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Cultural and Tribal Cultural Resources

Additional submitted attachment is included below.

COMMENTS ON CULTURAL AND TRIBAL CULTURAL RESOURCES

SECTION 5.4

Corby Battery Energy Storage System Project
CEC Docket No. 24-OPT-05
Comments on July 2026 Staff Assessment (TN 271468)

I. EXECUTIVE SUMMARY

These comments address the adequacy of Section 5.4, Cultural and Tribal Cultural Resources, of the California Energy Commission's July 2026 Staff Assessment for the Corby Battery Energy Storage System Project. They focus on whether the Staff Assessment provides the reasoned analysis, public disclosure, and substantial evidence necessary to support its conclusions that impacts to historical resources, archaeological resources, and tribal cultural resources would be less than significant following implementation of the proposed Conditions of Certification (COCs).

These comments do not challenge Staff's determination—contrary to the Applicant's consultant—that the Catherine Kilkenny Residence is eligible for listing in the California Register of Historical Resources (CRHR) under Criteria 2 and 3. The central concern is that the analytical path from those factual findings to the ultimate significance determinations is incomplete.

The Staff Assessment itself acknowledges that construction activity and the completed facility would remain in the direct line of sight of the Catherine Kilkenny Residence and would "further degrad[e] the original setting." (Staff Assessment, § 5.4, p. 5.4-67.) Yet the analysis moves almost immediately from that acknowledged adverse effect to COC CUL-7 and the conclusion that impacts will be less than significant. The document does not adequately explain what characteristics comprise the historic setting, how the Project will alter them, what aspects of integrity, feeling, and association are affected, what residual effects will remain after mitigation, or why those residual effects do not materially impair the characteristics supporting CRHR eligibility.

The record also contains substantial evidence reinforcing the seriousness of that issue. The Solano County Historical Society submitted comments emphasizing the historic rural setting, agricultural context, and relationship between the residence and the surrounding landscape. Staff itself relied on those comments in undertaking a revised eligibility review. (Staff Assessment, § 5.4, pp. 5.4-1, 5.4-46–47; Solano County Historical Society Comments, TN 267061.) At minimum, those materials—together with Staff's own admission that the Project will further degrade the original setting—support a fair argument that the Project may cause a substantial adverse change to the historical resource. Because an EIR-level document has already been prepared, the ultimate question is not simply whether the fair-argument threshold was crossed; it plainly was sufficient to warrant serious analysis. The operative question now is whether the Staff Assessment actually performs that analysis and supports its less-than-significant conclusion with substantial evidence.

The mitigation analysis presents a related deficiency. COC CUL-7 requires a future visual screening plan, relies upon COC VIS-2, calls for screening sufficient to block sight lines, contemplates use of mature trees and shrubs, and requires east-west electrical tie-lines in the vicinity of the residence to be buried, but not in front of the residence. (Staff Assessment, § 5.4, p. 5.4-83.) Those are meaningful requirements, but they do not themselves establish the objective performance standard necessary to support Staff's present less-than-significant finding. Neither CUL-7 nor VIS-2 specifies a mandatory percentage of visual coverage or opacity, a maximum permissible residual visibility of Project facilities, a date by which the historic-setting impact must be reduced below significance, or a historic-resource-specific corrective standard if the screening fails to achieve the assumed effect. CUL-7 instead states that the future plan shall include the "goal" of reducing visual impacts to less than significant.

The archaeology analysis likewise warrants revision. Staff discloses that 145 acres were intensively surveyed but approximately 16.5 acres were not surveyed because of inaccessibility. (Staff Assessment, § 5.4, p. 5.4-31.) Staff also identifies low-to-moderate potential for buried archaeological deposits and relies substantially on monitoring, stop-work, and inadvertent-discovery procedures. Those protections are important, but the Final Staff Assessment should explain how the acknowledged gap in pre-approval survey coverage affects the reliability of the significance determination and why discovery-stage measures are sufficient in areas that were never surveyed.

Finally, protection of confidential archaeological location information does not justify withholding non-confidential methodology and reasoning. The Commission can protect coordinates, site maps, and sensitive tribal or archaeological information while still providing the public with survey coverage, transect intervals, sampling and sensitivity methodologies, assumptions, limitations, and the analytical basis for treating the 16.5 unsurveyed acres as consistent with a less-than-significant conclusion.

For these reasons, the Final Staff Assessment should consolidate and strengthen the historical-resource analysis, separately identify the Project's unmitigated effect before relying on CUL-7, establish enforceable performance criteria for CUL-7, evaluate interim and residual impacts, disclose non-confidential archaeological methodology, and provide good-faith written responses to the significant environmental issues raised in these comments.

II. APPLICABLE CEQA STANDARDS

A. Historical Resources and Material Impairment

CEQA Guidelines section 15064.5 provides that a project may have a significant effect where it causes a substantial adverse change in the significance of a historical resource. A substantial adverse change includes demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of the historical resource would be materially impaired. (CEQA Guidelines, § 15064.5(b).)

Material impairment is evaluated by reference to the physical characteristics and historical associations that convey the resource's significance. Accordingly, once Staff concluded that the Catherine Kilkenny Residence qualifies under CRHR Criteria 2 and 3, the impact analysis was required to examine whether the Project would materially diminish the characteristics supporting those determinations, including any relevant aspects of integrity, setting, feeling, association, and architectural context.

B. Reasoned Analysis and the Informational Function of an EIR

CEQA is an informational statute. An EIR or functional equivalent must contain enough detail to enable persons who did not participate in its preparation to understand and meaningfully consider the environmental issues the project raises. (Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 404–405; Sierra Club v. County of Fresno (2018) 6 Cal.5th 502.) The agency must disclose the analytical connection between the evidence and its conclusion; a significance determination cannot rest on an unexplained leap from factual findings to an ultimate label of "less than significant."

Sierra Club v. County of Fresno is especially pertinent. Although courts defer to supported factual determinations and reasonable methodological choices, whether an EIR contains sufficient analysis to allow informed decision-making and public participation is a question of CEQA compliance. The document must make a reasonable effort to connect the disclosed environmental effect to the agency's conclusion.

C. Impact Analysis Must Precede Reliance on Mitigation

Lotus v. Department of Transportation (2014) 223 Cal.App.4th 645 is directly instructive where an environmental document blends an acknowledged impact into mitigation without first analyzing the significance of the unmitigated effect. Lotus held that compressing impact analysis and mitigation into a

single step can short-circuit CEQA by depriving the public and decision makers of a clear understanding of the actual impact and the sufficiency of the mitigation.

Here, Staff acknowledges direct line-of-sight exposure and further degradation of the original setting, but the discussion does not first determine the magnitude and significance of that effect before relying on CUL-7. The Final Staff Assessment should separately identify: (1) the Project's effect on the historical resource before mitigation; (2) the characteristics of the resource affected; (3) the mitigation required; and (4) the residual impact after mitigation.

D. Deferred Mitigation and Performance Standards

CEQA Guidelines section 15126.4(a)(1)(B) generally prohibits deferring formulation of mitigation measures to a future time. Details may be deferred when the agency commits to mitigation and adopts sufficiently specific performance standards or criteria that ensure the significant effect will be mitigated. The future plan must implement a defined mitigation obligation; it cannot decide later what level of environmental protection will be required.

Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296 likewise recognizes the fundamental CEQA principle that environmental assessment and mitigation cannot be postponed until after approval where the future study will determine what mitigation is necessary. The question here is therefore not whether CUL-7 contains any requirements—it does—but whether the standards presently adopted are sufficiently specific and enforceable to support a finding now that historical-resource impacts will be reduced below significance.

E. Fair Argument

The “fair argument” standard is principally associated with the threshold determination whether a project may have a significant environmental effect requiring EIR-level review. Because the Commission has already prepared a Staff Assessment containing a draft EIR, the ultimate adequacy of Section 5.4 is governed by the requirements for a reasoned EIR analysis and substantial evidence supporting the Commission's findings. Nonetheless, the fair-argument principle remains useful in identifying the significance of the record before the Commission.

Staff's express acknowledgment that the Project will be in the direct line of sight of the historic residence and will further degrade the original setting, combined with the Historical Society's evidence concerning the rural historic context and the absence of objective analysis demonstrating that the residual setting will remain unimpaired, constitutes substantial evidence supporting at least a fair argument that the Project may materially impair the historical resource. That evidence cannot be resolved by simply labeling the effect less than significant after a future screening plan. It must be confronted through the analysis required by section 15064.5.

F. Responses to Significant Environmental Comments

CEQA Guidelines section 15088 requires the lead agency to evaluate comments on environmental issues and prepare written responses. The response must describe the disposition of significant environmental issues and, where the agency disagrees with recommendations or objections, provide a good-faith, reasoned explanation. Conclusory statements unsupported by factual information are insufficient.

III. STAFF'S MATERIAL FINDINGS

The Staff Assessment reaches several factual and legal conclusions that should be read together:

- Staff determined, contrary to the Applicant's cultural resources consultant, that the Catherine Kilkenney Residence is eligible for the CRHR under Criteria 2 and 3. (Staff Assessment, § 5.4, pp. 5.4-47 et seq.)
- Staff states that the Project's construction activity and subsequent facility would be in the direct line of sight of the historic residence and would further degrade the original setting. (Id., p. 5.4-67.)

- Staff nevertheless concludes that COC CUL-7 will reduce that impact to less than significant. (Ibid.)
- The Executive Summary similarly states that the Kilkenny Residence is the one historical resource that would be impacted by the Project, but that screening required by the COCs would make the impact less than significant. (Staff Assessment, Executive Summary, p. 1-7.)
- Staff's Visual Resources analysis independently concludes that the Project would substantially degrade the existing visual character or quality of public views from multiple key observation points even after implementation of VIS-1 and VIS-2, and that visual impacts remain significant and unavoidable. (Staff Assessment, § 5.15, pp. 5.15-16, 5.15-62–63.)

These findings do not necessarily compel a conclusion that the historical-resource impact is significant. They do, however, require a clear explanation of why an acknowledged degradation of the historical resource's original setting does not materially impair the characteristics that support its CRHR eligibility, and why a mitigation program insufficient to eliminate broader visual impacts is nevertheless adequate to reduce the historical-resource impact below significance.

IV. SECTION 5.4 DOES NOT PROVIDE THE ANALYTICAL PATH REQUIRED TO SUPPORT THE LESS-THAN-SIGNIFICANT HISTORICAL-RESOURCE FINDING

Staff describes historical context, previous investigations, records research, architectural evaluation, and the reasons the Catherine Kilkenny Residence qualifies for the CRHR. The problem occurs when the analysis transitions from eligibility to environmental impact.

The eligibility determination is detailed. The impact analysis is not. The pivotal paragraph on page 5.4-67 identifies the historical resource, acknowledges temporary and potential long-term visual effects, acknowledges direct line of sight and further degradation of the original setting, invokes CUL-7, and then concludes the impact is less than significant. That paragraph does not explain the magnitude of the degradation, the characteristics of the historical resource affected, or why the residual effect does not materially impair the resource.

That compressed reasoning presents precisely the analytical concern identified in Lotus. Mitigation cannot substitute for the missing first step: identifying and analyzing the Project's unmitigated impact on the historical resource. Only after that effect is understood can the Commission determine whether CUL-7 actually reduces it below the applicable threshold.

SIGNIFICANT ENVIRONMENTAL ISSUES REQUIRING WRITTEN RESPONSE UNDER CEQA GUIDELINES § 15088

Pursuant to CEQA Guidelines section 15088, the Commission must evaluate comments on environmental issues received on the draft environmental document and prepare written responses describing the disposition of significant environmental issues raised. The following questions identify specific environmental and evidentiary issues. Please identify the specific page, figure, technical study, Condition of Certification, or other portion of the administrative record supporting each response.

1. What is Staff's determination of the historical-resource impact before implementation of CUL-7?
2. What characteristics of the Catherine Kilkenny Residence are affected by the acknowledged degradation of the original setting?
3. What methodology did Staff use to determine the magnitude of that degradation?
4. Where does the Staff Assessment explain why the acknowledged degradation does not materially impair the resource under CEQA Guidelines section 15064.5?
5. What residual historical-setting impacts will remain after CUL-7 is implemented?

V. THE CATHERINE KILKENNY RESIDENCE: SETTING, INTEGRITY, FEELING, ASSOCIATION, AND ARCHITECTURAL CONTEXT

A. The Historic Setting Must Be Analyzed Even If Surrounding Features Are Not Independently Eligible

Staff appropriately distinguishes the CRHR-eligible residence from later outbuildings and landscape features that Staff concludes are not contributing elements of the historical resource. But the boundary of the CRHR-eligible resource does not answer the separate CEQA impact question. A landscape feature may lack independent historic eligibility yet still contribute to the setting, context, feeling, association, or architectural appreciation of an eligible historical resource.

That distinction also should not obscure the breadth of the regulatory framework. CEQA Guidelines section 15064.5(a)(3) recognizes that an historical resource may consist of an “object, building, structure, site, area, [or] place” that is historically significant and expressly includes significance in California’s agricultural annals. Section 15064.5(b)(1) further provides that a substantial adverse change may result from alteration of the historical resource “or its immediate surroundings” when the resource’s significance would be materially impaired. The impact inquiry therefore is not necessarily confined to the formal boundary Staff drew around the Residence.

The issue is not whether every acre of the Kilkenny Ranch independently qualifies for historic designation, nor is it resolved merely by drawing the formal boundary of the historical resource around the Residence. The relevant question is whether the surviving agricultural landscape and setting are among the physical characteristics through which this historic farmhouse conveys its historical significance and, if so, whether the Project would materially alter those characteristics or its immediate surroundings.

Staff’s own language confirms that the setting remains relevant: Section 5.4 expressly states that the Project will further degrade the residence’s “original setting.” If the setting were irrelevant to the resource’s significance, that observation would have no analytical role. The Final Staff Assessment should therefore identify what Staff means by “original setting,” which elements of that setting remain, which of those elements contribute to the residence’s historical significance, and how the Project changes them.

B. Criterion 1 – Agricultural Associations Identified in Staff’s Own Historical Research

Staff’s historical discussion recognizes that Catherine Kilkenny and her family played a recognized role in Solano County agriculture and that portions of the original agricultural setting remain in agricultural use. The record should therefore explain the evidentiary basis for rejecting Criterion 1 and whether the surviving agricultural landscape contributes to the Residence’s ability to convey the historical associations Staff itself describes. This question is distinct from whether every former farmstead feature survives or independently qualifies as a historical resource.

C. Criterion 2 – Association with Catherine Kilkenny

Staff determined that the residence is eligible under Criterion 2 because of its association with Catherine Kilkenny. The impact analysis should therefore explain whether the surviving rural and agricultural context contributes to the ability of the residence to convey that association. The question is not whether the entire original 167-acre farmstead remains intact; it is whether the surviving historical resource still derives part of its significance from a rural agricultural context and whether introducing a utility-scale industrial energy facility into that context materially diminishes that association.

D. Criterion 3 – Architectural Significance

Staff also determined that the residence is eligible under Criterion 3 because of its architectural significance. Architectural integrity is experienced in context. The Final Staff Assessment should explain whether the rural setting contributes to the appreciation of the George Hutton Sharpe design, whether

the Project alters that relationship, and why screening of portions of the Project preserves the architectural context necessary to avoid material impairment.

E. Criterion 4 – Potential Information Value Concerning George Hutton Sharpe’s Building Practices

The record should also address whether the surviving Residence has potential information value concerning George Hutton Sharpe’s building methods, design practices, or local agricultural-residential architecture, particularly if—as asserted in the comments—no other still-existing farmhouse in the immediate area designed by Sharpe has been identified. This comment does not assume Criterion 4 is established; it preserves the question of whether Staff evaluated it and what evidence supports its conclusion.

F. Integrity, Setting, Feeling, and Association

The Staff Assessment’s eligibility analysis discusses integrity, but the impact discussion does not systematically return to the relevant aspects of integrity. It does not identify which aspects—location, design, setting, materials, workmanship, feeling, or association—Staff considers important to eligibility, which are affected by construction and operation, and which are preserved through mitigation.

This omission is especially important for setting, feeling, and association. The Project would introduce a utility-scale industrial facility into the immediate viewshed of a rural historical residence. The Final Staff Assessment should explain whether that change affects the resource’s ability to convey its historical context and associations, not merely whether vegetation may reduce visibility of selected equipment.

These concerns are not abstract. My husband and I live in and maintain the Catherine Kilkenny Residence and experience its historic rural and agricultural setting as part of the daily use and enjoyment of our home. The proposed industrialization of the adjoining agricultural landscape, alteration of the Residence’s historic setting and viewshed, visible BESS and above-ground gen-tie infrastructure, and unresolved questions concerning fire, toxic emissions, and emergency response directly affect how we experience and use this historic property. These conditions are already affecting our daily sense of safety, security, comfort, and peace of mind in our own home.

A related concern is that the Staff Assessment acknowledges that the Project would “further degrad[e] the original setting” of our historic residence, yet it does not appear to address who bears the consequences of that degradation. My husband and I have not identified any provision in the Staff Assessment that would compensate adjacent property owners for diminution in property value or marketability associated with the Project, increased homeowners-insurance costs, limitations or nonrenewal of coverage, or an inability to obtain coverage. Nor have we identified any mechanism that addresses the economic consequences to the owners of the historic residence if the Project permanently degrades the setting that contributes to the property’s historic character. If Staff has evaluated these consequences or identified a mechanism that addresses them, where is that analysis found in the Staff Assessment?

G. The Record Contains Substantial Evidence Supporting a Fair Argument of Material Impairment

The administrative record contains more than generalized opposition. Staff itself determined that the residence is a historical resource and expressly acknowledges further degradation of its original setting. The Solano County Historical Society emphasized that the residence’s historical significance is intertwined with its rural setting and agricultural environment and warned of substantial adverse change at this location. Staff considered those comments in revising the eligibility determination. (Staff Assessment, § 5.4, pp. 5.4-1, 5.4-46–47; SCHS 2025, TN 267061.)

Accordingly, there is substantial evidence in the record supporting at least a fair argument that the Project may materially impair the historical resource. The Final Staff Assessment may ultimately disagree with that conclusion, but it must explain why. Staff’s admission that the Project will “further

degrad[e] the original setting” cannot be reconciled with a less-than-significant conclusion through an unexplained reference to landscaping.

H. Objective Visual Evidence Is Needed to Evaluate Historic-Setting Impairment

Section 5.4 does not identify an objective visual threshold specific to the historical resource, does not quantify or otherwise characterize residual Project visibility from the residence, and does not identify a photo simulation prepared from the residence itself. The absence of a numerical threshold is not necessarily a CEQA violation; historical-resource impacts often require qualitative professional judgment. But qualitative judgment must still be explained and supported by evidence.

The Final Staff Assessment should therefore identify the viewpoints used to evaluate the Kilkenny Residence, provide or identify photo simulations from representative locations at the residence (including the driveway/approach and principal outward views, as appropriate), and explain what portion of the completed facility and related infrastructure will remain visible before and after mitigation.

SIGNIFICANT ENVIRONMENTAL ISSUES REQUIRING WRITTEN RESPONSE UNDER CEQA GUIDELINES § 15088

Pursuant to CEQA Guidelines section 15088, the Commission must evaluate comments on environmental issues received on the draft environmental document and prepare written responses describing the disposition of significant environmental issues raised. The following questions identify specific environmental and evidentiary issues. Please identify the specific page, figure, technical study, Condition of Certification, or other portion of the administrative record supporting each response.

6. What elements comprise the “original setting” that Staff states will be further degraded?
7. Which of those elements contribute to eligibility under Criteria 2 and/or 3 or to integrity, setting, feeling, and association?
8. Which aspects of integrity are altered during construction and operation?
9. Did Staff evaluate whether the surrounding agricultural landscape contributes to the residence’s association with Catherine Kilkenny and the architectural context of George Hutton Sharpe’s design?
10. Were photo simulations prepared from the Catherine Kilkenny Residence or its principal viewing locations? If so, identify them. If not, explain the evidentiary basis for Staff’s conclusion without them.
11. What substantial evidence demonstrates that the residual historic setting after mitigation will retain the characteristics necessary to avoid material impairment?
12. Has Staff evaluated who bears the economic consequences of the acknowledged degradation of the Catherine Kilkenny Residence’s historic setting, including any resulting effects on property value, marketability, homeowners-insurance costs, or insurability, and has Staff identified any mechanism that would compensate the owners of the historical resource for those consequences?

VI. POST-PUBLICATION SITE-ACCESS REQUEST RAISES QUESTIONS ABOUT WHETHER THE HISTORICAL-SETTING ANALYSIS AND CUL-7 MITIGATION WERE COMPLETE WHEN THE DRAFT EIR WAS CIRCULATED

The timing of CEC Staff’s August 31, 2026 email raises a separate Cultural Resources issue. The Staff Assessment/Draft EIR was published on July 15, 2026. As reflected in an August 31, 2026 email from CEC Staff to Linda Geller, Staff sought post-publication access to the Catherine Kilkenny Residence and surrounding property for the stated purpose of obtaining an understanding of the visual impacts the proposed Project would have on the Residence. That communication is in CEC Staff’s possession and is identified here as part of the administrative records; it is not separately attached to these comments.

Staff stated CEC staff was to be accompanied by Applicant representatives, and explained that it was “hoping to access your property outside near the residence, so we could get an idea of the visual impacts that would be caused by the proposed project.” (CEC email to Linda Geller, Aug. 31, 2026.)

That statement is difficult to separate from Section 5.4's historical-resource analysis. By the time of the email, Staff had already determined that the Catherine Kilkenny Residence is a CRHR-eligible historical resource, had already stated that the Project would be in its direct line of sight and would "further degrad[e] the original setting," and had already concluded that CUL-7 would reduce the historical-resource effect to less than significant. If Staff still needed access after publication to "get an idea" of the Project's visual impacts at the Residence, the published record does not explain what residence-specific factual investigation supported the historical-setting impact conclusion when the Draft EIR was circulated.

CEC Staff further explained that the Applicant's consultants would be cultural-resources specialists who "would likely be responsible for preparing a visual screening plan that would need to be approved by the CEC if the project is approved." (CEC email to Linda Geller, Aug. 31, 2026.) The significance is not that Applicant consultants may never assist with mitigation. It is that the Applicant consultants expected to develop the very screening plan on which Staff's less-than-significant historical-resource conclusion depends after the Draft EIR had already been published.

The email therefore links two deficiencies already apparent in Section 5.4: incomplete residence-specific impact information and deferred mitigation design. CUL-7 requires a future visual screening plan, but the public was not provided a completed plan showing the actual sight lines from the historical resource, the screening locations and species, dormant-season effectiveness, residual visibility of the BESS and elevated electrical infrastructure, or the objective basis for concluding that the acknowledged degradation of the original setting would be reduced below significance.

The seasonal issue is material to the historical-resource analysis as well as Visual Resources. The existing almond orchard and mature trees between the Catherine Kilkenny Residence and the Project are deciduous, as are the principal tree species proposed for landscape screening. Photographs, simulations, or mitigation assumptions depicting vegetation in leaf therefore materially overstate year-round screening. During the dormant season, the battery structures, associated infrastructure, wall, and gen-tie facilities would be substantially more exposed. Section 5.4 does not explain how CUL-7 protects the historical setting during that recurring condition.

The above-ground gen-tie presents the same problem. Staff's Visual Resources analysis acknowledges that gen-tie and other elevated electrical structures remain prominently visible above orchard screening at nearby KOPs, yet Section 5.4 does not directly depict or separately analyze the above-ground gen-tie in the Catherine Kilkenny Residence's viewshed. Because Staff itself identifies the Project as further degrading the Residence's original setting, the absence of a residence-specific depiction of this tall and persistent infrastructure is material to the historical-resource impact analysis.

CEC Staff then stated: "EIR was completed a while ago, but there will be an updated one filed after the public comment period closes." (CEC email to Linda Geller, Aug. 31, 2026.) That statement raises an additional CEQA informational issue. If information obtained after circulation materially changes Staff's understanding of the effect on the historical resource, or informs substantive development of CUL-7 screening, the public record should identify whether that information will first appear in an updated environmental document after the public-comment period has closed and how the public will have a meaningful opportunity to evaluate material new information before it is relied upon.

This concern is amplified by the separate public-disclosure limitations discussed below. Significant portions of the underlying cultural-resources technical record are confidential, while Staff was simultaneously still seeking additional site-specific information after publication. The combination leaves the public with limited access to underlying methodology and incomplete access to the later-developed information Staff and the Applicant may use to support the final significance and mitigation conclusions.

SIGNIFICANT ENVIRONMENTAL ISSUES REQUIRING WRITTEN RESPONSE UNDER CEQA GUIDELINES § 15088

If Staff still needed access on August 31, 2026 “so we could get an idea of the visual impacts,” what residence-specific evidence supported the July 15 Draft EIR’s conclusion concerning degradation of the Catherine Kilkenny Residence’s historic setting?

What information concerning the Residence, its sight lines, historic setting, or screening was expected to be obtained during the proposed August 31 site visit?

What portions of the CUL-7 visual screening plan had been developed before circulation of the Draft EIR, and what substantive portions remained for the Applicant’s cultural-resources consultants to develop afterward?

Where does Section 5.4 evaluate CUL-7 during dormant-season conditions when the existing orchard, mature Ranch vegetation, and proposed deciduous screening have lost their leaves?

Where does Section 5.4 directly depict or analyze the above-ground gen-tie from the Catherine Kilkenny Residence and its effect on setting, feeling, and association?

What material cultural-resource or mitigation information developed after July 15, 2026 is intended to appear in the “updated” EIR Staff stated would be filed after the public-comment period closes, and what opportunity will the public have to review and comment on that information before it is relied upon?

VII. COC CUL-7 DOES NOT PRESENTLY ESTABLISH SUFFICIENTLY SPECIFIC HISTORICAL-RESOURCE PERFORMANCE STANDARDS TO SUPPORT THE LESS-THAN-SIGNIFICANT FINDING

A. What CUL-7 and VIS-2 Actually Require

COC CUL-7 requires the Applicant, before construction, to develop a visual screening plan for the CRHR-eligible Catherine Kilkenny Residence as part of the VIS-2 vegetative screening plan. It requires screening “to a height sufficient to block sight lines” from the residence, states that already mature trees and bushes will be used to avoid a lengthy growth period, requires east-west electrical tie-lines parallel to Kilkenny Road in the vicinity of the residence to be buried, and requires a plan whose stated “goal” is reducing visual impacts to less than significant. Photographic documentation is required within 30 days after installation. (Staff Assessment, § 5.4, p. 5.4-83.)

VIS-2 requires a planting plan prepared by a qualified landscape architect familiar with local conditions. The future plan must identify installation sizes, growth rates, expected time to maturity, size at five years and maturity, spacing, number, availability, suitability for site conditions, irrigation, and lifetime maintenance. The CPM may require revisions after inspection, and annual compliance reports must describe landscape condition and maintenance. (Staff Assessment, § 5.15, pp. 5.15-64–65.)

These requirements are more specific than a bare promise to landscape the site. However, they still leave the decisive historical-resource performance standard unresolved.

B. CUL-7 States a Goal, Not an Objective Historical-Resource Performance Metric

Neither CUL-7 nor VIS-2 specifies how much of the Project must be screened, what percentage opacity must be achieved, what residual Project visibility is permissible from the historical resource, or how the Commission will determine that the integrity of setting, feeling, and association has been preserved. “Height sufficient to block sight lines” is helpful but incomplete: it does not define which sight lines, from which points at the residence, which Project components must be blocked, or what level of partial visibility is acceptable.

The verification provision is even less definite. It requires the future plan to include the “goal” of reducing visual impacts to less than significant. A significance conclusion should not itself be the future plan’s performance standard unless the condition supplies objective or otherwise ascertainable criteria by which the Commission can determine whether that goal has been achieved.

C. The Final Staff Assessment Should Address Improper Deferred Mitigation

Because Staff's less-than-significant historical-resource finding depends on CUL-7, the Commission must establish now the performance criteria the future plan is required to achieve. CEQA Guidelines section 15126.4(a)(1)(B) does not permit the future landscape plan to determine later what mitigation will be sufficient. The plan may implement details, species selection, spacing, and maintenance methods, but the environmental performance obligation must be fixed at approval.

At minimum, the condition should identify the mandatory historic-resource performance result, the viewpoints from which performance will be measured, the time by which it must be achieved, the maximum permissible residual visibility of the Project or equivalent objective/qualified-professional criteria, the inspection and reporting method, and mandatory corrective action if the performance standard is not achieved.

D. Interim Impacts Before Effective Screening Must Be Analyzed

CUL-7 acknowledges the timing problem by requiring use of already mature trees and bushes "to avoid a lengthy growth period." But that language does not establish that effective screening will exist on the first day of construction, at the beginning of commercial operation, or at any other defined date. Nor does the Staff Assessment quantify the anticipated interim condition.

VIS-2 specifically contemplates disclosure of expected time to maturity and plant size at five years. That requirement demonstrates that landscape performance changes over time. The historical-resource analysis should therefore evaluate the Project at installation, at commencement of operation, at five years, at maturity, and during foreseeable replacement periods. If the historic setting is materially impaired for a multi-year period before effective screening is achieved, the Commission must identify and analyze that impact rather than treating future maturity as though it existed at Project completion.

E. Site Conditions, Water, Drought, and Plant Survival Must Be Supported by Project-Specific Evidence

The Staff Assessment need not assume that landscaping will fail. But where the less-than-significant finding depends on long-term vegetative performance, Staff should identify the evidence supporting its assumptions. VIS-2 requires the landscape architect to address suitability for site conditions, water-conservation requirements, irrigation, growth rates, and maintenance; those matters are therefore material to the mitigation analysis.

The Final Staff Assessment should identify the relevant soil and climatic assumptions, drought tolerance, irrigation demand, water source, plant mortality/replacement assumptions, and whether maintaining the screening over the Project's operating life creates any secondary water or environmental effects. These requests do not presume a particular outcome; they ask Staff to disclose the evidence supporting the mitigation upon which the significance finding depends.

F. Failure and Replacement Criteria

VIS-2 requires annual reporting of landscape condition and maintenance, but neither VIS-2 nor CUL-7 expressly establishes a historic-resource-specific trigger requiring corrective action when screening no longer satisfies the assumed visual performance. The Commission should state what happens if mature trees die, irrigation fails, vegetation is damaged, or replacement plantings temporarily reopen sight lines.

A monitoring program is meaningful only if the performance standard is identifiable and failure requires a defined corrective response.

SIGNIFICANT ENVIRONMENTAL ISSUES REQUIRING WRITTEN RESPONSE UNDER CEQA GUIDELINES § 15088

Pursuant to CEQA Guidelines section 15088, the Commission must evaluate comments on environmental issues received on the draft environmental document and prepare written responses

describing the disposition of significant environmental issues raised. The following questions identify specific environmental and evidentiary issues. Please identify the specific page, figure, technical study, Condition of Certification, or other portion of the administrative record supporting each response.

13. What mandatory percentage of visual coverage, opacity, or equivalent objective/qualified-professional performance standard must CUL-7 achieve?
14. From which specific viewpoints at the Catherine Kilkenny Residence will compliance with CUL-7 be evaluated?
15. By what date must effective screening be achieved, and what is the significance determination for the period before that date?
16. What Project components are required to be fully screened, and what residual visibility is permitted?
17. What evidence supports the assumed growth, survival, irrigation, drought tolerance, and long-term maintenance of the screening vegetation under site-specific conditions?
18. What mandatory corrective actions and deadlines apply if vegetation dies, screening deteriorates, or the performance standard is not achieved?

VIII. STAFF'S SUBJECTIVE CHARACTERIZATIONS SHOULD BE REPLACED BY OBJECTIVE HISTORICAL-RESOURCE ANALYSIS

The Staff Assessment includes the characterization that portions of the current property constitute a “fantasy” or “Disneyesque” owner-inspired recreation of a historic farmstead. (Staff Assessment, § 5.4, pp. 5.4-47–48.) Staff may appropriately determine that modern outbuildings and later landscaping are not contributing elements of the CRHR-eligible resource. But subjective rhetorical terminology is not a CEQA significance criterion and does not assist the Commission in determining whether the Project materially impairs the historical resource that Staff itself found eligible.

The relevant issues are factual: what physical and associative characteristics make the residence significant; what aspects of integrity remain; what role the existing setting plays in conveying that significance; how the Project changes those characteristics; and what mitigation preserves them. The Final Staff Assessment should rely on that objective framework rather than subjective characterizations that risk obscuring the actual CEQA inquiry.

SIGNIFICANT ENVIRONMENTAL ISSUES REQUIRING WRITTEN RESPONSE UNDER CEQA GUIDELINES § 15088

Pursuant to CEQA Guidelines section 15088, the Commission must evaluate comments on environmental issues received on the draft environmental document and prepare written responses describing the disposition of significant environmental issues raised. The following questions identify specific environmental and evidentiary issues. Please identify the specific page, figure, technical study, Condition of Certification, or other portion of the administrative record supporting each response.

19. What factual or technical purpose does the “Disneyesque” characterization serve in the impact analysis?
20. Did Staff rely on that characterization in determining the historical-resource boundary or the significance of Project impacts?
21. Will the Final Staff Assessment replace subjective descriptors with objective analysis of setting, integrity, feeling, association, and material impairment?

IX. THE ARCHAEOLOGICAL ANALYSIS SHOULD ADDRESS THE 16.5 UNSURVEYED ACRES AND DISTINGUISH PRE-APPROVAL ANALYSIS FROM INADVERTENT-DISCOVERY MITIGATION

A. Staff Discloses a Material Survey Limitation

Staff reports that accessible areas were surveyed using approximately 33-to-50-foot transects, that 145 acres were intensively surveyed, and that 16.5 acres were not surveyed because of inaccessibility. The unsurveyed areas included portions within the transmission switchyard and areas intersecting specified

parcels. Staff also discloses variable ground visibility and identifies a low-to-moderate potential for buried archaeological deposits within the Project area. (Staff Assessment, § 5.4, pp. 5.4-31, 5.4-68–69.)

The existence of unsurveyed acreage does not establish that archaeological resources are present. But neither does inability to obtain access establish their absence. The Final Staff Assessment should explain how that limitation affects the confidence of the archaeological conclusion and whether additional investigation is feasible before disturbance.

B. Discovery Measures Are Important Contingencies, Not a Substitute for Reasonably Feasible Upfront Analysis

CUL-4 provides archaeological monitoring before construction and generally once every two weeks during construction or when ground disturbance moves to a new location, with authority to halt or redirect work. CUL-5 establishes procedures for unexpected discoveries, including a 50-foot stop-work zone, evaluation, testing, and data recovery if avoidance is infeasible. (Staff Assessment, § 5.4, pp. 5.4-81–82.) These are meaningful contingency protections.

But inadvertent-discovery provisions answer a different question from whether the Commission has adequately characterized archaeological sensitivity before approval. CEQA's informational purpose is served by identifying reasonably foreseeable environmental constraints while genuine planning flexibility remains. Discovery-stage measures should not be used to avoid explaining why additional pre-construction investigation of acknowledged survey gaps is unnecessary or infeasible.

San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus underscores the importance of an accurate environmental baseline and sufficient information to assess significance. Sundstrom likewise cautions against shifting environmental assessment to future studies after approval. The Final Staff Assessment should therefore explain the role of the 16.5 unsurveyed acres in Staff's confidence assessment and identify any condition requiring survey before ground disturbance if access later becomes available.

C. The Final Staff Assessment Should Address Whether the Monitoring Frequency Matches the Identified Risk

Staff identifies a low-to-moderate potential for buried archaeological deposits. CUL-4, however, generally provides for site visits once every two weeks during construction, subject to the CRS's discretion to expand monitoring. The Commission should explain why that baseline monitoring frequency is sufficient for the actual locations and phases of ground disturbance, particularly in previously inaccessible or otherwise more sensitive areas.

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22. What percentage of the total archaeological study area and of the actual ground-disturbance footprint is represented by the 16.5 unsurveyed acres?
23. What archaeological sensitivity did Staff assign to each unsurveyed area, and on what evidence?
24. If access becomes available before ground disturbance, will those areas be surveyed before construction? If not, why not?
25. What alternative methods, if any, were used to evaluate the unsurveyed acreage?
26. How did the survey gap affect Staff's confidence in the less-than-significant conclusion?

27. Why is the baseline monitoring frequency in CUL-4 sufficient for areas with low-to-moderate buried-resource potential and for previously unsurveyed areas?

X. Public Ability to Evaluate the Cultural and Tribal Cultural-Resources Record

The public record raises a separate concern regarding the ability of the public to evaluate the evidentiary basis for Staff's Cultural Resources and Tribal Cultural Resources conclusions. This concern does not question the legitimate protection of archaeological locations, sacred sites, culturally sensitive tribal information, or other information lawfully exempt from public disclosure.

The concern is whether the Staff Assessment provides sufficient nonconfidential information to permit meaningful public review of conclusions derived in significant part from materials that the public cannot inspect.

The Applicant's public application states that its Cultural Resources analysis was based upon a Cultural Resources Technical Report submitted as Confidential Appendix 4.5-A. The application also states that correspondence resulting from Native American outreach was maintained in that confidential appendix. At the same time, the public application does disclose certain important results of tribal outreach, including Yocha Dehe Wintun Nation's statement that the Project lies within its aboriginal territory, its request for formal consultation, and requests made during an October 3, 2024 meeting.

The underlying evidentiary record subsequently changed. In May 2025, the Applicant submitted an updated Cultural Resources Inventory Report and again requested confidential treatment, explaining that the report had been modified in response to Staff's data-adequacy requests. Later, Data Request CUL/TRI-7 stated that the confidential cultural study did not contain Appendix D and that the previously referenced Cultural Resources Inventory Report had been updated and replaced by a February 2025 report. Rincon responded that it obtained the updated report through coordination with CEC and incorporated relevant findings into its analysis.

This history raises a question different from whether protected tribal information should have been publicly released. It raises the question whether the Staff Assessment adequately explains, in nonconfidential form, what material evidence was considered, what changed as the cultural-resources record was supplemented and corrected, whether those changes affected Staff's conclusions, and how Staff independently evaluated the information upon which those conclusions rest.

Where portions of an environmental record must properly remain confidential, meaningful public review does not necessarily require disclosure of the protected information itself. It does, however, raise the question whether the public-facing environmental document provides enough description, analysis, and explanation to permit the public to understand the evidentiary basis for the agency's conclusions without revealing protected cultural-resource information.

That question is particularly important here because the confidential cultural-resources record was not merely static background information. The record shows that the report was revised in response to Staff's data-adequacy review, an updated report replaced an earlier report, and Staff subsequently identified an omitted appendix. The Staff Assessment should therefore be evaluated on whether its public discussion allows a reader to determine what material changes occurred and whether or how those changes affected the Cultural Resources and Tribal Cultural Resources analysis.

SIGNIFICANT ENVIRONMENTAL ISSUES REQUIRING WRITTEN RESPONSE UNDER CEQA GUIDELINES § 15088

Pursuant to CEQA Guidelines section 15088, the Commission must evaluate comments on environmental issues received on the draft environmental document and prepare written responses describing the disposition of significant environmental issues raised. The following questions identify specific environmental and evidentiary issues. Please identify the specific page, figure, technical study, Condition of Certification, or other portion of the administrative record supporting each response.

28. Which portions of the underlying cultural resources report are confidential because they disclose protected resource-location or tribal information, and which portions contain non-confidential methodology?
29. Will the Commission provide a redacted Cultural Resources Assessment/Inventory Report or equivalent public technical summary?
30. What survey coverage percentages, transect intervals, ground-visibility data, sampling methods, and sensitivity-model assumptions support Staff's archaeological conclusions?
31. What methodology was used to evaluate the 16.5 unsurveyed acres?
32. What specific non-confidential analytical material supporting the less-than-significant finding is currently unavailable to the public?

XI. THE COMMISSION MUST PROVIDE A GOOD-FAITH, REASONED RESPONSE TO THE SOLANO COUNTY HISTORICAL SOCIETY AND OTHER SIGNIFICANT ENVIRONMENTAL COMMENTS

The Solano County Historical Society submitted a November 6, 2025 comment letter specifically addressing the Catherine Kilkenny Residence, its rural setting, its association with Catherine Kilkenny, the George Hutton Sharpe design, and the adverse change that would result from locating the Project at this site. (TN 267061.) Staff did not ignore the letter; to the contrary, the Staff Assessment states that Staff prepared an updated DPR 523 record following receipt of the Historical Society's comments and quotes portions of the letter in the revised eligibility discussion. (Staff Assessment, § 5.4, pp. 5.4-1, 5.4-46.)

That makes a substantive response even more important. Staff accepted enough of the historical evidence to reject the Applicant consultant's ineligibility conclusion and determine that the residence qualifies under Criteria 2 and 3. The Final Staff Assessment should therefore directly address the Historical Society's remaining environmental point: whether the rural landscape and historic setting contribute to the resource's significance and whether permanent industrial development within that setting causes material impairment.

CEQA Guidelines section 15088 requires a detailed, good-faith response where the agency's position differs from significant environmental objections raised during review. A response that merely repeats the less-than-significant conclusion or cites CUL-7 without explaining the underlying disagreement would not resolve the issue.

SIGNIFICANT ENVIRONMENTAL ISSUES REQUIRING WRITTEN RESPONSE UNDER CEQA GUIDELINES § 15088

Pursuant to CEQA Guidelines section 15088, the Commission must evaluate comments on environmental issues received on the draft environmental document and prepare written responses describing the disposition of significant environmental issues raised. The following questions identify specific environmental and evidentiary issues. Please identify the specific page, figure, technical study, Condition of Certification, or other portion of the administrative record supporting each response.

33. What portions of the Solano County Historical Society's comments did Staff accept in determining CRHR eligibility?
34. What portions did Staff reject regarding the historic setting and Project impacts, and why?
35. What substantial evidence supports Staff's disagreement, if any, with the Historical Society's position that the rural setting contributes materially to the historical resource?
36. How does CUL-7 address the specific setting, integrity, feeling, association, and architectural-context concerns raised by the Historical Society?

XII. UNRESOLVED ISSUES MATERIAL TO THE STAFF ASSESSMENT'S SIGNIFICANCE DETERMINATIONS

The following issues remain unresolved in the circulated Staff Assessment and are material to the evidentiary basis for its significance determinations:

37. The Staff Assessment does not clearly separate the unmitigated historical-resource impact from the mitigation analysis or identify the significance of the Project's effect on the Catherine Kilkenny Residence before applying CUL-7, as discussed above in connection with Lotus.
38. The Staff Assessment does not clearly identify, within its impact analysis, which characteristics supporting CRHR eligibility under Criteria 2 and 3 are affected by construction and operation.
39. The meaning and constituent elements of the "original setting" Staff states will be further degraded remain undefined, as does the relationship of that setting to feeling, association, and architectural context.
40. The Staff Assessment does not adequately explain why its acknowledged degradation of the original setting does or does not materially impair the resource under CEQA Guidelines section 15064.5.
41. The objective evidence and professional methodology supporting Staff's residual-impact conclusion remain unclear, including whether representative photo simulations or equivalent residence-specific evidence support that conclusion.
42. CUL-7 does not presently establish an ascertainable historic-resource performance standard addressing such matters as the viewpoints from which performance will be judged, required screening effectiveness, timing, verification, deterioration or failure, and the consequences of loss or replacement of screening.
43. The Staff Assessment does not adequately identify the historical-resource impact during the period before vegetative screening is fully effective or during foreseeable periods of plant loss, dormancy, failure, or replacement.
44. The site-specific evidentiary basis for assumed growth rates, screening effectiveness, irrigation needs, drought tolerance, soil suitability, plant survival, and long-term maintenance remains unclear.
45. The record does not adequately explain how the 16.5 unsurveyed acres affect confidence in the archaeological analysis or how those areas will be treated if access becomes available before disturbance.
46. The evidentiary basis for concluding that CUL-4's baseline monitoring frequency and CUL-5's discovery procedures are adequate in light of the identified low-to-moderate potential for buried resources remains unclear.
47. The public record still does not appear to disclose, in redacted or equivalent non-confidential form, all methodology, survey coverage, limitations, sensitivity modeling, and analytical reasoning necessary to understand the basis for Staff's cultural-resource conclusions while protecting legitimately confidential information.
48. The disposition of the significant environmental issues raised by the Solano County Historical Society and by these comments remains to be addressed through the written-response process under CEQA Guidelines section 15088.

XIII. CONCLUSION

The principal deficiency in Section 5.4 is not a lack of historical research or resource identification. Staff performed substantial work and, importantly, independently concluded that the Catherine Kilkenny Residence is a historical resource despite the Applicant consultant's contrary conclusion. The deficiency is the disconnect between that detailed eligibility analysis and the abbreviated impact analysis that follows.

Staff acknowledges that the Project will be in the direct line of sight of the historical resource and will further degrade its original setting. That is a consequential factual finding. CEQA requires the Commission to explain what that degradation means for the characteristics that convey the resource's significance and why it does—or does not—constitute material impairment. A future landscaping plan cannot substitute for that analysis.

COC CUL-7 contains useful commitments, including mature vegetation, sight-line screening, and burial of specified tie-lines. But the condition's stated "goal" of reducing impacts below significance must be

translated into an enforceable historic-resource performance standard capable of objective or professionally ascertainable verification. The Final Staff Assessment must also analyze the interim period before effective screening and the consequences of screening failure or replacement.

The archaeological analysis should likewise distinguish confidential location information from non-confidential methodology. The Commission can protect sensitive resources while still disclosing how 145 surveyed acres, 16.5 unsurveyed acres, variable ground visibility, low-to-moderate buried-resource sensitivity, and proposed monitoring/discovery measures support the significance determination.

The August 31, 2026 site-access email adds a separate timing problem. After circulating the Draft EIR, CEC Staff stated that it still sought access near the historical residence to “get an idea of the visual impacts,” while explaining that the Applicant’s cultural-resources consultants would likely prepare the future visual screening plan. Staff also stated that an updated EIR would be filed after the public-comment period closed. Those facts reinforce the need to identify what historical-setting analysis and mitigation information was complete at circulation, what was developed afterward, and whether the public will receive a meaningful opportunity to review any material new information before the Commission relies on it.

The historical-setting analysis must also account for the recurring dormant-season condition and the above-ground gen-tie. Deciduous orchard and screening vegetation cannot provide the same visual separation year-round, and the tall gen-tie infrastructure is not directly depicted from the Residence. These conditions bear directly on whether the historical resource retains the setting, feeling, and association necessary to convey its significance.

Accordingly, before adopting findings that cultural and tribal cultural resource impacts will be less than significant with mitigation, the administrative record should disclose the reasoned analysis, evidentiary basis, mitigation standards, public methodological information, and written responses necessary to support those findings. Where substantial evidence supporting a proposed finding cannot be identified in the record, the basis for that finding remains unresolved.