

DOCKETED	
Docket Number:	24-OPT-05
Project Title:	Corby Battery Energy Storage System Project
TN #:	272418
Document Title:	Michael Geller Comments - Comments on Staff Assessment Section 11 Override Findings and Recommendations
Description:	N/A
Filer:	System
Organization:	Michael Geller
Submitter Role:	Public
Submission Date:	9/10/2026 8:44:40 AM
Docketed Date:	9/10/2026

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

Comments on Staff Assessment Section 11 Override Findings and Recommendations

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 11
Override Findings and Recommendations

Commissioners:

I submit these comments regarding Section 11 of the Staff Assessment, Override Findings and Recommendations.

Section 11 is different from most of the technical sections of the Staff Assessment. Staff has already concluded that the Corby Battery Energy Storage System Project would cause significant and unavoidable impacts to visual resources. The question in Section 11 is whether the Commission should nevertheless approve the project because other benefits outweigh that acknowledged environmental damage.

I recognize that CEQA permits such a decision in appropriate circumstances. I also recognize that energy storage, grid reliability, renewable-energy integration, employment, and tax revenue can constitute legitimate project benefits.

But a Statement of Overriding Considerations is not simply permission to acknowledge an environmental impact and then decide that the project is worthwhile anyway. Before the Commission reaches that balancing judgment, CEQA requires supported findings that feasible mitigation measures and feasible alternatives cannot avoid or substantially lessen the significant environmental effects.

That requirement is especially important here because Staff has acknowledged that Corby's visual impacts will remain significant and unavoidable at six key observation points.

For the reasons below, I do not believe the Commission should adopt the proposed findings in Section 11 as presently written.

1. An Override Does Not Substitute for the Duty to Avoid or Reduce Significant Environmental Harm

California Code of Regulations, title 14, section 15093 permits an agency to balance a project's specific economic, legal, social, technological, and other benefits against its unavoidable environmental effects. But section 15093 expressly provides that a Statement of Overriding Considerations does not substitute for the findings required under section 15091.

The California Supreme Court explained this distinction in *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341.

The Court held that an agency may rely upon overriding considerations only after the measures necessary to mitigate or avoid the significant environmental effects have properly been found infeasible. The Court specifically rejected the proposition that an agency may proceed with significant unmitigated environmental impacts merely because it concludes that the project's benefits outweigh the damage.

That principle should guide the Commission's consideration of Corby.

2. Finding No. 4 Is Too Conclusory to Support the Proposed Override

Staff proposes the following Finding of Fact:

“There are no feasible alternatives to the Corby BESS Project that would avoid or substantially lessen the significant impacts to visual resources and achieve most of the benefits and objectives of the project.”

That single sentence carries enormous weight.

It is the finding that allows Staff to move from an acknowledged significant environmental impact to the proposed Statement of Overriding Considerations. Yet Section 11 does not identify the alternatives being rejected, explain why each is infeasible, or state why none could substantially lessen the acknowledged visual impacts while accomplishing most of the project's fundamental objectives.

CEQA Guidelines section 15091 requires more than a conclusion that an alternative is infeasible. The findings must be supported by substantial evidence, and the agency must describe the specific reasons for rejecting identified alternatives.

The Commission may certainly rely upon analysis elsewhere in the Staff Assessment. My concern is therefore not that every page of the alternatives analysis must be repeated in Section 11.

My concern is more fundamental: Finding No. 4, as presently proposed, does not tell the Commission or the public why the identified alternatives are infeasible.

The Commission should not adopt that finding in its present form.

At minimum, any final finding should identify each potentially relevant alternative, state the specific reasons for finding it infeasible, identify the evidence supporting those reasons, and explain why the alternative could not avoid or substantially lessen the significant visual impacts while accomplishing most of the project's fundamental objectives.

3. The Alternatives Analysis Appears to Have Been Constrained by a Project Objective Tied to the Vaca-Dixon Substation

The alternatives analysis deserves particular scrutiny because Staff has treated proximity and interconnection to the Vaca-Dixon Substation as a basic project objective. Staff's own Alternatives analysis, however, makes an important admission: a site no more than one to two miles from the interconnection substation is described as the most desirable constraint for reducing environmental impacts, but Staff states that such proximity is not necessary to meet the project objectives. That distinction matters directly to Finding No. 4.

The Staff Assessment explains that the applicant has an existing interconnection arrangement for a 300-MW BESS at Vaca-Dixon and that proximity to that substation is therefore treated as an important siting objective.

The issue is not whether proximity to Vaca-Dixon is irrelevant. Obviously it is technically and economically important.

The issue is whether an existing private interconnection arrangement is being allowed to define the environmental alternatives analysis so narrowly that otherwise reasonable alternatives are effectively excluded because they do not preserve the applicant's preferred interconnection configuration.

The Lambie Industrial Park Alternative illustrates the concern. Staff identifies Lambie as an approximately 1,461-acre industrial-designated and industrial-zoned property and states that approximately 25 acres would be needed for the BESS footprint. Staff's analysis indicates that locating the BESS there would avoid conversion of Important Farmland at the BESS site, place the facility farther from sensitive residential receptors, and locate it in an area planned for industrial use.

Staff rejects Lambie principally in light of the assumed approximately 14-mile gen-tie to the Vaca-Dixon Substation and the additional impacts associated with that transmission route. Those are legitimate considerations. But they do not erase Staff's express acknowledgment that locating the BESS within one to two miles of Vaca-Dixon is desirable rather than necessary to achieve the project objectives.

The important question for Section 11 is not whether Lambie must necessarily be selected. It is whether the Commission can make the much broader finding that no feasible alternative exists that could avoid or

substantially lessen Corby's acknowledged significant visual impacts while achieving most of the project's objectives. Before making that finding, the Commission should explain why the environmental advantages Staff itself identifies at an industrial location are outweighed by the assumed gen-tie impacts, and why the applicant's existing Vaca-Dixon interconnection arrangement does not impermissibly narrow the range of alternatives.

Before making that finding, the Commission should be satisfied that the alternatives analysis was not effectively predetermined by defining the project objective around the applicant's existing interconnection arrangement.

4. Several of Staff's Claimed Benefits Are Legitimate, but the List Gives the Appearance of More Independent Benefits Than Actually Exist

Staff identifies numerous benefits in Finding No. 3. Among them are renewable-energy obligations, energy-storage mandates, renewable integration, peak-hour discharge, grid reliability, frequency response, proximity to a major transmission node, use of existing transmission capacity, reduction in transmission-line length, and operational flexibility at Vaca-Dixon.

I do not dispute that these are relevant considerations.

But many are different descriptions of the same underlying project functions.

For example, providing energy storage; storing energy when demand is low or renewable production is high; discharging during periods of high demand; supporting renewable-energy integration; contributing to grid reliability; providing frequency response; and providing operational flexibility at Vaca-Dixon are not seven wholly independent benefits. They are overlapping consequences of operating a large battery-storage facility at this transmission location.

The Commission is entitled to consider all of those attributes. But in weighing them against a concededly significant and unavoidable environmental impact, it should avoid effectively counting the same fundamental benefit multiple times simply because it can be described in several ways.

The ultimate question under CEQA is not how many separate bullet points can be attached to the project.

It is whether the specific, supported benefits of this project outweigh the environmental harm that Staff has concluded cannot be avoided.

5. Staff Should Correct the Statement That Corby Will Provide “Renewable Electricity”

One proposed benefit warrants particular clarification.

Finding 3(e) states that the project: “Contributes to the state's electrical grid reliability by providing renewable electricity during increased load demand.”

Corby is a battery energy storage facility. It does not generate electricity.

A battery can store electricity produced by renewable resources and return that electricity to the grid later. In that sense, Corby may facilitate renewable-energy integration. But that is different from saying that the Corby facility itself “provides renewable electricity.”

Unless the project's operating agreements require Corby to charge exclusively from qualifying renewable generation, electricity stored in the batteries may reflect the grid mix at the time of charging. The project also consumes energy through round-trip losses and auxiliary loads. Those facts do not negate the

legitimate renewable-integration function of storage, but they make precision especially important when the claimed benefit is being weighed against an unavoidable environmental impact.

Staff should therefore either identify the evidence establishing that Corby will provide renewable electricity as stated or revise Finding 3(e) more accurately to say that the project can facilitate the storage and integration of renewable electricity.

This may appear to be a small wording issue. It is not insignificant in Section 11, because these claimed benefits are being used to justify accepting a significant and unavoidable environmental impact.

The description of those benefits should therefore be precise.

6. Economic Benefits May Be Considered, but the SB 254 Presumption Does Not Decide the Override

Staff relies upon jobs and local tax revenue as part of its overriding-benefit analysis. Those are legitimate matters for the Commission to consider.

The Legislature's 2025 amendment to Public Resources Code section 25545.9 added a rebuttable presumption that an Opt-In project will provide an overall net positive economic benefit to the local government that otherwise would have had permitting authority. I do not contend in this Section 11 analysis that Corby must prove that separate Opt-In requirement from a blank slate.

But the Section 10 economic-benefit presumption and the Section 11 CEQA balancing judgment are different questions. A statutory presumption that assists the project in satisfying an Opt-In prerequisite does not establish the weight that the Commission should assign to particular employment or tax benefits when deciding whether those benefits justify accepting a significant and unavoidable environmental impact.

For the override, the Commission should evaluate the actual magnitude, duration, and certainty of the claimed economic benefits. Staff estimates an average construction workforce of approximately 80 over 14 to 15 months, a peak of approximately 131 workers, approximately six operational employees on an as-needed basis, periodic maintenance and augmentation crews, and substantial sales-and-use-tax and property-tax revenues. Those figures should be described for what they are and weighed without treating the Section 10 presumption as evidence that they necessarily outweigh permanent environmental harm.

7. Temporary Construction Employment Should Be Described in Proportion to the Permanent Project

The distinction between construction employment and permanent employment is also important.

A construction workforce averaging approximately 80 people for 14 to 15 months is certainly an economic benefit.

But it is temporary.

The facility is expected to operate for approximately 30 years. Staff refers to approximately six operational employees on an as-needed basis, aside from periodic maintenance and augmentation work.

Elsewhere, however, the project is described as unstaffed after construction and controlled from an offsite control room through SCADA, with onsite personnel performing periodic inspections and maintenance. The final override findings should reconcile those descriptions and should not leave the impression that six employees will be continuously stationed at the Corby site.

The Commission should therefore distinguish between short-term construction employment and long-term employment attributable to the operating facility.

Both may properly be considered. But they should not be treated as though the temporary construction workforce represents a continuing employment benefit throughout the life of the project.

That distinction becomes especially relevant because CEQA specifically allows employment opportunities to be considered in an overriding determination. The finding should accurately describe the duration and magnitude of the employment benefit that is actually being weighed.

8. The Community Benefit Agreement Should Be Considered for What It Actually Provides

Staff also relies upon the project's community-benefit agreement as one of the reasons supporting an override.

I do not dispute that an enforceable community contribution is a legitimate benefit.

But the Commission should evaluate the agreement according to what it actually provides rather than according to the broader phrase "community benefits."

If the agreement consists of a specified contribution to local charitable or community programs, the amount, timing, duration, and conditions attached to that contribution should be clear in the final findings.

The value of the agreement can then be considered fairly alongside the magnitude and duration of the environmental impact the Commission is being asked to accept.

A one-time community contribution and a permanent or decades-long environmental impact are both relevant considerations, but they are not equivalent in duration. That difference should be transparent in the balancing analysis.

9. The Commission's Decision Should Turn on the Record for This Particular Project

Section 11 appropriately states that Staff's recommendations are based on the unique facts and circumstances of this project and are not intended to apply generally to other CEC siting proceedings.

That principle should work both ways.

The benefits of battery storage in general are not enough.

California may need substantial additional energy storage. Storage may assist renewable integration. Grid reliability is important. The Vaca-Dixon Substation may be an advantageous interconnection location.

But none of those propositions answers the site-specific CEQA question: Must this 300-MW facility be constructed at this particular location, with these acknowledged significant and unavoidable visual impacts, because no feasible alternative could substantially lessen those impacts while accomplishing most of the project's fundamental objectives?

That is the finding the Commission must be able to support.

And it is precisely the finding that requires the greatest care before an override can properly be adopted.

10. Requested Action

I respectfully request that the Commission decline to adopt Section 11's proposed Statement of Overriding Considerations in its present form.

Before considering an override, the Commission should:

1. Make specific, evidence-supported findings identifying why each relevant alternative is infeasible or would fail to substantially lessen the significant visual impacts while accomplishing most of the project's fundamental objectives;
2. Examine whether the alternatives analysis was unduly constrained by defining proximity and interconnection to Vaca-Dixon as a project objective based substantially upon the applicant's existing contractual arrangements;
3. Explain why the environmental advantages Staff identifies for the Lambie industrial location are outweighed by the assumed approximately 14-mile gen-tie impacts, particularly given Staff's statement that locating the BESS within one to two miles of Vaca-Dixon is desirable but not necessary to meet the project objectives;
4. Evaluate the actual magnitude, duration, and certainty of the economic benefits used in the override independently of the SB 254 rebuttable presumption applicable to the separate Opt-In economic-benefit finding;
5. Distinguish temporary construction employment from long-term operational employment;
6. Correct or substantiate the statement that Corby will provide "renewable electricity";
7. Describe the community-benefit agreement according to its actual amount, timing, duration, and enforceable obligations; and
8. Evaluate overlapping energy-storage and grid-reliability benefits without giving the impression that multiple descriptions of the same underlying function constitute wholly independent overriding considerations.

The Commission has considerable discretion in deciding whether genuine project benefits outweigh environmental harm that truly cannot feasibly be avoided.

But that discretion comes after, not before, the determination that the environmental damage really cannot be feasibly avoided or substantially lessened.

That distinction is especially important here.

Staff has already concluded that Corby will significantly and unavoidably degrade public views of this rural area. Once that conclusion has been reached, the remaining question cannot simply be whether battery storage is beneficial to California.

The question is whether this environmental harm, at this location, is truly unavoidable after all feasible mitigation and alternatives have been fairly and adequately considered.

On the present proposed findings, I do not believe the Commission has yet demonstrated that it is.

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

Selected Authorities and Record Sources

California Code of Regulations, title 14, §§ 15091 and 15093.

City of Marina v. Board of Trustees of the California State University (2006) 39 Cal.4th 341.

Corby BESS Staff Assessment, Section 11, Override Findings and Recommendations.

Corby BESS Staff Assessment, Section 8, Alternatives.

Solano County comments on the Corby BESS application, December 2, 2024.
Corby BESS Community Benefits Agreement with the Solano Community Foundation.