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Environmental Justice Is Incomplete

See attached

Additional submitted attachment is included below.

COMMENTS ON STAFF ASSESSMENT SECTION 6 ENVIRONMENTAL JUSTICE

CORBY BATTERY ENERGY STORAGE SYSTEM PROJECT (24-OPT-05)

California Energy Commission

Docket No. 24-OPT-05

Commissioners:

I submit these comments regarding Section 6, Environmental Justice, of the Staff Assessment for the proposed Corby Battery Energy Storage System Project.

Staff did perform an environmental-justice screening. It used a six-mile radius around the Project, reviewed 56 block groups, and identified 34 block groups as environmental-justice populations based on minority and/or low-income criteria. Staff also separately reviewed CalEnviroScreen and concluded that no census tract within the six-mile radius met the CalEPA definition of a disadvantaged community.

My concern is therefore not that Staff failed to identify environmental-justice populations. The concern is what Staff did after identifying them. Section 6.3 repeatedly treats a less-than-significant, less-than-cumulatively-considerable, or no-impact finding from an underlying technical section as sufficient reason to end further evaluation of whether the remaining burden would be disproportionately high and adverse to the identified EJ populations.

That approach is especially important here because other sections of the Staff Assessment identify project-specific offsite toxic-gas effects, significant BESS fire risk before mitigation, emergency-response requirements, and other impacts that extend beyond the Project fence line. The Environmental Justice analysis should connect those technical findings to the populations Staff itself identified, rather than simply importing the significance label from another section.

I. STAFF IDENTIFIED 34 EJ BLOCK GROUPS - THE ISSUE IS THE ANALYSIS THAT FOLLOWS

Section 6.2 uses a six-mile study area because Staff states that air pollution from a natural-gas power plant can travel that distance and because that radius provides a broad screening area for potential project effects. Within that six-mile radius, Staff identified 17 block groups as low-income EJ populations, 29 block groups as minority EJ populations, and 34 block groups that qualified under at least one of those criteria.

That is a substantial EJ population within the Project study area. The Environmental Justice analysis therefore cannot be understood as a case where no nearby EJ population exists. The analytical question is whether the Project's residual risks and burdens are distributed in a manner that disproportionately affects those populations.

Staff also used draft CalEnviroScreen 5.0 to look for additional disadvantaged communities and concluded that no census tract within six miles met the CalEPA disadvantaged-community definition. That finding does not negate the 34 EJ block groups that Staff independently identified using its income and minority criteria.

II. STAFF'S METHODOLOGY CREATES A POTENTIAL ANALYTICAL SHORTCUT

Section 6.3 states that where an impact is found to be less than significant, less than cumulatively considerable, or No Impact, further evaluation of whether the impact is disproportionately high and adverse to minority and/or low-income populations is not needed because impacts that would not be significant would not have the potential to result in negative disproportionate effects.

That statement is the central issue in this section.

A CEQA significance determination and an environmental-justice distributional analysis are related, but they are not necessarily identical questions. A technical section may conclude that an effect is less than significant because of frequency, mitigation, duration, threshold selection, or averaging methodology. The environmental-justice question is whether the remaining burden, even after mitigation, is concentrated on

or materially more consequential for populations that already experience documented social or environmental vulnerability.

By treating the technical significance label as dispositive, Staff risks converting the EJ analysis into a restatement of the technical chapters instead of an independent examination of who bears the residual burden.

III. PUBLIC HEALTH AND FIRE RISK SHOW WHY THE DISTINCTION MATTERS

The Public Health discussion is the clearest example. Section 6 states that construction diesel particulate matter would be less than significant with mitigation and that operational toxic releases would be less than significant, and therefore concludes that no disproportionate impacts to an EJ population would occur.

But Section 5.10 and Appendix D include project-specific offsite consequence modeling. Under certain modeled scenarios, Staff identifies AEGL-1 effects at offsite residences. Staff ultimately concludes that the public-health risk is less than significant based on its frequency and consequence framework and the emergency-response measures incorporated into the Project.

The Environmental Justice analysis should not stop at the phrase 'less than significant.' It should identify whether the receptors within the modeled impact area overlap with the EJ populations identified in Section 6 and whether documented baseline vulnerability changes the practical significance of those residual effects.

The same point applies to fire risk. Section 6 acknowledges that operation of the BESS includes a risk of fire that could emit toxic gases, then concludes that no disproportionate EJ impact would occur because the hazards analysis finds the risk less than significant with mitigation and because the nearest EJ population is approximately 0.5 mile away.

Distance is relevant, but distance alone does not answer the question where Staff's own dispersion analysis models offsite effects extending well beyond the Project boundary under some conditions. The Commission should identify whether the modeled plume areas intersect any EJ block groups and, if not, show that analysis rather than relying on a generalized half-mile statement.

IV. VACAVILLE'S 2022 EJ ANALYSIS IS RELEVANT LOCAL BASELINE EVIDENCE

The City of Vacaville's 2022 environmental-justice analysis is relevant because it demonstrates that local conditions may not be fully captured by a single statewide cumulative-score threshold. The City concluded that none of its census tracts met the statewide SB 1000 cumulative-score criterion and therefore used complementary statewide and citywide methods to identify areas of local environmental and health concern.

That local analysis identified Census Tract 2904, including North Village and Quinn Crossing, as an area of concern and reported high statewide percentile values for hazardous waste, cleanup sites, pesticide use, and other indicators. The City also identified asthma and traffic burdens as relevant local health considerations.

I do not contend that CEC was required to substitute Vacaville's methodology for its own or to treat every nearby rural resident as part of Census Tract 2904. The narrower and more defensible point is that locally developed health and pollution data are part of the available baseline evidence and should be considered when evaluating whether residual Project risks fall disproportionately on nearby EJ populations.

V. STAFF SHOULD MAP TECHNICAL IMPACT AREAS AGAINST THE EJ POPULATIONS IT IDENTIFIED

Staff already has the two components needed for a more rigorous analysis: it has mapped the low-income and minority block groups within six miles, and the technical sections identify the geographic extent of a number of Project effects.

The Commission should therefore compare, where data are available, the EJ maps with:

- modeled toxic-gas and accidental-release contours from Appendix D;
- construction and operational air-quality impact areas;
- emergency-response and road-closure areas;

- noise-sensitive receptor locations;
- visual impact corridors and viewpoints;
- surface-water and groundwater pathways; and
- construction traffic routes and diversion routes.

That spatial comparison would transform Section 6 from a threshold cross-reference exercise into the project-specific distributional analysis that the EJ screening is intended to support.

VI. TRANSPORTATION AND EMERGENCY RESPONSE WARRANT MORE THAN A GENERIC NO-DISPROPORTIONATE-IMPACT CONCLUSION

Section 6 concludes that no disproportionate transportation impact would occur because the Project would temporarily generate construction traffic, the Transportation section finds sufficient roadway capacity, and the Construction Management Plan would reduce impacts.

That conclusion should be cross-checked against the emergency-response requirements in Worker Safety and Fire Protection. A serious BESS event may require responder access, road closure, public notification, shelter-in-place, or evacuation decisions. The same rural road network would have to accommodate both emergency vehicles and any protective movement by nearby residents.

If EJ populations are located along or dependent upon those routes, Staff should evaluate whether limited roadway alternatives, mobility constraints, or other documented vulnerabilities create a differential burden during an emergency. The absence of sidewalks or bicycle facilities is not by itself an EJ impact; the relevant issue is whether the emergency-response system works equally well for the populations Staff has identified.

VII. WATER RESOURCES PRESENTS A SIMILAR DISTRIBUTIONAL QUESTION

Section 6 concludes that no disproportionate water-resource impact would occur because the Water Resources section finds impacts less than significant with mitigation and because modern stormwater and containment controls are required.

The Water Resources section, however, recognizes shallow groundwater, possible construction dewatering, unlined detention basins, and the possibility that contaminated water from a BESS event could reach groundwater. Those issues are being addressed through conditions and future plans.

The EJ analysis should identify whether any EJ populations rely on groundwater, irrigation infrastructure, or drainage pathways that could be affected by those residual risks. Again, the technical finding of less than significant does not by itself show whether the remaining burden is evenly distributed.

VIII. LOCAL BESS SAFETY STANDARDS ARE RELEVANT CONTEXT EVEN WHERE CEC HAS OPT-IN AUTHORITY

Solano County's BESS ordinance does not independently control the Commission's decision under the Opt-In process, because the CEC's Opt-In authority can supersede many otherwise applicable local permitting requirements. That jurisdictional point, however, does not make the County's locally adopted BESS standards irrelevant to the Commission's environmental-justice analysis.

The stronger point is that Solano County's later-adopted BESS ordinance reflects the local government's considered judgment concerning appropriate siting, setbacks, fire protection, monitoring, and land-use compatibility. Those standards are relevant evidence when the Commission evaluates whether Corby's protections are adequate and whether an industrial alternative could reduce burdens on nearby residents.

IX. COMMUNITY BENEFITS ARE NOT A SUBSTITUTE FOR ENVIRONMENTAL-JUSTICE ANALYSIS

The Opt-In process separately requires community-benefit commitments. Those commitments may provide useful local benefits. They should not be treated as mitigation for, or as an offset to, health, safety, or environmental burdens that have not been fully analyzed.

The Commission should keep three concepts distinct: environmental mitigation, emergency-response and operating protections, and community benefits. A community benefit does not answer whether the Project's residual burdens are distributed disproportionately.

X. REQUESTED COMMISSION ACTION

1. Identify the specific EJ block groups that overlap or lie downwind of the modeled accidental-release and toxic-gas impact areas.
2. Explain why a less-than-significant finding in an underlying technical section is sufficient, by itself, to foreclose further analysis of disproportionate residual burdens.
3. Compare the geographic distribution of modeled Public Health and Hazards impacts with the low-income and minority EJ populations identified in Section 6.
4. Address Vacaville's 2022 locally tailored environmental-justice data as relevant baseline evidence, without mischaracterizing it as a formal statewide DAC designation.
5. Evaluate whether emergency notification, shelter-in-place, evacuation, and road-closure procedures would impose differential burdens on identified EJ populations.
6. Cross-reference Water Resources and emergency-response analyses where residual risks may extend offsite through groundwater, drainage, or contaminated runoff pathways.
7. Explain how Solano County's locally adopted BESS siting and safety standards were considered as relevant evidence in the environmental-justice analysis.
8. Confirm that community-benefit commitments are not being used as a substitute for mitigation or a complete analysis of disproportionate impacts.

XI. CONCLUSION

Section 6 establishes that environmental-justice populations are present in substantial numbers within the Project's six-mile study area. The issue is therefore not whether an EJ population exists. The issue is whether Staff's method adequately evaluates the distribution of Project burdens after those populations have been identified.

Staff's present approach repeatedly moves from an underlying less-than-significant technical finding directly to a conclusion of no disproportionate EJ impact. That shortcut is most concerning where the underlying technical sections themselves identify offsite effects, rely on mitigation or future emergency-response measures, or recognize low-frequency but potentially consequential events.

The Commission should connect its EJ maps with the actual geographic footprints of the Project's modeled impacts and explain who bears the residual burdens. Until that analysis is completed, the Commission should not rely on Section 6 as support for approval of the proposed Kilkenny Road location.

Where an industrial alternative can reduce the proximity of residential and EJ populations to modeled toxic-plume, emergency-response, traffic, water, and other offsite burdens, that siting consideration should be weighed seriously before certification.

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

Respectfully submitted,

Sarah Dunn
Vacaville Resident