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Comments on Staff Assessment 5-8 Land Use and Agriculture

See Attached Comment Letter

Additional submitted attachment is included below.

California Energy Commission
Corby Battery Energy Storage System Project
Docket No. 24-OPT-05

Comments on Staff Assessment Section 5.8

Land Use and Agriculture

Commissioners:

I submit these comments regarding Section 5.8 of the Staff Assessment, Land Use and Agriculture.

Staff acknowledges that the Corby BESS would permanently convert approximately 40.3 acres of Important Farmland within the BESS site, with approximately another 0.5 acre of Important Farmland conversion associated with the gen-tie right-of-way, for approximately 40.8 acres subject to agricultural mitigation. Staff also acknowledges that the project conflicts with Solano County's A-40 Exclusive Agriculture zoning. Staff's own LESA analysis concludes that the agricultural conversion is significant before mitigation.

Staff nevertheless concludes that these impacts can be reduced to less than significant primarily through Condition of Certification LAND-1, which requires approximately 122.4 acres of agricultural conservation easement elsewhere in Solano County.

That conclusion raises several unresolved questions.

1. LAND-1 Does Not Replace the Approximately 40.8 Acres of Important Farmland Permanently Removed From Agriculture

Staff's own analysis recognizes that the BESS site contains Important Farmland and that permanent conversion of the site is a significant agricultural impact.

The BESS site would permanently convert approximately 40.3 acres of Important Farmland, with approximately another 0.5 acre associated with the gen-tie right-of-way. LAND-1 therefore requires approximately 122.4 acres of agricultural conservation easement at a 3:1 ratio.

That is a meaningful conservation benefit. But it does not recreate the agricultural land that Corby destroys.

The 122.4 acres protected by easement are already agricultural land before Corby is built. They remain agricultural land after Corby is built. The 40.8 acres at Corby, by contrast, permanently leave agricultural use.

So the relevant arithmetic is not:

40.8 acres lost + 122.4 acres protected = no significant agricultural loss.

The actual physical result is:

40.8 fewer acres remain available for agricultural production after the project is built.

The easement prevents some other farmland from being converted in the future. That is valuable. But preservation of existing farmland elsewhere is not the same as replacement of the agricultural acreage being permanently removed here.

Staff should therefore explain the analytical basis for concluding that the significant physical conversion itself becomes less than significant.

2. The Actual LAND-1 Easement Property Has Not Yet Been Identified or Evaluated

Staff does not merely apply the County's 3:1 ratio mechanically. LAND-1 includes qualifying criteria for the conservation property, including agricultural classification, continued agricultural viability, water availability, and the requirement that the land not already be permanently conserved.

Those safeguards are relevant, but the actual 122.4 acres have not yet been identified. As a result, the Commission does not presently know the soil quality, actual productivity, water reliability, location, surrounding agricultural context, or long-term agricultural characteristics of the land that will supposedly mitigate the Corby conversion.

The issue is therefore not whether LAND-1 contains any quality controls. It does. The issue is how Staff can make a present less-than-significant finding based on an easement property that has not yet been selected and whose actual characteristics cannot yet be compared with the Important Farmland being permanently converted.

If the mitigation acreage ultimately satisfies LAND-1, it may provide a meaningful conservation benefit. But the record should distinguish that future showing from the factual basis necessary for the Commission's present significance finding.

The Commission should therefore require a clear explanation of how the present record supports a less-than-significant conclusion before the actual mitigation property is known.

3. Staff Gives Too Much Weight to the Site's Recent Fallow Condition

Staff expressly relies on the site's approximately four-year fallow condition as one reason the 3:1 mitigation ratio is sufficient. That factual premise now warrants closer examination.

I have been informed by a neighboring property owner, who confirmed the information directly with the individual who leased and farmed the property, that the agricultural lease was not bought out until September 19, 2023. I do not present that date as a substitute for the underlying lease or farming records. I present it because it creates a concrete and readily verifiable question about when active agricultural production actually ceased.

That question matters under California's Farmland Mapping and Monitoring Program (FMMP). For Prime Farmland and Farmland of Statewide Importance, the Department of Conservation requires irrigated agricultural production at some time during the four years prior to the Important Farmland Map date. Unique Farmland must have been cropped at some time during the four years prior to the mapping date. The Department's mapping protocol is specifically designed to accommodate temporary fallowing within that period.

Accordingly, the relevant factual question is not simply whether the parcel appears fallow today. It is when the property was last cropped and, for the Prime and Statewide acreage, when it was last used for irrigated agricultural production. If agricultural production continued into 2023, Staff's characterization of the property as having been fallow for approximately four years requires correction or explanation, particularly in relation to the next FMMP mapping cycle.

The applicant and Staff should be able to answer this question from the property, lease, farming, or irrigation records. Staff should determine and disclose the date of the last crop production and irrigated agricultural use before relying on an approximate four-year fallow period to discount the significance of the site's agricultural value.

Until that factual question is resolved, 'fallow' should be treated as a temporary land-use condition, not as evidence that the property is agriculturally marginal or appropriately treated as non-agricultural.

The Commission should evaluate the permanent conversion based on the agricultural quality, capability, and verified recent agricultural history of the land rather than an unsupported approximation of how long it has been fallow.

4. LAND-1 Does Not Cure the Separate Conflict With Solano County's Agricultural Zoning

The zoning issue is analytically different from farmland conversion.

The proposed BESS site is within Solano County's A-40 Exclusive Agriculture zoning district. Staff acknowledges that the BESS would conflict with that agricultural zoning.

Solano County's November 2025 BESS ordinance made a more specific siting judgment: front-of-the-meter BESS facilities are prohibited in Agricultural and several other protected zoning districts. Staff acknowledges that Corby does not conform to that ordinance.

CEC may possess statutory authority to supersede the local ordinance. But 'CEC has legal authority to override the conflict' is not the same proposition as 'there is no land-use conflict.' State preemption does not make the conflict disappear.

And a conservation easement somewhere else in Solano County does not make an industrial BESS compatible with the agricultural zoning of this parcel.

Staff nevertheless relies upon LAND-1 to support a less-than-significant conclusion for the zoning conflict. A farmland conservation easement addresses agricultural conversion, but Staff does not explain how it mitigates the distinct environmental effect of overriding an agricultural land-use policy.

Staff also identifies the purpose of the County's agricultural zoning districts as preserving agriculture. The Commission should therefore distinguish between compensating for farmland conversion and overriding a local land-use policy specifically intended to preserve agricultural areas and exclude front-of-the-meter BESS from them.

Staff goes further: Section 5.8 states that the BESS conflicts with A-40 because the intent of that zoning designation is to protect Important Farmland, and the impact is significant because the project would permanently convert Important Farmland within the district to non-agricultural use. That is Staff's own characterization of the conflict. It should not then be treated as though the conflict disappears merely because LAND-1 protects different farmland elsewhere.

Those are not the same environmental issue.

The conflict is broader than the zoning label alone. Staff's own General Plan conformance table identifies Policy AG.P-28, which recognizes agriculture as the predominant land use in the Dixon Ridge and Maine Prairie, Montezuma Hills, Ryer Island, and Winters regions and directs that agricultural preservation efforts be focused there. Staff states that the proposed agricultural conservation easement would be located within the same agricultural region as the project site - Elmira and Maine Prairie. That confirms that Corby is not simply on land carrying an agricultural zoning designation; it is within one of the agricultural regions the General Plan specifically identifies for preservation.

This matters because Solano County's protection of agriculture did not begin with its 2025 BESS ordinance. The ordinance is a more recent and more specific application of a longstanding General Plan policy. The Commission should therefore evaluate the A-40 conflict, AG.P-28, the County's farmland-conversion policies, and the BESS siting prohibition together as a consistent land-use judgment rather than treating each as an isolated local requirement that can be displaced without addressing the policy they collectively express.

If the Commission decides to override Solano County's policy, it should do so directly and transparently rather than characterize the policy conflict as having been mitigated by LAND-1.

5. The Applicant's Own Contract Refers to a 'Larger Corby Energy Complex'

There is also a project-scope issue that Staff should address before concluding that the agricultural conversion is limited to the presently described 40.3-acre BESS site.

Commercial documentation associated with Corby describes the contracted facility as only part of a 'larger Corby energy complex' and states that the relevant property will also include one or more other generation and/or storage facilities owned or operated by the seller or its affiliates.

That language is important because it originates in the applicant's own commercial documentation.

It does not prove that another BESS expansion has been designed. It does not prove that any additional 40-acre parcel will be developed.

It does establish that, when the commercial agreement was written, additional generation or storage facilities on the property were affirmatively contemplated as part of a larger Corby complex.

Before Staff defines the agricultural conversion as limited to the presently proposed BESS footprint, the Commission should require disclosure of what additional facilities, land, or future development that language refers to and whether such development is reasonably foreseeable.

This question is particularly important because CEC retains post-certification jurisdiction over approved opt-in facilities and provides a process for later project changes or additions. The existence of that process does not establish that Corby will expand, nor does it exempt a future expansion from environmental review. But where the applicant's own pre-certification commercial documentation expressly describes a larger energy complex, the Commission should understand the reasonably foreseeable project envelope before approving the present agricultural conversion.

The Commission should not approve what may be the first component of a larger energy complex without understanding whether additional agricultural conversion is already contemplated.

6. The Cumulative Analysis Should Recognize That Conservation Easements Do Not Replace Converted Acreage

Staff acknowledges that cumulative conversion of farmland is a relevant concern.

The County's 3:1 conservation program can slow future agricultural loss by permanently protecting qualifying farmland.

But if multiple development projects each permanently convert agricultural land and each protect existing farmland somewhere else, the total acreage actually available for agriculture still declines with each project.

That does not make conservation easements ineffective. It means Staff should accurately characterize what they accomplish.

They prevent additional future conversion. They do not restore acreage already converted.

That distinction is especially important in an area where agricultural zoning and farmland preservation remain central County land-use policies.

7. The County's Agricultural and BESS Siting Policies Are Substantive Land-Use Judgments

Staff correctly recognizes that CEC may supersede conflicting local requirements. But that jurisdictional authority does not make the County's policy judgment irrelevant to the land-use analysis.

The A-40 designation exists to preserve agriculture, and the later BESS ordinance represents an even more specific County determination about where front-of-the-meter battery storage is and is not compatible.

The Commission may ultimately decide that statewide energy objectives justify overriding those local policies. If so, that is a substantive siting tradeoff that should be acknowledged directly, not treated as though the underlying land-use conflict has disappeared.

8. The Vaca-Dixon Siting Objective Contributes Directly to the Agricultural Conflict

This section also connects directly with the Alternatives analysis.

The applicant and Staff place substantial weight on locating the BESS close to the Vaca-Dixon Substation.

But that siting objective is one of the principal reasons the project is being placed on Important Farmland in an A-40 agricultural district.

If proximity to Vaca-Dixon is defined so narrowly that non-agricultural or already industrialized sites, including sites in areas the County considers appropriate for industrial development such as the Lambie Industrial area, are screened out, the agricultural conflict becomes partly a product of how the project objectives have been defined.

That does not mean the Commission must select another site.

It does mean the Commission should recognize the connection between the site-selection objective and the agricultural impact that follows from it.

The Commission should not first define proximity to Vaca-Dixon as an essential objective and then treat permanent farmland conversion as unavoidable merely because other sites do not satisfy that narrowly defined objective.

9. Requested Action

I respectfully request that the Commission address these deficiencies in evaluating whether the Corby Project should be certified at this agricultural location.

Specifically, Staff should:

1. Explain how permanent protection of agricultural land that already exists elsewhere reduces the physical loss of 40.8 acres of Important Farmland at the Corby site to less than significant;
2. Explain how the Commission can make a present less-than-significant finding before the actual LAND-1 easement property has been identified and its agricultural characteristics can be compared with the land being converted;
3. Determine and disclose when the property was last cropped and last used for irrigated agricultural production, and reconcile that evidence with Staff's assertion that the property has been fallow for approximately four years and with the Department of Conservation's four-year FMMP criteria;
4. Separate the impact of farmland conversion from the distinct conflict with Solano County's A-40 zoning and its front-of-the-meter BESS siting prohibition;
5. Explain how, if at all, LAND-1 mitigates the land-use-policy conflict rather than merely compensating for farmland conversion;
6. Address the Project's consistency with the County's longstanding General Plan agricultural-preservation framework, including AG.P-28's direction to focus agricultural preservation in the Elmira/Maine Prairie agricultural region, rather than analyzing the A-40 and BESS-ordinance conflicts in isolation;
7. Disclose the meaning and scope of the applicant's reference to a 'larger Corby energy complex,' including any additional generation or storage facilities and agricultural land that may reasonably foreseeably be developed;
8. Evaluate whether cumulative farmland loss remains significant when conservation easements preserve existing acreage but do not replace acreage permanently converted by successive projects; and
9. Reconsider whether the Vaca-Dixon proximity objective has been defined so narrowly that it unnecessarily drives the project onto Important Farmland and into direct conflict with local agricultural policy.

Staff's own analysis establishes the essential facts.

The Corby project permanently converts Important Farmland. The conversion is significant before mitigation. The project conflicts with agricultural zoning. The County has specifically prohibited this type of BESS development in agricultural zones.

Those facts should not be transformed into less-than-significant impacts merely because farmland elsewhere will be protected from future conversion.

The Commission has the legal authority to override Solano County's agricultural zoning.

That does not change the soil beneath the project into non-agricultural land.

It does not replace the approximately 40.8 acres of Important Farmland permanently removed from agricultural use by the BESS site and associated gen-tie impacts.

And it does not make the County's agricultural land-use policy disappear.

In evaluating whether Corby should be certified at this agricultural location, the Commission should confront those facts openly and on a complete record rather than treat an offsite conservation easement as though it eliminates both the physical conversion and the separate land-use conflict.

For these reasons, I do not support approval of the Corby BESS at the proposed agricultural location. The record establishes a significant permanent conversion of Important Farmland, a direct conflict with A-40 zoning, and inconsistency with the County's specific policy against front-of-the-meter BESS facilities in agricultural districts. Those impacts are especially difficult to justify when an appropriate industrial alternative has been identified.

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

Respectfully submitted,

Michael Geller