments specifically dispute any assumption that Staff's analysis of ordinary local zoning resolves the separate Measure T issue without addressing Measure T's voter-enacted status and the governing initiative-preemption standard.

Sincerely,

Linda Geller

Solano County Resident

Authorities Cited

- Cal. Const., art. II, § 11.
- CEQA Guidelines, §§ 15125(d), 15088.
- Pub. Resources Code, § 25545.1, subds. (a)-(c).
- DeVita v. County of Napa (1995) 9 Cal.4th 763, 775-781.
- City of Morgan Hill v. Bushey (2018) 5 Cal.5th 1068, 1079.
- AIDS Healthcare Foundation v. Bonta (2024) 101 Cal.App.5th 73, 89-90.
- Corby Battery Energy Storage System Project Staff Assessment, TN 271468, Executive Summary p. 1-15; Land Use and Agriculture pp. 5.8-12, 5.8-25 to 5.8-26, 5.8-32; source reference p. 5.6-79.
- Solano County 2008 General Plan/Orderly Growth Initiative (Measure T), including LU.P-3 and AG.P-31 through AG.P-36.