

DOCKETED	
Docket Number:	24-OPT-05
Project Title:	Corby Battery Energy Storage System Project
TN #:	272638
Document Title:	Linda Geller Comments - COMMENTS REGARDING COMMUNITY BENEFITS AGREEMENT ANALYSIS
Description:	N/A
Filer:	System
Organization:	Linda Geller
Submitter Role:	Public
Submission Date:	9/13/2026 2:48:08 PM
Docketed Date:	9/14/2026

*Comment Received From: Linda Geller
Submitted On: 9/13/2026
Docket Number: 24-OPT-05*

COMMENTS REGARDING COMMUNITY BENEFITS AGREEMENT ANALYSIS

Additional submitted attachment is included below.

CALIFORNIA ENERGY COMMISSION

Docket No. 24-OPT-05

Corby Battery Energy Storage System Project

Submitted by Linda Geller

September 13, 2026

RE: Staff Assessment, Section 10.5, Legally Binding Enforceable Agreement(s) for Community Benefits of the Project; COC MAND-2; TN 267229, Community Benefit Agreement Progress Report

These comments address the Staff Assessment's treatment of the Corby Project's Community Benefits Agreement under Public Resources Code section 25545.10. The issue is not whether the charitable purposes identified in the agreement are worthwhile. The issue is whether Staff performed and disclosed the analysis necessary to support the mandatory statutory finding that the Applicant has entered into a legally binding and enforceable community benefits agreement that satisfies section 25545.10.

Section 25545.10(a) is framed as a condition of certification: the Commission "shall not certify" the site and related facility unless it makes the required finding. Staff accurately recites that standard in Section 10.5 of the Staff Assessment, but the analysis that follows is extremely abbreviated. Staff identifies the Solano Community Foundation, lists four funding categories, states that the agreement is legally binding and enforceable, and recommends adoption of that finding. (Staff Assessment, pp. 10-7–10-9; TN 267229.)

I. Staff's Analysis Does Not Meaningfully Evaluate the Operative Contract Terms

Staff's proposed finding states that the Applicant entered into a "legally binding and enforceable agreement" with the Solano Community Foundation. Yet the Staff Assessment does not appear to analyze several provisions that bear directly on whether the promised community benefit is fixed, enforceable, durable, and available to the affected community.

A. Payment Is Contingent on Future Commercial Operation

The amended agreement does not require payment upon certification, commencement of construction, or even completion of construction. The Applicant's payment obligation is expressly subject to a condition precedent: achievement of commercial operation. The \$500,000 is then payable within 90 days after that condition is satisfied. (TN 267229, pp. 5–6.)

Staff does not explain the significance of this contingency. If the Project is certified but never reaches commercial operation, the agreement appears to impose no matured obligation to make the \$500,000 payment. Because section 25545.10 is a certification prerequisite, Staff should explain why a benefit that remains contingent on a later event satisfies the statutory requirement at the time certification is granted.

B. The Agreement Appears to Permit the Donor to Terminate on Five Days' Notice

The amended agreement states that it remains in effect until specified events occur, but also provides that the "Donor may terminate this Amended Agreement with 5 days' advance" notice. (TN 267229, p. 7, § 9.) Staff's Section 10.5 analysis does not discuss this provision.

This omission is material. Staff should identify what provision prevents the Applicant from obtaining certification and subsequently terminating the agreement before commercial operation and before the \$500,000 payment becomes due. If another Condition of Certification eliminates that possibility, the Staff Assessment should identify the operative language and explain how it does so. If no such restriction exists, Staff should explain how an agreement subject to a five-day unilateral termination right supports the present finding that the promised community benefit is legally binding and enforceable.

C. COC MAND-2 Requires Reporting, But Does Not Clearly Cure the Underlying Enforceability Issue

MAND-2 is Staff's proposed Condition of Certification for the Community Benefits Agreement. Its function is monitoring and reporting. It requires the Project owner to provide progress reports on implementation of the agreement with the Solano Community Foundation and/or any additional community benefits agreements. Those reports must identify the status of donations and other obligations, the amount of funding distributed, documentation demonstrating fulfillment, any changes or updates to the agreement, implementation issues or barriers, and other information the developer considers relevant. Reporting begins with the first Monthly Compliance Report, continues quarterly during construction, and then annually following construction until the obligations under the agreement have been fully satisfied. (Staff Assessment, p. 10-15, COC MAND-2.)

The distinction between monitoring and guaranteeing performance is critical. MAND-2 tells Corby what it must report about the Community Benefits Agreement; the language identified in the Staff Assessment does not itself appear to require Corby to preserve the existing agreement, prohibit its termination, prohibit reduction of the \$500,000 commitment, require prior CEC approval before a material amendment or termination, or require a replacement agreement providing equivalent benefits.

Indeed, MAND-2 expressly requires Corby to report "any changes or updates to the community benefits agreement." (Staff Assessment, p. 10-15.) That language appears to contemplate that changes may occur, but the condition does not state what changes are permissible or what happens if the underlying agreement is terminated before payment. A requirement to report that an agreement has changed or terminated is materially different from a requirement preventing that result.

This becomes particularly important when MAND-2 is read together with the underlying agreement. The amended Donation Agreement makes the \$500,000 payment contingent on achievement of commercial operation and separately appears to permit the Donor to terminate the agreement on five days' advance notice. Staff nevertheless recommends that the Commission presently find that Corby has entered into a legally binding and enforceable agreement satisfying Public Resources Code section 25545.10. The Staff Assessment should therefore identify the exact legal mechanism, if one exists, that converts MAND-2 from a reporting requirement into an enforceable guarantee that a qualifying community-benefit obligation will remain in force through payment.

Put plainly: MAND-2 appears to require Corby to report what happens to the Community Benefits Agreement. It does not, on its face, appear to guarantee that the agreement cannot be terminated or materially reduced before the promised \$500,000 is paid.

II. Staff Does Not Analyze Contract Terms Affecting Independence, Public Messaging, and Mutual Benefit

A. Requested "Statement of Support"

The agreement requires the Recipient, upon request by the Donor, to provide a letter acknowledging and supporting the positive impact of the community benefit contributions. Although the agreement states that the Foundation does not evaluate or endorse commercial energy projects, the contractual support-letter provision remains relevant to the nature of the parties' relationship. (TN 267229, pp. 5–6, § 3.2.)

Staff does not discuss this provision before concluding that the agreement qualifies as a community benefit agreement. This matters because the agreement allows Corby to request a letter from the Foundation acknowledging the positive impact of Corby's contributions. If the Foundation later submits a letter supporting Corby or describing the Project's community benefits, the public and the Commission should be able to tell whether the letter reflects the Foundation's independent views or was provided because Corby requested it under the agreement.

B. Unequal Public-Announcement Rights and Confidentiality

The amended agreement permits the Donor to make public announcements and communicate with media organizations about the agreement without prior consent of the Recipient, while restricting the Recipient from making public announcements concerning the agreement without prior written consent of the Donor. The agreement also contains a confidentiality provision covering its execution, terms, conditions, and confidential information, subject to governmental disclosure and disclosures required by law. (TN 267229, p. 6, §§ 4–5.)

These provisions do not necessarily invalidate the agreement, but they are relevant to assessing the character of the arrangement and the independence of public communications concerning it. Staff's proposed finding contains no discussion of them.

C. Release, Indemnification, and Limitation-of-Liability Provisions

The agreement also includes a broad waiver and release in favor of the Donor, indemnification obligations imposed on the Recipient, and a limitation-of-liability provision protecting the Donor from specified categories of damages arising from or relating to the donation agreement. (TN 267229, p. 6, §§ 6–8.)

Again, these may be permissible commercial terms. The concern is analytical: Staff characterized the agreement as legally binding, enforceable, and qualifying under section 25545.10 without showing that it evaluated the operative contract as a whole rather than merely confirming the existence of an executed document and identifying the stated donation amount.

III. Staff Gives Little Attention to the Evolution of the Community Benefits Plan

The Applicant's November 2025 Progress Report states that its original Community Benefits Plan contemplated proposed contributions of \$200,000 to Solano Community College, \$200,000 to the Travis Fisher House Foundation, \$10,000 to initiatives supporting Vacaville veterans, and \$100,000 to various City/County initiatives. The report then states that Solano Community College and Travis Fisher House Foundation declined the proposed contributions, and organizations supporting Vacaville veterans declined to execute a formal community benefits agreement, although some accepted donations associated with holiday events. (TN 267229, p. 2.)

The Applicant ultimately entered into a \$300,000 agreement with the Solano Community Foundation and later increased that amount to \$500,000 after Solano Community College declined the proposed \$200,000 contribution. (TN 267229, pp. 2–3.)

Staff should explain whether it reviewed why multiple organizations identified in the original Community Benefits Plan declined proposed contributions or formal agreements, what outreach occurred to communities closest to the Project site, and whether the final agreement reflects identified needs of the population expected to bear the Project's most localized impacts.

IV. Staff Does Not Explain the Nexus Between the Benefits and the Communities Bearing Localized Project Burdens

The final \$500,000 arrangement allocates \$125,000 to the Solano Community Foundation General Operating Fund, \$125,000 to Education Plus!, \$150,000 to the Solano Community Impact Fund, and \$100,000 to A Hand Up. (TN 267229, p. 5.) These are countywide charitable purposes. Staff does not

explain whether, or to what extent, the benefits are directed to the communities closest to the Corby site or to residents expected to experience the Project's localized effects.

This distinction is important because the Staff Assessment elsewhere evaluates site-specific impacts involving rural residences, agricultural land, visual resources, emergency response, biological resources, cultural resources, and other localized conditions. The community benefits analysis does not show whether Staff examined any relationship between those localized burdens and the geographic or substantive distribution of the promised benefits.

V. Staff Does Not Explain Why Each Funding Category Qualifies as a Section 25545.10 Community Benefit

One-quarter of the total package—\$125,000—is directed to the Solano Community Foundation's General Operating Fund for internal capacity, systems modernization, operational infrastructure, staff resources, digital transformation of archival systems, and programmatic oversight. (TN 267229, p. 5.)

The \$150,000 Community Impact Fund is expressly limited to CEC-approved categories including job training and workforce development, small-business and nonprofit support, affordable housing, local infrastructure improvements, environmental mitigation and restoration, and community health and safety. (TN 267229, p. 5.) By contrast, Staff's analysis does not explain its legal or factual basis for determining that each of the other allocations independently qualifies under section 25545.10, or whether Staff considered the agreement sufficient simply because it benefits an organization Staff considers a qualifying community-based organization.

Staff also notes that section 25545.10 permits, among other things, annual contributions to nonprofit or community-based organizations. (Staff Assessment, p. 10-8.) The Corby agreement appears to provide a one-time \$500,000 contribution rather than an annual benefit over the Project's operating life. The statute may not prescribe a particular amount or annual-payment formula, but Staff should disclose the basis for concluding that the structure and duration of this particular benefit satisfy the statutory purpose.

VI. How the Limited Analysis Benefited Corby and the Staff Recommendation

The practical effect of Staff's *abbreviated* analysis was favorable to Corby. This comment does not assume or allege improper intent. The concern is the directional effect of the analytical choices reflected in the Staff Assessment.

By treating execution of the agreement and identification of four funding categories as sufficient, Staff avoided confronting contractual provisions that could complicate or weaken the mandatory finding required for certification. Specifically, the limited analysis:

MAND-2 illustrates the directional effect particularly clearly. By describing a reporting condition alongside the statutory finding, the Staff Assessment can give the appearance of a continuing enforcement safeguard without demonstrating that the condition actually preserves the underlying \$500,000 obligation. That analytical shortcut benefits Corby because it permits Staff to recommend that the mandatory certification prerequisite is satisfied now, while leaving unresolved whether the agreement may later be terminated or materially altered before the community receives the promised benefit. It simultaneously benefits Staff's recommendation because the unresolved enforceability question is moved into future compliance reporting rather than resolved before the Commission makes the certification finding.

- allowed Staff to characterize the agreement as presently "legally binding and enforceable" without reconciling the five-day termination provision;
- allowed Staff to rely on the full \$500,000 figure without emphasizing that payment is contingent on later commercial operation;
- allowed Staff to recommend certification without first establishing whether Corby must maintain an equivalent qualifying agreement after certification and through payment;

- treated MAND-2 reporting as compliance oversight without explaining whether reporting actually prevents termination, material reduction, or replacement with a lesser benefit;
- presented the Foundation relationship as a straightforward community benefit without discussing the requested support letter, Donor-controlled public-announcement provision, confidentiality provision, release, indemnification, and limitation-of-liability terms;
- did not test whether the ultimate countywide charitable distribution has a meaningful nexus to the communities bearing the Project's most direct localized burdens; and
- did not explain whether the refusal of several originally identified organizations to enter formal agreements raised any issue requiring further inquiry.

Each of these omissions moves the analysis in the same direction: uncertainty that could weigh against, qualify, or delay the mandatory finding is left unexplored, while the conclusion favorable to certification is stated affirmatively. The result is that Corby receives the benefit of the statutory finding without the Staff Assessment showing the analytical work necessary to demonstrate that the agreement, as actually written, satisfies the requirement on which that finding depends.

The same limited analysis also materially supports Staff's recommendation. Staff's conclusion expressly recommends that the Commission adopt findings that section 25545.10 is satisfied. (Staff Assessment, p. 10-9.) Had Staff analyzed the termination right, condition precedent, durability of the agreement, scope of MAND-2, and other operative terms, Staff might still have reached the same conclusion—but the record would show why. As written, the Staff Assessment largely states the conclusion rather than demonstrating it.

VII. Questions Requiring a Reasoned Response

1. What specific legal analysis supports Staff's conclusion that the amended agreement is "legally binding and enforceable" notwithstanding the provision allowing the Donor to terminate the agreement on five days' notice?
2. What prevents Corby from receiving certification and then terminating the agreement before commercial operation and before the \$500,000 payment becomes due?
3. Does MAND-2 prohibit termination or material reduction of the community benefit, or does it merely require Corby to report such a change after it occurs? Please identify the exact language that makes continued maintenance of a qualifying agreement a substantive condition of certification rather than only a reporting obligation.
4. If Corby terminates or materially amends the agreement after certification, must it obtain prior CEC approval and enter a replacement agreement providing equivalent or greater benefits?
5. What enforcement consequence applies if the agreement is terminated after certification but before payment?
6. Why did Staff conclude that a payment contingent upon commercial operation satisfies the certification-stage requirement in section 25545.10(a)?
7. Did Staff evaluate the requested Statement of Support, confidentiality provision, unequal public-announcement rights, release, indemnification, and limitation-of-liability provisions before making its proposed finding? If so, where is that analysis disclosed?
8. Did Staff evaluate whether the Solano Community Foundation or any associated recipient submitted or may submit statements that are responsive to the agreement's Statement of Support provision, and if so, how are such statements distinguished from independent support for the Project?
9. Did Staff investigate why Solano Community College, Travis Fisher House Foundation, and Vacaville veterans organizations declined proposed contributions or formal community benefits agreements?
10. What outreach was conducted specifically with residents, organizations, or local entities closest to the Project site regarding community needs and proposed benefits?
11. What analysis supports treating the \$125,000 General Operating Fund contribution—including internal capacity, systems modernization, staffing, and archival-data modernization—as a qualifying community benefit under section 25545.10?

12. What analysis did Staff perform regarding the geographic nexus between the countywide charitable benefits and the communities experiencing the Project's most localized burdens?
13. Why is a one-time \$500,000 contribution considered sufficient for this Project, and did Staff conduct any proportionality, duration, or comparative analysis?
14. Please identify every document, memorandum, legal review, staff communication, checklist, or QA/QC record relied upon in evaluating compliance with section 25545.10 and COC MAND-2.

VIII. Requested Revision to the Final Staff Assessment

The Final Staff Assessment should not simply repeat the conclusion that the agreement is legally binding and enforceable. It should analyze the operative provisions of the October 20, 2025 amended agreement; explain the legal effect of the five-day termination clause and commercial-operation condition precedent; identify whether MAND-2 prevents termination or material reduction of the benefit; disclose the basis for treating each funding category as qualifying under section 25545.10; address the relationship between the benefits and the affected community; and explain how the Commission can make the mandatory statutory finding on the present record.

If Staff concludes that existing conditions do not prevent termination or material diminution of the agreement after certification, the Final Staff Assessment should identify that issue plainly rather than relying on reporting alone as a substitute for an enforceable substantive requirement.

IX. Conclusion

The Community Benefits Agreement may ultimately satisfy Public Resources Code section 25545.10. The present Staff Assessment, however, does not demonstrate that conclusion with the level of analysis warranted by a mandatory condition of Opt-In certification. The concern is not the worthiness of the recipient organizations. It is whether Staff critically evaluated the agreement Corby actually executed before recommending that the Commission make a finding that the statute expressly makes a prerequisite to certification.

The Commission should require a transparent, contract-specific analysis before adopting the proposed finding.