

DOCKETED	
Docket Number:	24-OPT-05
Project Title:	Corby Battery Energy Storage System Project
TN #:	272710
Document Title:	Neil Serr Comments - Commissioner Accountability, Governmental Immunity, and the Consequences of Certifying the Corby BESS Project
Description:	N/A
Filer:	System
Organization:	Neil Serr
Submitter Role:	Public
Submission Date:	9/14/2026 9:36:01 AM
Docketed Date:	9/14/2026

Comment Received From: Neil Serr
Submitted On: 9/14/2026
Docket Number: 24-OPT-05

**Commissioner Accountability, Governmental Immunity, and the
Consequences of Certifying the Corby BESS Project**

Additional submitted attachment is included below.

To: Chair and Commissioners
California Energy Commission

Re: Corby Battery Energy Storage System Project — Docket No. 24-OPT-05

Location: Kilkenny Road, Solano County, California

Subject: Commissioner Accountability, Governmental Immunity, and the Consequences of Certifying the Corby BESS Project

Dear Chair and Commissioners:

I respectfully submit this letter concerning the proposed certification of the Corby Battery Energy Storage System Project on Kilkenny Road.

I am asking each Commissioner to carefully consider not only whether the Corby project meets the Commission's statutory requirements, but also the potential consequences of approving this project if material safety, engineering, emergency-response, environmental, land-use, or regulatory matters remain unresolved at the time of certification.

I want to make clear at the outset that **this letter is not intended as a threat against any individual Commissioner**, nor am I asserting that a future accident would automatically result in personal civil or criminal liability.

That would be an inappropriate conclusion without knowing the specific facts, applicable law, and circumstances surrounding any future event.

My concern is instead about **accountability and the Commission's responsibility to create a complete and legally defensible record before exercising its authority to certify this project.**

Governmental immunity is not a substitute for compliance with the law

I recognize that public officials may be entitled to various statutory and common-law immunities when performing lawful governmental functions.

However, governmental immunity should not be understood as blanket immunity from every possible consequence of official conduct.

Immunity does not give a public official unlimited authority to act outside the law.

Nor should the existence of governmental immunity be considered a reason to approve a project before material legal, safety, engineering, and regulatory questions have been resolved.

The Commission should therefore carefully distinguish between:

- lawful discretionary governmental decision-making;
- negligence;

- violation of a mandatory statutory duty;
- action outside the scope of lawful authority;
- bad-faith conduct;
- knowing disregard of material information;
- concealment or misrepresentation of material facts; and
- independently unlawful conduct.

These circumstances can have very different legal consequences.

Potential civil consequences

If a catastrophic BESS incident were to occur after certification — including a major battery fire, thermal runaway event, explosion, hazardous-material release, evacuation, serious injury, death, or substantial property damage — the circumstances surrounding the Commission's approval could inevitably become relevant to subsequent legal proceedings.

That does not mean that a Commissioner would automatically be personally liable.

Rather, the important question would be what the Commission knew, what it was told, what it was required to do, what it actually did, and whether the Commission acted within the authority granted to it by law.

Among the questions that could potentially be examined are:

- What information did the Commission possess before certification?
- What safety deficiencies or uncertainties were identified?
- Which plans and studies had actually been completed?
- Which requirements were deferred until after certification?
- What warnings were provided by fire agencies and emergency responders?
- What concerns were raised by water agencies or other governmental entities?
- What concerns were raised by engineers or technical professionals?
- Were neighboring property owners' concerns adequately considered?
- Did the Commission have sufficient information to determine that this particular site was appropriate?
- Were material risks disclosed accurately and completely?
- Were mandatory statutory and regulatory requirements satisfied?
- Did the Commission have lawful authority to override applicable local land-use restrictions?
- Did the Commission knowingly disregard material information contained in its own administrative record?

These are not hypothetical legal technicalities.

They are precisely the types of questions that demonstrate why the administrative record must be complete **before certification**.

Criminal accountability is a separate and much higher standard

I am also aware that criminal liability is fundamentally different from civil liability.

A bad permitting decision, negligence, or an accident does not automatically make a public official criminally responsible.

Criminal liability requires an applicable criminal law and satisfaction of the elements required by that law, including any required mental state.

Nevertheless, government office does not create a blanket exemption from criminal law.

If an official were ever found to have knowingly falsified records, accepted a bribe, engaged in corruption, intentionally concealed material information, or knowingly participated in some other independently criminal conduct, the fact that the person held public office would not, by itself, make such conduct lawful.

Again, I am **not alleging that any Commissioner has engaged in such conduct.**

I raise this only to emphasize an important principle:

The Commission should not rely upon governmental or qualified immunity as a substitute for ensuring that every action taken in connection with Corby is within the Commission's lawful authority and supported by a complete administrative record.

The administrative record is the Commissioners' best protection

The best protection for the Commissioners is not an assumption that governmental immunity will protect them from every possible consequence.

The best protection is a thorough, accurate, and defensible administrative record demonstrating that:

1. The Commission had complete material information;
2. Material safety concerns were identified and considered;
3. Mandatory requirements were satisfied;
4. Material engineering and design questions were resolved;
5. Emergency-response capabilities were adequately established;
6. Environmental impacts were properly evaluated;
7. Applicable land-use issues were lawfully resolved;
8. Measure T was properly analyzed;
9. The Commission acted within its statutory authority;
10. Material warnings from qualified agencies and professionals were not ignored;
11. The project certified was sufficiently defined to allow meaningful review; and
12. The Commissioners had a reasonable and lawful basis for concluding that the Corby site could safely accommodate the facility.

That record should exist **before the vote**, not be assembled afterward.

What happens if a catastrophic event occurs?

The Commission should consider the following scenario before certification:

Suppose a serious battery event occurs after the facility becomes operational.

Suppose the incident results in a prolonged fire, hazardous smoke, evacuation of nearby residents, contamination from fire-suppression water, damage to neighboring property, serious injury, or loss of life.

At that point, investigators, courts, regulators, insurance companies, and affected property owners could reasonably ask:

What did the Commission know before it approved this facility?

They could ask:

What warnings were in the record?

Which requirements were unresolved?

Which plans did not yet exist in final form?

Which conditions were deferred?

Were there known deficiencies in fire protection or emergency response?

Were there concerns about water availability?

Was the site appropriate for this technology?

Were there reasonable alternative locations?

Did the Commission have the legal authority to override local land-use protections?

And perhaps most importantly:

Why did the Commission approve the project before these questions were resolved?

Those questions are precisely why I am asking the Commissioners to exercise caution now.

The Commission should not approve a project and rely on future conditions to protect itself

If material safety and engineering requirements are being deferred through Conditions of Certification, the Commission should carefully determine whether those conditions are merely implementing requirements for an adequately defined project or whether they are actually being used to complete material elements of the project after certification.

There is a substantial difference.

If a future condition could materially change the facility's fire protection, emergency response, hazardous-material management, water requirements, access, ventilation, explosion protection, battery configuration, or other significant safety characteristic, then the Commission should ask whether it has enough information **today** to determine that the project is safe and appropriate for certification.

A future promise is not the same thing as a completed requirement.

The Measure T issue increases the Commission's responsibility

The Commission must also consider the legal consequences of overriding local land-use authority.

If certification of Corby would override Solano County Measure T, then the Commission should expressly determine whether its action constitutes a **de facto displacement of voter-enacted local land-use authority**.

That is a significant legal issue.

The Commission should identify the statutory authority allowing it to displace the land-use decision made directly by the voters and should explain why that authority extends to voter-enacted agricultural protections.

The more extraordinary the State's authority becomes, the more important it is that the Commissioners ensure that the record is complete and that every legal prerequisite has been satisfied.

My request to the Commissioners

I respectfully ask each Commissioner to consider the following before voting on Corby:

Do I have enough information to know exactly what project I am approving?

Have all material safety requirements actually been demonstrated, or are some merely promised for the future?

Have the responsible fire and emergency-response agencies been provided with a sufficiently complete project to determine whether they can safely respond to an incident?

Have all material environmental impacts been adequately analyzed?

Have all material legal questions concerning Measure T been resolved?

Does the Commission clearly possess the statutory authority necessary to override the local land-use restrictions applicable to this property?

Would my vote contribute to a de facto displacement of voter-enacted local land-use authority?

If a catastrophic event were to occur, would the administrative record demonstrate that I had all material information reasonably necessary to make this decision?

And finally:

Can I honestly conclude that this project has been sufficiently defined, evaluated, and legally reviewed that certification is appropriate today?

Conclusion

After 46 years in the construction industry, I have learned that the safest and most responsible approach is to resolve the important questions **before** the project is approved and constructed.

I respectfully ask the Commissioners to apply that same principle here.

The purpose of raising the issue of potential liability or accountability is not to threaten the Commission.

It is to emphasize the seriousness of the decision before you.

A BESS facility is a significant industrial installation with potentially serious consequences if something goes wrong. The decision to approve its location should therefore be based upon a complete understanding of its design, risks, emergency requirements, environmental impacts, legal authority, and site suitability.

Governmental immunity should never be the standard by which the Commission determines whether it is safe or lawful to approve a project.

The standard should be whether the Commission has complied with the law, exercised its authority within the limits granted by the Legislature, considered the material evidence before it, resolved the significant outstanding issues, and created a complete and defensible administrative record.

I respectfully request that the Commission **defer or deny certification of the Corby BESS project until the material legal, safety, engineering, environmental, emergency-response, and land-use issues have been fully resolved and documented in the public record.**

The Commissioners have an opportunity before the vote to make certain that every material question has been answered.

Once the facility is built and an emergency occurs, it will be too late to discover that an important question should have been answered before certification.

I respectfully ask each Commissioner to consider that responsibility carefully.

Respectfully submitted,

Neil Serr
Vacaville, CA

California Energy Commission — Docket No. 24-OPT-05