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Comments on Staff Assessment Section 5-15 Visual Resources

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 5.15
Visual Resources

Commissioners:

I submit these comments regarding Section 5.15 of the Staff Assessment, Visual Resources.

Unlike several other resource sections, Staff does not minimize the basic environmental effect here. Staff concludes that the Corby project would substantially alter the existing rural agricultural landscape and that, even after implementation of the proposed visual Conditions of Certification, residual visual impacts would remain significant and unavoidable.

That admission should frame the Commission's review of this section.

The question is no longer whether Corby will materially change the visual character of this area. Staff has already answered that question.

The remaining questions are whether Staff has accurately defined the full extent of that unavoidable impact, whether all feasible means of reducing it have actually been considered, whether the mitigation measures contain meaningful performance standards, and whether Staff's visual conclusions are consistent with findings elsewhere in the Staff Assessment.

1. Staff's Own Analysis Shows That the Visual Impact Is Broad, Severe, and Resistant to Mitigation

Staff evaluated nine Key Observation Points around the project area. Its conclusion is striking.

At six of the nine KOPs - KOPs 2a, 2b, 3, 5a, 5b, and 5c - Staff determined that the project's color, form, texture, scale, structure heights, and equipment could not be fully camouflaged or screened sufficiently to reduce the visual impact below significance.

This is not a case in which a significant effect arises from one unusual or distant viewpoint. Several of the most important viewpoints are concentrated immediately around Kilkenny Road and Byrnes Road, adjacent to the proposed BESS site.

At KOP 5b on Kilkenny Road, Staff describes the BESS, substation structures, sound barriers, and gen-tie components as creating a dramatic visual change. The project prominence is rated severe, and the magnitude of change is rated dominant.

Those terms are Staff's, not mine.

Accordingly, the Commission should not describe the remaining visual impact in generalized terms. The record shows an industrial facility that remains visually dominant from multiple nearby public viewpoints even after Staff's proposed mitigation is assumed to function as intended.

That is the impact the Commission would be accepting through an override.

2. Staff's Own Simulations Show That Landscaping Does Not Solve the Problem

The Staff Assessment places substantial reliance on vegetative screening. But the simulations themselves demonstrate the limitations of that mitigation.

At KOP 2a, Staff states that after approximately one year of growth, the proposed vegetation would not effectively screen the project from Byrnes Road. After approximately five years, the landscaping would obscure much of the lower project equipment, but taller components, including the substation, would still remain visible.

The same pattern occurs along Kilkenny Road. At KOP 5a, Staff finds that vegetation would reduce the visibility of portions of the project but would not reduce the visual effect below significance. At KOP 5b, even the proposed screening does not prevent the project from remaining visually dominant.

This leads to an important distinction.

The landscaping is not mitigation that eliminates the significant impact. It is mitigation that makes an admittedly significant impact somewhat less severe.

That matters when the Commission considers whether all feasible means of avoiding or further reducing the impact have been exhausted.

3. The First Several Years of Operation Will Be Visually Worse Than the Five-Year Condition

Staff's simulations expressly distinguish between early landscape growth and the five-year condition. That is helpful, but it also exposes an additional consequence that should be discussed more directly.

For a period of years after construction, the landscaping will not have reached the screening effect shown in the five-year simulations. During that establishment period, the BESS, substation, sound barriers, fencing, and related equipment will be substantially more exposed.

Staff therefore should not treat the five-year condition as though it were the visual condition of the project from the beginning of operation.

The Commission should explicitly recognize that there will be an extended period in which the project's visual impact is greater than the condition depicted after landscaping has matured.

That is particularly important because Staff concludes that the impact remains significant even after five years of vegetation growth. If the mature condition is still significant, the early operational condition is necessarily an important part of the impact the Commission is being asked to accept.

4. VIS-2 Regulates Landscaping Activities but Does Not Clearly Establish a Visual Performance Standard

VIS-2 is more detailed than a simple promise to plant trees. It requires a planting plan, species information, growth rates, expected size after five years and at maturity, irrigation, maintenance, inspection, and annual reporting.

Those provisions are useful. But they are not the same thing as an enforceable visual-performance requirement.

The critical issue is not simply whether plants are installed. It is whether they achieve the screening effect Staff relies upon.

The condition does not appear to establish measurable requirements such as a minimum percentage of vegetative survival, a minimum screening height by a specified year, minimum screening density, a required

percentage of the BESS obscured from particular KOPs, a specific replacement deadline when vegetation dies, or corrective action where actual screening materially underperforms the visual simulations.

Staff's analysis uses visual simulations to show what the mitigation is expected to accomplish. The Conditions of Certification should therefore establish a means of determining whether that expected visual result actually occurs.

Without measurable performance standards, it is possible to comply with the planting plan while failing to achieve the visual screening upon which Staff relies.

The same concern continues over the operating life of the project. Screening can be reduced by plant mortality, drought, wind or storm damage, irrigation failure, pruning, wildfire-prevention work, disease, or replacement of mature vegetation. VIS-2 should therefore require not merely planting and reporting, but timely replacement and corrective action sufficient to maintain the screening performance Staff assumes throughout project operation.

5. Visual Resources and Cultural Resources Reach Different Conclusions About the Same Physical Change

Section 5.15 concludes that Corby would permanently introduce industrial forms into a rural agricultural landscape, substantially degrade that visual character, and remain significant and unavoidable even after mitigation.

The Cultural Resources analysis examines the same project, the same rural setting, and the Catherine Kilkenny Residence within that setting.

There, Staff recognizes that the project would be in direct line of sight of the historic residence and would further degrade its original setting, yet concludes that screening and other measures reduce the historical-resource effect below significance.

Those two conclusions do not necessarily have to be identical. But they do have to be explained.

The Visual Resources analysis says the permanent industrialization of the rural landscape remains too severe to mitigate below significance. The Cultural Resources analysis says that essentially the same permanent landscape alteration does not significantly impair the historic setting of the identified historical resource after mitigation.

The Staff Assessment should explain which characteristics of the visual degradation matter to the historical setting, which characteristics do not, how those distinctions were evaluated, and what substantial evidence supports the differing significance conclusions.

The Commission should reconcile this internal tension before final findings are adopted.

6. The Cumulative Analysis Acknowledges Further Industrialization but Does Not Adequately Explain Why It Is Not Cumulatively Considerable

Staff identifies the proposed Vaca-Dixon Power Center as a nearby project with potentially similar visual characteristics.

It acknowledges that Corby and Vaca-Dixon could overlap during construction and that their combined presence would increase the incremental industrialization of the landscape along this portion of Kilkenny Road.

Staff nevertheless concludes that Corby's cumulative contribution would not be considerable after mitigation.

That conclusion deserves more explanation.

Staff has already determined that Corby's individual impact remains significant and unavoidable from six of nine KOPs.

If another large energy-storage development is added to the same landscape, the Commission should explain why Corby's contribution to that cumulative industrialization is nevertheless not considerable.

The point is not that every individually significant visual impact must automatically be cumulatively considerable. The point is that Staff's reasoning should be visible.

The public should not have to infer how an impact can remain individually significant and unavoidable while its contribution to an acknowledged cumulative transformation of the same landscape becomes environmentally inconsequential.

7. Staff Has Not Adequately Demonstrated That All Feasible Visual Mitigation Has Been Exhausted

This is the most important issue before the Commission resorts to a Statement of Overriding Considerations.

Staff has identified where the project causes its worst visual effects. Its own KOP analysis tells the Commission which viewpoints are severe, dominant, prominent, and significant.

The next question should therefore be:

What additional measures were considered to reduce those specific impacts?

The Staff Assessment relies principally on surface treatments, landscaping, and lighting controls. But before declaring the residual effects unavoidable, Staff should demonstrate whether it evaluated additional measures directed at the most affected KOPs, including increased setbacks, equipment relocation or micrositing, changes to BESS or substation layout, reduced structure heights where technically feasible, additional berming, expanded landscape buffers, alternative fencing or sound-barrier treatments, architectural treatment of visible structures, phased landscape installation before major construction, and extension of the proposed underground gen-tie segment to reduce the visibility of overhead transmission structures from Kilkenny Road.

The last measure warrants evaluation because the project already incorporates underground portions of the 230-kV gen-tie. The issue is therefore not whether underground transmission is an unknown concept for this project, but whether extending an already-proposed underground segment could materially reduce one component of the significant visual effect identified by Staff.

These measures may or may not prove feasible. Requesting their evaluation should not be construed as support for the project or as a representation that any one measure would resolve the significant environmental concerns identified in these comments or elsewhere in the record.

The point is that, before the Commission declares an admitted impact unavoidable, the record should show that feasible means of reducing it were actually considered and should explain the technical, operational, economic, or environmental basis for rejecting them.

8. The Alternatives Analysis Becomes Especially Important Because Visual Impacts Cannot Be Mitigated Away

This issue also connects directly to the Commission's Alternatives analysis.

Where an impact can be reduced below significance through ordinary mitigation, the precise location of the project may be less critical. That is not the situation here.

Staff has determined that the visual impact remains significant even after mitigation. That means location itself becomes part of the environmental problem.

If an alternative site, layout, or configuration would place the project in a less visually sensitive setting, move industrial equipment farther from rural roadways, or reduce exposure from the KOPs Staff considers most affected, that alternative deserves serious consideration.

The conclusion that visual impacts are unavoidable cannot be separated from the question of whether the project's selected location makes them unavoidable.

The Commission therefore should not accept a significant and unavoidable visual impact without ensuring that the Alternatives analysis has meaningfully considered locations and configurations that could reduce that effect.

That inquiry should include the Lambie Industrial Park Alternative. Staff identifies Lambie as industrial-designated and industrial-zoned land and recognizes environmental advantages associated with locating the BESS there, while also identifying the impacts of the substantially longer gen-tie it assumes would be required. Most importantly, Staff's own Alternatives analysis states that locating a site no more than one to two miles from the interconnection substation is the most desirable constraint for reducing environmental impacts, but is not necessary to meet the project objectives. Where the proposed Kilkenny Road location produces an admitted significant and unavoidable visual impact, that distinction deserves particular weight before an industrial alternative is rejected.

9. The Statement of Overriding Considerations Should Describe Exactly What the Commission Is Accepting

If the Commission ultimately determines that the project benefits outweigh the unavoidable visual harm, the Statement of Overriding Considerations should describe that harm accurately.

It should not simply state that there will be 'significant visual impacts.'

The record supports a much more specific description: permanent introduction of a large industrial facility into an existing rural agricultural landscape; severe and dominant visual change at some nearby public viewpoints; significant visual effects at six of nine evaluated KOPs; continued visibility even after five years of vegetative screening; a multi-year establishment period when screening will be less effective; substantial visual contrast from BESS equipment, substation components, barriers, fencing, and gen-tie infrastructure; and an incremental increase in the industrialization of the Kilkenny Road landscape.

Those are the actual effects disclosed by Staff.

If the Commission decides that statewide energy benefits justify accepting them, it should say so plainly.

10. Requested Action

I respectfully request that the Commission require Staff to revise or supplement Section 5.15 before adopting final findings.

Specifically, Staff should:

1. Clearly identify the specific residual visual impacts that remain significant and unavoidable at each affected KOP;
2. Acknowledge that the five-year landscape simulations still leave significant visual impacts and that visual exposure will be greater during the first several years of project operation;
3. Add measurable visual-performance standards to VIS-2, including screening height, density, survival, replacement, inspection, and corrective-action requirements tied to the visual outcomes Staff relies upon;

4. Reconcile the significant-and-unavoidable Visual Resources finding with the less-than-significant Cultural Resources finding regarding degradation of the Catherine Kilkenny Residence's rural setting;
5. Explain why Corby's individually significant and unavoidable impact is not cumulatively considerable when combined with additional energy development that Staff acknowledges will further industrialize the Kilkenny Road landscape;
6. Identify the additional visual mitigation measures and site-design changes Staff considered, including setbacks, layout changes, height reductions, berming, expanded buffers, micrositeing, and extension of underground gen-tie construction where it could materially reduce visibility from affected KOPs;
7. Provide the evidentiary basis for concluding that each rejected measure is infeasible or would not materially reduce the impact;
8. Ensure that the Alternatives analysis meaningfully considers locations and configurations capable of reducing the significant visual effects; and
9. Describe with specificity in any Statement of Overriding Considerations the actual visual effects the Commission is choosing to accept.

Staff has already answered the most basic question.

Corby will substantially degrade the visual character of this rural agricultural area.

The project remains visually significant even after mitigation.

The Commission therefore should not spend its effort minimizing that conclusion. It should confront the next question:

Has every feasible means of avoiding or reducing that admitted harm actually been exhausted?

If the answer is yes, the record should demonstrate it.

If the answer is no, the Commission should require additional mitigation or reconsider the project's location or configuration before declaring the impact unavoidable.

And if the Commission ultimately chooses to approve Corby despite the remaining harm, it should identify clearly and specifically the rural landscape degradation it is accepting in exchange for the benefits it attributes to the project.

For these reasons, the Commission should not approve the Corby Project at the proposed Kilkenny Road location on the present record. If the Commission determines that a utility-scale BESS should be certified, it should first require a genuinely comparative evaluation of an industrial location capable of avoiding or substantially reducing the rural visual harm Staff has already found unavoidable here.

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

Respectfully submitted,

Michael Geller