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Comments on Staff Assessment Section 5-2 Biological Resources

See Attached Comment Letter

Additional submitted attachment is included below.

PUBLIC COMMENTS AND LEGAL OBJECTIONS TO SECTION 5.2 — BIOLOGICAL RESOURCES

Corby Battery Energy Storage System Project WITH PHOTOGRAPHIC EVIDENCE

I. Executive Summary

Section 5.2 of the Staff Assessment concludes that the Corby Battery Energy Storage System Project's impacts to biological resources can be reduced to less-than-significant levels through Conditions of Certification BIO-1 through BIO-21. The record, however, contains significant gaps between the biological conditions actually present in the project vicinity and the conclusions Staff asks the Commission to adopt.

These comments do not contend that every agricultural acre surrounding the Corby site constitutes pristine wildlife habitat. It plainly does not. The issue is whether Staff adequately identified and evaluated the biological resources that actually use this agricultural landscape before determining that the project's effects would be less than significant.

Several facts warrant particular attention. Staff acknowledges deviations from the recommended survey protocol for western burrowing owl. The 2024 surveys were not conducted at the recommended spacing, and a February 18, 2025 survey occurred outside the recommended survey window. Staff nevertheless concludes that these variations were “minor” and did not affect survey adequacy. Staff also acknowledges that a burrowing owl had previously been observed approximately one-half mile northeast of the project site.

Evidence now available for the administrative record strengthens rather than resolves that concern. Photographs taken January 28 and 29, 2025 document an apparent burrowing owl at 5213 Walnut Road in the vicinity of the SID ditch. A subsequent field investigation commissioned by a nearby resident identified potential burrowing-owl habitat along that ditch, although no pellets, droppings, feathers, or other signs of current occupancy were found during that later inspection.

The Staff Assessment also acknowledges two active Swainson's hawk nests within one-half mile of the project site and gen-tie corridor. Yet the Project would permanently remove or alter substantial foraging habitat and Staff proposes compensatory mitigation without demonstrating in the Staff Assessment that replacement acreage will provide equivalent biological function.

Staff further acknowledges that no protocol-level survey was conducted for Crotch's bumble bee. And recent photographic evidence establishes that monarch butterflies occur in the immediate project vicinity: two monarch butterflies were photographed mating at a nearby residence on July 20, 2026.

These are not speculative objections. They are reasons to question whether the biological baseline upon which Staff's less-than-significant findings depend is complete and whether important conclusions have been deferred to future surveys, plans, and monitoring.

II. Burrowing Owl — The Record Now Contains Contrary Site-Specific Evidence

The burrowing owl issue presents perhaps the clearest example of why Section 5.2 requires additional analysis.

Staff acknowledges that burrowing-owl surveys were conducted May 24, June 17, and July 10, 2024 and that those surveys did not follow the recommended spacing. Staff further acknowledges that the February 18, 2025 survey occurred outside the recommended survey window. Nevertheless, Staff characterizes these deviations as minor and concludes that they did not affect the adequacy of the overall survey effort.

That conclusion deserves substantially more scrutiny because Staff's own record establishes that burrowing owls occur in the immediate vicinity. Staff acknowledges that although no burrowing owl was detected within the project site during its surveys, an owl was observed approximately one-half mile northeast of the site during Swainson's hawk surveys.

The administrative record should now include additional site-specific evidence. Photographs supplied by a neighboring property owner show an apparent burrowing owl at 5213 Walnut Road on January 28 and 29, 2025. One photograph shows the owl perched on a fence post; another shows the owl on the ground. These photographs were taken only weeks before Staff's February 18, 2025 survey.



Figure 1. Burrowing owl photographed at 5213 Walnut Road, January 28–29, 2025.



Figure 2. Burrowing owl photographed on the ground at 5213 Walnut Road, January 28–29, 2025.

In addition, on August 7, 2026, a subsequent field investigation commissioned specifically to look for burrowing owl identified potential habitat along the SID irrigation canal. The location where the burrowing owl was photographed on January 28 and 29, 2025 is along that same SID canal, approximately 1,086 yards (0.62 mile) from the area subsequently identified as potential habitat. Although no pellets, droppings, feathers, or other evidence of current occupancy were observed during the later investigation, the photographic evidence establishes recent burrowing-owl occurrence along the same continuous physical feature where suitable habitat was independently identified.

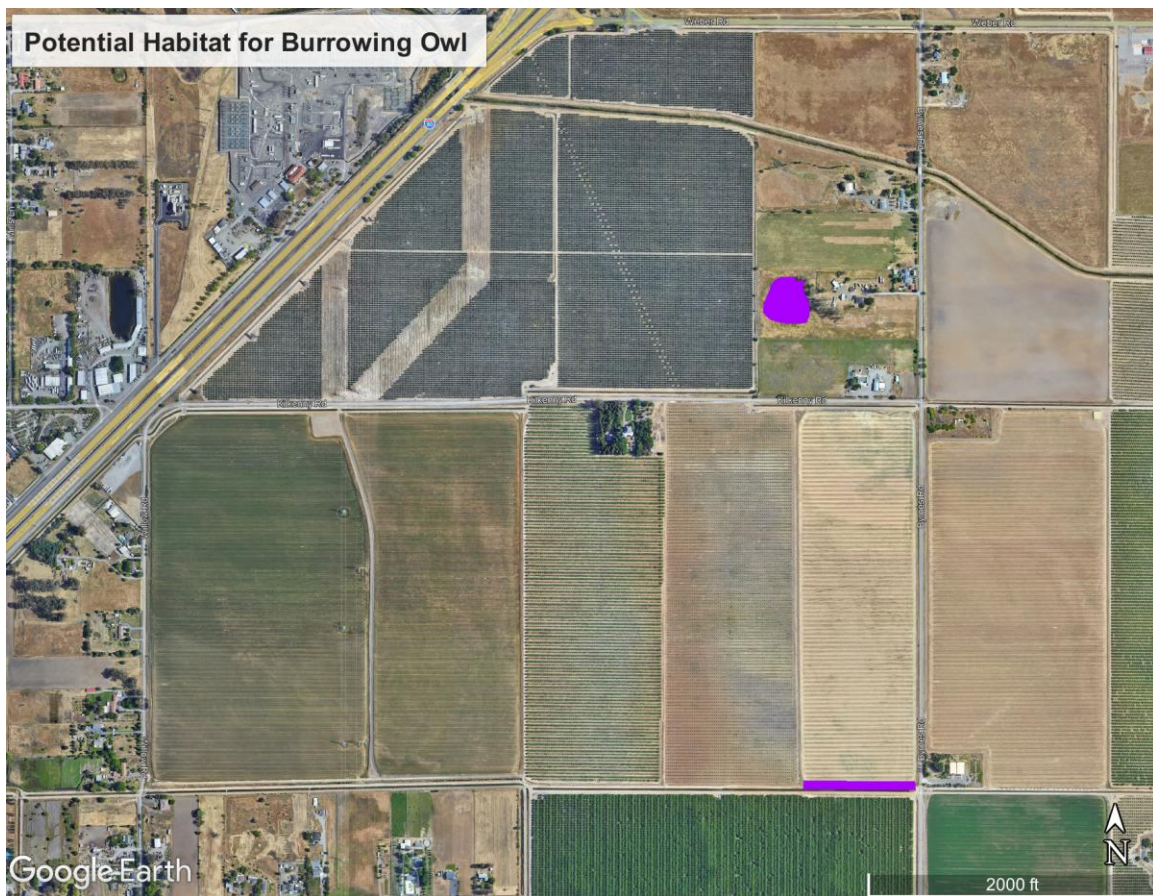


Figure 3. Consultant map identifying potential burrowing-owl habitat along the SID irrigation canal.

Those facts are not contradictory. Rather, they demonstrate why a later non-detection cannot by itself establish absence from a larger habitat feature. An owl documented along the SID canal in January 2025 need not remain at the same location or leave detectable sign at another location along that canal during a subsequent inspection.

More importantly, the January 2025 photographs raise a direct question concerning Staff's conclusion that its February 2025 survey timing deviation had no effect on adequacy. The Commission should not simply accept the characterization of the protocol deviations as "minor." Staff should explain the biological basis for concluding that the deviations did not materially affect detection probability in light of documented nearby occurrences.

Requested action: Staff should reevaluate the burrowing-owl baseline using the January 2025 photographic evidence and mapped potential habitat; conduct or require fully protocol-compliant surveys during the appropriate survey periods; and revise the impact analysis and mitigation if those surveys establish occupancy or regular use.

III. Swainson's Hawk — Documented Active Nests and Loss of Foraging Habitat

This issue is not based merely upon potential habitat. Staff acknowledges that two pairs of Swainson's hawks were observed with active nests within a 0.5-mile radius of the project site and gen-tie corridor.

Staff also proposes mitigation for 16.1 acres of permanent impacts to Swainson's hawk foraging habitat, generally at a 1:1 ratio. If appropriate credits within the service area are unavailable, Staff would permit out-of-service-area credits at a minimum 2:1 ratio.

The difficulty is that acres are not necessarily biologically interchangeable. Sixteen acres of foraging habitat near active nests may have substantially different biological value from sixteen acres located elsewhere. Distance from an active nest, prey availability, surrounding development, agricultural practices, habitat configuration and long-term protection can all affect whether replacement land actually performs the biological function being lost.

Section 5.2 should therefore demonstrate why the proposed mitigation represents functional replacement of the affected habitat rather than merely numerical replacement of acreage.

Staff also states that scheduling PG&E construction outside the March 1 through September 15 nesting period “eliminates” the potential to disrupt Swainson's hawk nesting behavior. “Eliminates” is an unusually absolute conclusion. Construction schedules change. Biological activity does not necessarily conform perfectly to calendar dates. Section 5.2 should identify what occurs if work extends into the nesting season or an active nest is identified outside the assumed window.

Requested action: Require demonstration that compensatory habitat provides equivalent or greater foraging function, with preference for habitat serving the affected local nesting population, and establish enforceable contingency measures if construction overlaps actual nesting activity.

IV. Monarch Butterfly — Recent Site-Specific Evidence Must Be Considered

The biological record should also be updated concerning monarch butterfly occurrence.

On July 20, 2026, two monarch butterflies were photographed mating at a residence in the immediate Corby project vicinity.

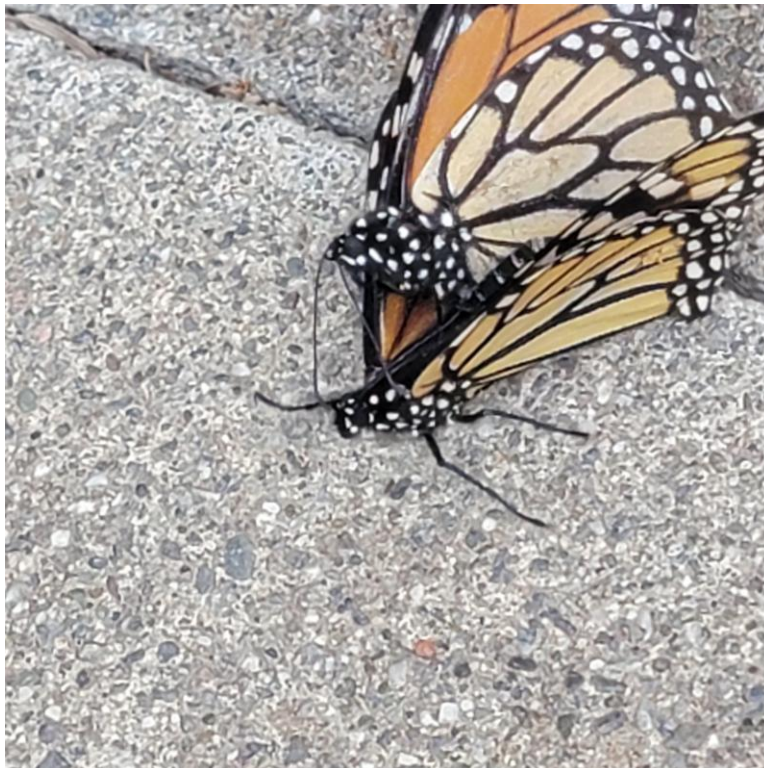


Figure 4. Two monarch butterflies photographed mating on July 20, 2026, at a residence in the immediate vicinity of the Corby BESS Project.

The photograph does not establish that monarchs breed on the Corby site itself, nor does it establish that milkweed occurs on the project footprint. These comments do not make either claim.

It does establish something considerably narrower but important: monarch butterflies are currently present in the immediate project vicinity and were observed engaging in reproductive behavior.

That evidence should be considered when Staff evaluates its survey results and its characterization of monarch occurrence potential. The proper response is not to claim that one photograph proves a significant Project impact. The proper response is to ensure that the Commission's biological baseline reflects actual, recent observations rather than treating failure to detect a species during earlier surveys as proof of absence.

Requested action: Add the July 20, 2026 monarch observation to the biological record and determine whether the observation warrants supplemental host-plant or monarch surveys before finalizing the significance determination.

V. Crotch's Bumble Bee — Staff Admits That No Protocol-Level Survey Was Conducted

Section 5.2 acknowledges that no bumble bee species were incidentally detected during field surveys but then states explicitly that no protocol-level surveys for Crotch's bumble bee were conducted. Staff nevertheless concludes that there is a “moderate” potential for the species to occur within and adjacent to the project site.

This creates an important baseline issue. Absence of an incidental observation during surveys designed primarily for other purposes is not equivalent to a species-specific survey.

Staff acknowledges both the lack of a protocol survey and the existence of floral resources potentially usable for foraging. If the species has sufficient potential to occur that Staff assigns it a moderate occurrence probability, Staff should explain why the Commission can determine the magnitude of potential effects before an appropriate survey establishes whether and how the site is being used.

This becomes particularly important if Staff's ultimate solution is to conduct additional surveys only shortly before construction. CEQA review is intended to inform the decision-maker before the Project is approved.

Requested action: Complete appropriate species-specific surveys during the relevant detection period or explain, with substantial biological evidence, why such surveys are unnecessary before certification.

VI. Wildlife Movement — Regional Mapping Does Not Establish Site-Specific Absence

Staff states that regional connectivity models do not identify the area as part of a native resident or migratory wildlife movement corridor. From that, Staff concludes that wildlife movement through the site is limited to localized and opportunistic use by common species.

That conclusion reaches farther than the cited evidence appears to support. The fact that a regional model does not designate a major wildlife corridor does not establish that wildlife does not regularly move through a particular ditch, orchard, field margin, or agricultural parcel.

Indeed, Staff's own analysis addresses American badger, burrowing owl, Swainson's hawk and other wildlife in this landscape. The recent burrowing-owl evidence further demonstrates why actual site conditions matter.

These comments do not contend that the Corby property has been established as a regional wildlife corridor. There is presently insufficient evidence to make that assertion. The narrower issue is whether Staff has substantial evidence for converting the absence of a regional corridor designation into the affirmative conclusion that site use is limited essentially to opportunistic movement by common species.

The Project would introduce extensive fencing, lighting, structures, roads and intensive industrial development into agricultural land. The effect of those features on localized movement should be evaluated at the scale at which the effect actually occurs.

VII. Deferred Biological Analysis and the BRMIMP

Section 5.2 relies extensively upon Conditions of Certification and future plans to reduce biological impacts.

Some degree of post-approval implementation planning is normal and permissible. The problem arises if a future plan is expected to answer a biological question that must be answered before the Commission can determine significance.

That distinction should guide review of the Biological Resources Mitigation Implementation and Monitoring Plan and related plans.

For example, Staff should distinguish between: (1) implementation details — such as precisely where protective fencing will be installed after a resource has already been identified; and (2) fundamental environmental determinations — such as whether a sensitive species is present, what habitat function will be lost, what level of impact will occur, and what mitigation is necessary to reduce that impact below significance. The latter should not be postponed merely because construction has not begun.

The Staff Assessment relies on BIO-1 through BIO-21 collectively to reach less-than-significant conclusions. The critical question is whether those measures contain sufficiently definite biological standards, performance criteria, and enforceable requirements to support those conclusions, rather than leaving essential biological determinations to future plans, surveys, or agency approvals.

We should not allege that every future plan constitutes unlawful deferred mitigation. Instead, Staff should identify the objective performance standards and biological assumptions established now, so the Commission and public can determine whether the measures will actually reduce impacts below significance.

VIII. The Draft Solano HCP Cannot Substitute for Binding Project-Specific Protection

Staff acknowledges that the Solano Multispecies Habitat Conservation Plan has not been adopted and that the Corby Project would not be a covered activity under that draft HCP.

Likewise, Staff acknowledges that the proposed Project is not a covered activity under PG&E's Bay Area Habitat Conservation Plan and receives no incidental-take authorization under that plan, even though Staff relies upon PG&E implementation of standard biological protection measures.

These plans may provide useful biological guidance. But guidance is not the same thing as enforceable mitigation.

Where Staff relies upon a protection contained in one of these plans to support a less-than-significant finding, the equivalent protection should be expressly incorporated into enforceable Project conditions rather than depending upon voluntary consistency with a plan that does not legally cover the Project.

IX. Solano County General Plan — Staff’s Own Local-Policy Discussion Strengthens the Need for a Complete Biological Baseline

The Solano County General Plan is not an outside policy concern being introduced for the first time in these comments. Staff itself identifies the County General Plan as applicable local law and specifically cites biological-resource policies in Section 5.2. Those policies include Policy RS.P-1, which directs protection and enhancement of the County’s natural habitats and diverse plant and animal communities, particularly occurrences of special-status species, wetlands, sensitive natural communities, and habitat connections; Policy RS.P-4, which calls for feasible and economically viable methods of protecting and enhancing natural habitats and biological resources; and Policy RS.P-7.1, which requires land-use activities and development to occur in a manner that minimizes impacts to natural resources, erosion, and surface runoff pollutants. Staff also identifies County zoning provisions requiring protection of sensitive habitats, wetlands, special-status species, protected trees and oak woodlands.

These policies matter to the evidentiary questions raised above. A finding that the Project is consistent with policies protecting special-status species and habitat connections depends upon a reliable understanding of which species and habitat functions are actually present. The acknowledged burrowing-owl survey deviations, the documented nearby owl occurrence, the two active Swainson’s hawk nests, the absence of a protocol-level Crotch’s bumble bee survey, and the recent monarch observation all bear directly on whether that baseline is sufficiently complete to support Staff’s local-policy consistency conclusion.

The General Plan therefore reinforces, rather than replaces, the CEQA concern. Staff should not cite the County’s biological-protection policies as part of the regulatory framework and then treat unresolved site-specific biological questions as matters that can be answered after certification. Before finding the Project consistent with those policies, the Commission should require Staff to explain, with substantial evidence, how the Project protects the biological resources those policies identify and how the proposed mitigation will preserve or replace the affected biological functions.

X. Cumulative Biological Impacts Require More Than the Conclusion That Individual Effects Are Mitigated

The cumulative analysis deserves particular attention because the Corby Project is not occurring in an agricultural landscape insulated from further development.

Another substantial battery-energy-storage development — the Vaca Dixon Power Center — is presently proposed in the same general Vaca-Dixon Substation area.

The relevant biological question is not merely whether each project, considered individually, has mitigation measures. The question is what happens to the same agricultural biological landscape when multiple large energy projects remove or fragment habitat, introduce fencing and lighting, construct transmission infrastructure, disturb nesting and foraging areas, and convert agricultural acreage to industrial energy uses.

This is particularly relevant to Swainson's hawk. If multiple projects eliminate foraging acreage within the range of local nesting birds, replacement acreage somewhere else does not automatically demonstrate that the cumulative effect on those local birds is insignificant.

The same principle applies to burrowing owl habitat and other species using agricultural margins, ditches, orchards and fields.

Staff should quantify the reasonably foreseeable biological habitat conversion associated with Corby and nearby projects and evaluate the combined effect rather than reasoning that because each individual impact is mitigated, the cumulative impact necessarily disappears.

XI. Requested Commission Action

Based upon the present record and the additional site-specific evidence submitted with these comments, the Commission should not adopt Section 5.2's less-than-significant findings without further analysis. Specifically, Staff should:

1. Reevaluate the burrowing-owl analysis using the January 28–29, 2025 photographic evidence and the subsequently identified potential habitat, and explain the biological basis for concluding that acknowledged survey-protocol deviations did not affect detection.
2. Require protocol-compliant burrowing-owl surveys during appropriate survey periods before relying upon absence of detection.
3. Demonstrate that Swainson's hawk compensatory habitat provides functional biological replacement for habitat lost near documented active nests.
4. Incorporate the July 20, 2026 monarch observation into the biological baseline and determine whether supplemental monarch/host-plant investigation is warranted.
5. Resolve the Crotch's bumble bee baseline issue through appropriate species-specific survey evidence or a reasoned explanation supported by substantial evidence.
6. Distinguish mitigation implementation details that properly may be completed later from environmental determinations that must be made before certification.
7. Make biological protections derived from nonbinding or nonapplicable habitat conservation plans enforceable Project conditions wherever Staff relies upon those protections.
8. Provide a genuine cumulative analysis of biological habitat conversion associated with Corby, Vaca Dixon and other reasonably foreseeable projects affecting the same agricultural landscape.
9. Make an express, evidence-based finding concerning consistency with Solano County General Plan Policies RS.P-1, RS.P-4 and RS.P-7.1 and the County biological-resource protection provisions identified by Staff, after resolving the baseline and mitigation deficiencies described above.

XII. Conclusion

Section 5.2 contains extensive biological information and numerous proposed Conditions of Certification. The problem is not simply the quantity of information. The issue is whether that information supports the findings the Commission is being asked to make.

The burrowing-owl evidence illustrates the problem particularly well. Staff acknowledges nearby occurrence and acknowledges departures from the recommended survey protocol. We now have additional photographic evidence of an apparent burrowing owl in January 2025 and separately identified potential habitat along the SID ditch. A later failure to find pellets, feathers, droppings or an owl does not erase those observations.

Likewise, Staff has documented active Swainson's hawk nests close to the Project, acknowledged the absence of protocol-level Crotch's bumble bee surveys, and relied in several areas upon future plans and monitoring. Recent photographic evidence also establishes monarch occurrence in the immediate Project vicinity.

These facts do not prove that every biological impact will be significant. They do establish that the Commission does not presently have a sufficiently complete and internally consistent biological record to support Section 5.2's less-than-significant findings or its conclusion that the Project is consistent with the County policies Staff identifies. The Commission should not resolve acknowledged survey deviations,

missing species-specific surveys, functional-habitat questions, and contrary site-specific evidence by assuming that future surveys and implementation plans will supply the answers after certification. On the present record, the Commission should decline to adopt the Section 5.2 findings and should not certify the Corby Project at this location.

In addition to my comments, I formally incorporate by reference and fully support the technical comment letter submitted by Keep Vacaville Safe.

Respectfully submitted,
Michael Geller

Supporting Photographic Documentation

The following message screenshot is retained as supporting documentation for the stated date and location of the January 2025 burrowing-owl photographs.



Figure 5. Message accompanying the owl photographs, documenting January 28–29, 2025 and 5213 Walnut Road, Vacaville.