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*Comment Received From: Michael Geller*  
*Submitted On: 9/10/2026*  
*Docket Number: 24-OPT-05*

## **Comments on Staff Assessment Section 10 Mandatory Opt-in Requirements**

Please See the Attached Comment Letter

*Additional submitted attachment is included below.*

**COMMENTS ON STAFF ASSESSMENT SECTION 10**  
**MANDATORY OPT-IN REQUIREMENTS**  
**CORBY BATTERY ENERGY STORAGE SYSTEM PROJECT (24-OPT-05)**

California Energy Commission

Docket No. 24-OPT-05

Commissioners:

I submit these comments on Section 10, Mandatory Opt-In Requirements. These comments do not dispute that a 1,200 MWh battery energy storage system falls within the statutory definition of an eligible facility, nor do they attempt to convert agricultural zoning or local land-use opposition into a statutory “prohibited area.” The purpose of these comments is narrower: to identify places where Staff’s mandatory findings should be stated with greater precision and reconciled with findings elsewhere in the Staff Assessment.

**I. SB 254 SUBSTANTIALLY CHANGED THE ECONOMIC-BENEFIT INQUIRY**

Section 10.4 correctly recognizes the 2025 amendment to Public Resources Code section 25545.9. The statute still requires the Commission to find an overall net positive economic benefit to the local government that otherwise would have had permitting authority, but SB 254 added a rebuttable presumption that the requirement is satisfied.

That amendment materially reduces the applicant’s practical burden. I therefore do not contend that Corby must prove the net-positive finding from a blank slate, or that the existence of additional local governmental costs automatically defeats Opt-In eligibility.

At the same time, Staff should avoid describing its tax and employment estimates as though it had performed a comprehensive net fiscal accounting if it has not. Elsewhere, Staff recognizes additional fire-service requirements associated with the project. The more precise Section 10.4 finding is that the statutory presumption applies and Staff has not identified evidence sufficient to rebut it. That is different from demonstrating that every local cost has been quantified and subtracted from projected revenues.

**II. THE COMMUNITY BENEFITS AGREEMENT SATISFIES A STATUTORY REQUIREMENT, BUT IT SHOULD NOT BE CONFUSED WITH MITIGATION OF SITE-SPECIFIC IMPACTS**

Section 10.5 relies on a legally binding agreement with the Solano Community Foundation and identifies funding for the Solano Community Foundation General Operating Fund, Education Plus! Program Fund, Solano Community Impact Fund, and Hand Up Fund. Staff proposes MAND-2 to require progress reporting on implementation of the agreement.

I do not challenge the proposition that an agreement benefiting a qualifying community-based organization may satisfy Public Resources Code section 25545.10. But satisfaction of that mandatory Opt-In requirement is analytically separate from mitigation of the project’s environmental impacts. Community-benefit funding does not reduce toxic-plume exposure, agricultural conversion, visual effects, emergency-response demands, groundwater risks, or other impacts identified in the Staff Assessment.

MAND-2 should therefore remain an enforceable reporting condition, but neither the agreement nor its payments should be treated as an offset for environmental effects that must be analyzed and mitigated under the applicable environmental standards.

**III. STAFF SHOULD RECONCILE THE SIX FULL-TIME OPERATIONAL EMPLOYEES WITH THE PROJECT’S UNSTAFFED OPERATING MODEL**

In Section 10.7, Staff relies in part on employment information to support the Environmental Leadership Development Project findings. It states that operation would involve approximately six full-time employees per year, an annual maintenance inspection involving approximately 20 personnel for one week, and periodic augmentation involving approximately 20 additional workers.

That six-employee characterization should be reconciled with the CEC’s description of Corby as unstaffed after construction, with operational control from an offsite control room through the SCADA system and periodic onsite inspection and maintenance. The two statements may be reconcilable if the six positions are full-time-equivalent labor attributable to Corby but are not six permanently onsite employees. If so, Staff should say that.

The Commission should identify the six positions, their expected work locations, whether they are new positions or shared personnel, and how much of each position is attributable to Corby. This matters because Section 10 invokes employment as part of the statutory findings; the record should distinguish six FTE-equivalents from six permanent onsite local jobs.

#### **IV. THE ABSENCE OF A CEC MINIMUM EFFICIENCY STANDARD DOES NOT MAKE PROJECT EFFICIENCY IRRELEVANT**

Section 10.9 states that the CEC has not recommended minimum standards of efficiency for this proposed project and therefore concludes that the applicant is not required to demonstrate compliance with a minimum efficiency standard. I do not contend otherwise.

That narrow statutory conclusion should not be read more broadly. The Staff Assessment elsewhere evaluates the project's efficiency, energy losses, greenhouse-gas implications, and claimed public benefits. The applicant-specific efficiency information remains relevant to those analyses even though Section 10.9 supplies no independent minimum-efficiency threshold.

The distinction is important: "no applicable minimum efficiency standard" means there is no Section 10.9 efficiency standard for Corby to violate. It does not mean that round-trip losses, auxiliary consumption, degradation, or changing efficiency over the operating life should be omitted from the Commission's evaluation of environmental and public benefits.

#### **V. THE ENVIRONMENTAL LEADERSHIP FINDING SHOULD TRACK THE ACTUAL MITIGATION RECORD**

Section 10.7 concludes that Corby meets the Environmental Leadership Development Project requirements and specifically relies on compliance with greenhouse-gas mitigation requirements, recycling requirements for commercial solid waste and organic waste, enforceability of mitigation measures through Conditions of Certification, and the applicant's agreement to pay specified record and litigation costs.

Staff also states that the mitigation measures required as conditions of approval will be fully enforceable by the CEC or another designated agency and that the CEC will monitor and enforce them. That finding should be read together with Section 9. Where a technical conclusion depends on a later plan or later compliance submittal, the substantive performance standard must already be sufficiently definite to be enforceable. A future plan cannot become "fully enforceable" merely because Section 10 labels mitigation generally enforceable.

The Commission should therefore ensure that the final Section 10 finding rests on the actual, final Conditions of Certification—not on the assumption that unresolved details will necessarily become adequate after certification.

#### **VI. THE RESTORATION-IF-REJECTED FINDING IS NARROW AND SHOULD REMAIN SO**

Section 10.8 concludes that restoration would not be necessary if the application is rejected because project site preparation and construction would not begin before application approval. On the record presented in Section 10, that is a narrow and reasonable statutory finding.

It should not be confused with final closure or decommissioning after an approved project has been constructed. Those later obligations are materially different and are addressed through the Compliance Plan and other Conditions of Certification. The finding that no restoration is needed if the application is rejected does not resolve the separate need for adequate decommissioning, remediation, and financial assurance if the project is approved and later closes.

#### **VII. THE 'PROHIBITED AREA' FINDING SHOULD NOT BE OVERREAD AS A LAND-USE COMPATIBILITY FINDING**

Section 10.3 concludes that the Corby site is not within one of the specifically defined statutory prohibited areas. I do not challenge that conclusion on the present record. The property is not made a statutory prohibited area merely because it is agricultural land, is zoned A-40, conflicts with local siting preferences, or is opposed by Solano County.

But the converse is equally important. A finding that the site is not a statutory prohibited area does not establish that the site is environmentally preferable, compatible with the Solano County General Plan, consistent with local BESS siting policy, or superior to an industrial alternative. Those questions remain governed by the other portions of the Staff Assessment and the Commission's ultimate decision.

## VIII. MAND-1 AND MAND-2 SHOULD REMAIN VERIFIABLE FOR THE LIFE OF THE OBLIGATION

Staff proposes only two Section 10 Conditions of Certification: MAND-1 for construction labor requirements and MAND-2 for the community benefits agreement. MAND-2 requires progress reporting beginning with the first Monthly Compliance Report and continuing until the obligations under the community benefits agreement have been fully satisfied.

That condition should require the compliance record to identify each monetary and nonmonetary obligation, the required recipient, due date or milestone, amount or performance promised, proof of fulfillment, and any amendment to the agreement. The Commission should not treat the obligation as fully satisfied until the administrative record demonstrates fulfillment of every enforceable commitment.

## IX. REQUESTED COMMISSION ACTION

1. State the Section 10.4 economic-benefit finding in a manner that accurately reflects SB 254's rebuttable presumption and does not imply that Staff performed a complete net fiscal accounting unless it actually did so.
2. Keep the community benefits agreement analytically separate from mitigation of environmental impacts and site-specific harms.
3. Reconcile the six full-time operational employees used in Section 10.7 with the project's unstaffed, remotely controlled SCADA operating model and identify whether the figure represents onsite jobs, offsite jobs, or full-time-equivalent labor.
4. Preserve the narrow Section 10.9 conclusion that no CEC minimum efficiency standard applies, while continuing to consider actual project efficiency and energy losses in the technical and public-benefit analyses where they are relevant.
5. Ensure that the Environmental Leadership finding rests on final, enforceable Conditions of Certification with sufficiently definite performance standards rather than unresolved future plans.
6. Clarify that Section 10.8's no-restoration finding applies to rejection before construction and does not address decommissioning, remediation, or financial assurance following construction and operation.
7. Clarify that the Section 10.3 prohibited-area finding is a narrow statutory eligibility determination and not a finding of land-use compatibility or environmental superiority.
8. Require MAND-2 compliance reports to document each community-benefit obligation and its fulfillment before the obligation is deemed satisfied.

## X. CONCLUSION

Section 10 contains several mandatory statutory findings, but not every finding presents a genuine basis for disputing Opt-In eligibility. SB 254 now gives the project a rebuttable presumption on the local economic-benefit requirement; the site does not appear to fall within a specifically defined prohibited area; and no CEC minimum efficiency standard applies to this BESS. Those points should be acknowledged accurately.

Accuracy cuts both ways. The economic-benefit presumption should not be presented as a comprehensive fiscal study; a community benefits agreement should not be treated as environmental mitigation; an unstaffed facility should not be described in a way that implies six permanent onsite jobs without explanation; and the absence of an efficiency threshold should not erase actual efficiency losses from analyses where they matter.

For these reasons, I do not believe Section 10 supplies an independent basis for overlooking the unresolved environmental, safety, land-use, and alternatives issues identified elsewhere in the Staff Assessment. The Commission should resolve those issues on their merits.

**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