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September 14, 2026

Via Email and e-filing Docket 24-OPT-05

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Re: Docket 24-OPT-05: Draft Environmental Impact Report for the Corby Battery Energy Storage System Project

Dear Ms. Longman:

These comments are submitted by the Solano County Department of Resource Management ("County") on the California Energy Commission's ("CEC's") July 2026 Staff Assessment, which includes a Draft Environmental Impact Report ("DEIR"), for the Corby Battery Energy Storage System Project ("Project"). This letter follows up on, and incorporates by reference, the County's December 2, 2024, comment letter on the Project.

The County has serious concerns regarding the Staff Assessment's recommendation that the CEC approve the Project and certify the DEIR despite the Project's significant and unavoidable visual-resource impact and other significant land-use, agricultural, public-health, and safety concerns that the County believes have not been adequately analyzed or mitigated. As proposed, the Project raises substantial concerns about public health and safety and would result in significant impacts to agricultural resources, neighboring communities, and the rural character of the surrounding area. The Project is also inconsistent with the County's General Plan and Zoning Regulations, including Measure T and the County's local battery energy storage system ("BESS") ordinance. These local laws, ordinances, and regulations ("LORS"), as well as designations and policies affirmed by a voter approved initiative, reflect the County's efforts to protect local communities and the County's natural and agricultural resources while appropriately balancing California's clean-energy goals.

Further, and as explained below, the Staff Assessment and DEIR also contain significant legal and analytical deficiencies that must be corrected before the CEC takes action on the Project. These include (1) failure to adequately describe and analyze the Project's significant and unavoidable land use impacts; (2) failure to address the substantial legal question whether the CEC has authority to override Measure T, a voter-approved initiative; (3) failure

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to adequately address the Project's noncompliance with numerous standards in the County's BESS ordinance; (4) failure to adequately analyze a reasonable range of alternatives to the proposed Project; and (5) numerous other flaws in the environmental analysis that must be corrected to comply with the California Environmental Quality Act ("CEQA"). These deficiencies deprive CEC decisionmakers and the public of the complete and accurate information necessary to evaluate a project of this magnitude and consequence before the CEC takes action.

I. The DEIR Does Not Adequately Describe the Existing Regulatory Setting or Analyze the Project's Significant and Unavoidable Land Use Impacts.

The environmental impact report is "the heart of CEQA." (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) It "is an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The EIR is also intended 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.' Because the EIR must be certified or rejected by public officials, it is a document of accountability." (*Id.*) Where, as here, an EIR fails to fully and accurately inform decision makers, and the public, of the environmental consequences of proposed actions, it does not satisfy the basic goals of the statute.

CEQA requires that environmental impact reports analyze the consistency of a project with applicable local plans. (CEQA Guidelines Appendix G, § XI(b); see *Napa Citizens for Honest Govt. v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 386-87.) Inconsistencies with a general plan or other local plan goals and policies that were enacted for the purpose of avoiding or mitigating an environmental impact are significant impacts in and of themselves and can also be evidence of other significant impacts. (See *id.*; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 929.)

Here, the DEIR concludes that the Project is consistent with the Solano County 2008 General Plan, while acknowledging that it is inconsistent with the County's Zoning Regulations, including Ordinance No. 2025-1864 (the "County BESS Ordinance"). (DEIR at p. 5.8-31 to 5.8-32.) That conclusion rests on an incomplete description and analysis of the existing land use plans, policies, and regulations applicable to the Project site.

The Project is located on land designated "Agriculture" under the Solano County 2008 General Plan. (Solano County 2008 General Plan ("2008 General Plan"), Figure LU-1.) The General Plan states that "[a]gricultural land use designations protect these areas from intrusion by nonagricultural uses and other uses that do not directly support the economic viability of agriculture." (*Id.*, Chapter 2 [Land Use] at Page LU-19.) The Agricultural designation "[p]rovides areas for the practice of agriculture as the primary use, including areas that contribute significantly to the local agricultural economy, and allows for secondary uses that support the economic viability of agriculture." (*Id.*) These provisions align with the policies, programs, and goals reiterated throughout the 2008 General Plan that

collectively seek to protect agriculture in recognition of its economic, environmental, and social benefits. (See *id.* at Chapters 1 [Introduction], 2 [Land Use], and 3 [Agriculture]. The DEIR does not adequately address these provisions or explain how the Project can be reconciled with them.

Consistent with its Agriculture land use designation, the Project site is zoned “Exclusive Agriculture – A-40” (“A-40”) under the County Zoning Regulations. (See *id.* at Table LU-7, Page LU-43 [identifying the zoning districts consistent with each General Plan land use designation].) Front-of-the-meter BESS facilities, such as the proposed Project, are not allowed within the A-40 zoning district. (Solano County Code, Chapter 28, §28.21, Table 28.21A; see *also* Ordinance No. 2025-1864.) That prohibition implements the General Plan’s direction that agricultural lands be reserved primarily for agricultural uses and compatible secondary uses that support the economic viability of agriculture. (2008 General Plan, at page LU-19; Solano County Code §28.21.11 [explaining the purpose of the Agricultural zoning districts].) It also reflects the County’s determination that front-of-the-meter BESS facilities, which inherently displace and are inconsistent with agriculture, should instead be located in specified Manufacturing, Industrial, and Commercial Service zoning districts. The County permits such facilities in the MG-L, M-G-1/2, M-G-3, I-WD, IAS, and CS districts, subject to compliance with the standards established by the County’s BESS Ordinance. (See Ordinance No. 2025-1864; Solano County Code §28.83.)

The conflict is therefore not limited to a technical inconsistency with the County’s Zoning Regulations. In its current form, the Project directly conflicts with both the 2008 General Plan and County Zoning Regulations. Moreover, rezoning the Project site to a Manufacturing, Industrial, or Commercial Service zoning district in which a front-of-the meter BESS facilities are permitted would itself create an inconsistency with the site’s Agricultural land use designation. Under the General Plan, those zoning districts correspond to Industrial or Urban Commercial (not Agriculture) land use designations. (2008 General Plan, Chapter 2, Table LU-7.) Accordingly, bringing the Project into conformity with County land use requirements would require not only rezoning but also an amendment of the General Plan to change the site’s Agricultural land use designation. Such an amendment would require approval by Solano County voters under Measure T. (*Id.*, Chapter 1, pp. IN-12 to -13; Chapter 2, Policies LU.P-2, LU.P-3; Ordinance No. 2008-01.) Accordingly, the land use conflicts of the Project are significant and unavoidable and cannot be mitigated.

In summary, although the DEIR acknowledges that the Project is inconsistent with County zoning, its conclusion that the Project nevertheless is consistent with the General Plan is inaccurate and requires substantially greater analysis. The Project would introduce a large-scale, nonagricultural industrial use onto land expressly designated and zoned for agriculture, displace existing agricultural land, and potentially affect surrounding agricultural operations. The DEIR does not adequately reconcile those characteristics with the General Plan’s express direction that agriculture remain the primary use of Agriculture-designated land and that such lands be protected from intrusion by nonagricultural uses that do not directly support the economic viability of agriculture. Nor does the DEIR

adequately address the significance of the fact that the zoning districts in which the County permits front-of-the-meter BESS facilities (the MG-L, M-G-1/2, M-G-3, I-WD, IAS, and CS districts) are not among the zoning districts that the General Plan identifies as consistent with an Agriculture land use designation.

The DEIR therefore fails to fully disclose and analyze the Project's conflicts with the 2008 General Plan, Measure T, and County Zoning Regulations, and fails to adequately analyze how those irreconcilable conflicts result in significant land use and related environmental impacts that cannot be mitigated. Because the County's agricultural land use policies intend to protect agricultural resources, these omissions bear directly on the DEIR's assessment of the Project's environmental consequences. The CEC must correct these deficiencies before it can properly evaluate the Project's land use impacts.

II. The Staff Assessment/DEIR Fail to Address the Substantial Legal Question About Whether the CEC has Authority to Override Measure T, a Local Voter-Approved Initiative.

The Staff Assessment and DEIR fail to mention Measure T, or address the consequences of approving the Project notwithstanding the land use restrictions imposed by that voter-approved initiative. As discussed above, Measure T requires voter approval to redesignate the Project site from Agriculture to a land use designation that would accommodate a front-of-the-meter BESS facility under the County's General Plan and Zoning Regulations. CEC approval of the Project at the proposed site would effectively override Measure T.

The Staff Assessment must therefore address whether the CEC's certification authority under AB 205 extends to overriding General Plan policies and land use designations adopted or protected through the local initiative power. As explained in *City of Morgan Hill v. Bushey*, courts have a duty to "jealously guard" the referendum and initiative power, and to liberally construe those powers so that they "be not improperly annulled." (*City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1078.)

Courts resolve doubts about the scope of the initiative power in its favor whenever possible and narrowly construe provisions that would burden or limit the exercise of that power. (*Id.* [citing *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 936].) The Legislature has limited ability to preempt a local initiative, and may only do so regarding issues of "statewide concern" and where there is a "definite indication" or a "clear showing" that the statute intended to override the initiative. (*Id.* at 1078-79; *AIDS Healthcare Found. v. Bonta* (2024) 101 Cal.App.5th 73 [upholding preemption where a statute explicitly granted action "[n]otwithstanding any local restrictions ... including ... restrictions enacted by local initiative"].)

Here, the Staff Assessment does not address Measure T at all, much less analyze whether AB 205 authorizes the CEC to displace the voter-approved land use restrictions otherwise applicable to the Project at the proposed site. The Staff Assessment's general citation to

Public Resources Code section 25545.1 does not address whether that authority clearly extends to land-use restrictions protected through the electorate's reserved initiative power. Neither Public Resources Code section 25545.1 nor any other relevant statutory provision expressly states that the CEC's certification authority supersedes land-use restrictions adopted by local initiative. At minimum, the absence of such language raises a substantial legal question regarding the scope of the CEC's authority.

The CEC should not certify the Project based on an unstated assumption that AB 205 authorizes it to override Measure T. Before taking action on the Project, the CEC must acknowledge Measure T, explain the effect that Project certification would have on its voter-approved requirements, and identify the statutory and legal basis for concluding that AB 205 authorizes the CEC to displace those requirements.

III. The Staff Assessment/DEIR Fails to Adequately Address the Project's Noncompliance with Numerous Standards in the County's BESS Ordinance.

The CEC is required to include in the Staff Assessment as separate discussion addressing "conformity of the facility with public safety standards and the applicable air and water quality standards, and with all other applicable local, regional, state, and federal standards, ordinances, or laws and a statement of efforts made to correct or eliminate any noncompliance." (20 Cal. Code Regs., § 1879(a)(2).) As discussed in Sections I and II of this comment letter, the Staff Assessment fails to adequately identify and analyze the Project's conflicts with the County's General Plan, Measure T, and Zoning Regulations. It likewise fails to adequately evaluate the Project's compliance with numerous substantive standards established by the County's BESS Ordinance or explain what efforts have been made to correct or eliminate identified areas of noncompliance.

Ordinance No. 2025-1864 ("County BESS Ordinance") regulates BESS facilities in unincorporated Solano County and establishes local siting, safety, and environmental standards that would govern the Project but for the AB 205 opt-in certification process. The Board of Supervisors adopted the County BESS Ordinance in November 2025 following extensive consideration of BESS fire and safety risks, emerging technologies, environmental impacts, and appropriate siting requirements. The ordinance permits BESS facilities in specified zoning districts subject to detailed standards intended to protect public health and safety, surrounding communities, agricultural and natural resources, and the environment, while appropriately accommodating California's clean-energy objectives.

The Staff Assessment does not adequately address the Project's conformity with these standards or describe the policies underlying them. A general acknowledgement of the County BESS Ordinance is insufficient.

- The Staff Assessment's characterization of the purpose of the A-40 zoning district and the BESS ordinance is incorrect. At pages 5.8-21 and 5.8-25, CEC staff reasons that the intent of the A-40 designation where the Project is currently proposed is to protect

Important Farmland, and that the Project's conflict with County zoning is therefore reduced to a less than significant level through COC LAND-1 and the resulting 122.4-acre agricultural conservation easement. That reasoning conflates two distinct County ordinances. Ordinance No. 2024-1858 established the Agricultural Mitigation Program and is directed at farmland conversion. Ordinance No. 2025-1864 (the County BESS Ordinance) is directed at public health and safety. Section 28.83(A) states that the regulations are adopted to protect the health, safety, welfare and quality of life of the general public, to ensure compatible land uses in areas affected by energy storage facilities, and to mitigate the impacts of energy storage facilities on the environment. The BESS Ordinance's recitals identify fire and explosion hazards from lithium-ion technology, thermal runaway, the requirements of Senate Bill 38, and the proximity of front-of-the-meter facilities to sensitive receptors including human residence as the conditions that prompted the prohibition. COC LAND-1 may mitigate the acreage-based conversion of Important Farmland under Ordinance No. 2024-1858, but an off-site agricultural conservation easement does not cure the Project's conflict with the County's land-use designation, zoning prohibition, BESS siting policy, or public-health and safety standards. The conclusion that COC LAND-1 reduces the project's conflict with the A-40 prohibition of BESS facilities to a less than significant level is not supported by substantial evidence, and the County requests that it be revised.

- The Staff Assessment also misidentifies the BESS Ordinance and its provisions in ways that misinform the public and create an inaccurate record. The document refers throughout Section 5.8 to "County Ordinance No. ZT-25-02." ZT-25-02 is the County's zoning text amendment file number. The correct citation is Ordinance No. 2025-1864. Table 4.4-1 in Section 4.4 attributes the County's minimum setbacks of 50 to 100 feet from property lines and 300 feet from any existing sensitive receptor to Solano County Code Section 28.78.20(B)(9), adopted August 26, 2025. Those standards appear at Section 28.83(D)(3) of Ordinance No. 2025-1864. Section 28.78.20(B)(9), as amended by that same ordinance, now provides that Battery Energy Storage Systems are not regulated as Utility Facilities or Infrastructure for purposes of Chapter 28. The regulatory discussion at page 5.8-12 nonetheless describes the A-40 district as allowing utility facilities or infrastructure subject to a use permit under Section 28.21.20 without noting that this permitting pathway is no longer available to a Battery Energy Storage System. The County requests that these citations be corrected and that the Section 5.8 regulatory discussion be revised accordingly.
- Beyond the use prohibition, the Staff Assessment does not analyze the Project's nonconformance with the substantive standards of Section 28.83. Section 28.83 imposes requirements governing siting and natural disaster zone exclusion, setbacks and fire apparatus access, security and screening, sound levels, hours of construction, battery chemistry and best available technology, owner responsibility for thermal runaway costs, impact mitigation measures, cybersecurity, safety standards and certifications, decommissioning and financial assurance, permitting

and compliance with the BESS Emergency Response Plan Guidance document developed by Solano Office of Emergency Services. The Staff Assessment does not reproduce or systematically evaluate Section 28.83 as a whole. Although isolated requirements appear elsewhere in the document—including setback provisions that are incorrectly cited—the only provision expressly reproduced in the LORS discussion appears to be Section 28.83(F), and even that provision is presented without a conformance determination. Table 5.8-4 addresses only the prohibition against front-of-the-meter BESS facilities in the A-40 agricultural zoning district. The County requests that Table 5.8-4 be expanded to state, standard by standard, whether the project conforms to each requirement of Section 28.83 and, where it does not, whether a proposed Condition of Certification affords protection equivalent to the County standard.

- Several gaps are apparent on the present record and warrant Conditions of Certification. Section 28.83(E)(2) requires the facility owner to reimburse the County and emergency response agencies for all costs associated with a thermal runaway event, including root cause analysis, damage assessment and remediation. Section 28.83(H)(1)(a)(xv) requires the applicant to fund 10 or more permanent air monitors and to provide County staff with access to raw, unfiltered monitoring data. Section 28.83(H)(1)(a)(xvi) requires a comprehensive annual report to County staff. No proposed Condition of Certification appears to expressly incorporate or provide equivalent protection for any of these requirements. As to decommissioning, the closure framework at Section 9.7 defers both the closure plan and the cost estimate to the time of closure, while Section 28.83(I)(3) requires financial assurance in the form of a bond, parent company guarantee or irrevocable letter of credit, expressly excluding cash, in an amount not less than the third-party estimated cost of decommissioning net of salvage value, posted in full by the start of full commercial operation. The County requests a Condition of Certification that provides equivalent pre-funded security. Finally, Section 28.83(E)(1) requires the applicant to submit third-party written documentation evaluating whether the proposed battery technology poses a risk of thermal runaway and, where that risk is present, a comprehensive technology comparison analysis. The proposed LG JF2 lithium iron phosphate units present that risk, and the alternative technology screening presently in the record does not satisfy the standard. The sodium-ion feasibility discussion at page 8-12 rejects that chemistry in part on operating temperatures of 300 to 350 degrees Celsius and associated fire failures, which are characteristics of sodium-sulfur rather than sodium-ion. That reasoning originates in the applicant's Data Request Response #3, which responded to the sodium-ion request by analyzing sodium-sulfur, and it was not corrected before publication. The County requests that the sodium-ion screening be redone.
- The County further requests correction of the Worker Safety and Fire Protection section. The local regulatory discussion at page 4.4-5 identifies Ordinance No. 2024-1852-U-E Amendment No. 1, adopted August 26, 2025, as the operative County

regulation of Battery Energy Storage Systems. That interim ordinance was repealed in its entirety by Section XVI of Ordinance No. 2025-1864. Section 4.4 therefore evaluates the project against an instrument that is no longer in effect, and Table 4.4-1 at page 4.4-7 attributes the County's current setback standards to Section 28.78.20(B)(9) with an adoption date of August 26, 2025 on that basis. The County requests that the discussion and the table be revised to reflect Section 28.83 of Ordinance No. 2025-1864, effective December 5, 2025.

- Finally, the County notes that the Staff Assessment finds at page 8-42 that a BESS facility at the Lambie Industrial Park would be consistent with the County's BESS Ordinance because that site is zoned Manufacturing General, would not convert Important Farmland and would not conflict with agricultural zoning. This is correct and reflects a deliberate County siting scheme, developed over 20 months through a Technical Working Group and adopted unanimously by the Board of Supervisors, that directs front-of-the-meter Battery Energy Storage Systems to Manufacturing and Industrial zoning districts. The County requests that this scheme be given corresponding weight in the alternatives analysis and in the Commission's ultimate determination.

IV. The DEIR Fails to Adequately Analyze a Reasonable Range of Alternatives to the Proposed Project.

Under CEQA, meaningful analysis of alternatives is essential to comply with the Act's mandate that significant environmental damage be avoided or substantially lessened where feasible. (Pub. Res. Code, § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126.6(d); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45.) "Without meaningful analysis of alternatives in the DEIR, neither the courts nor the public can fulfill their proper roles in the CEQA process [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404.)

The range of alternatives evaluated in an EIR is necessarily informed by the project's objectives, which the lead agency has discretion to formulate. (CEQA Guidelines §15124(b); *California Oak Found. v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 276.) But that discretion has limits. An EIR may not describe the project objectives so narrowly that "the results of its alternatives analysis would be a foregone conclusion." (*We Advocate Through Env't'l Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 692; see also *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1299-1300 [explaining that objectives tied to implementing a settlement agreement and seeking a sphere-of-influence amendment were impermissibly narrow where the underlying project purpose was to provide water and sewer service for campus expansion].) Once appropriate objectives are established, an EIR must consider alternatives to the project or its location

“that are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” (CEQA Guidelines § 15126.6(b) [emphasis added].)

The DEIR fails to meet these basic mandates. As discussed above, it fails to recognize and analyze the significant land use impacts resulting from the Project’s conflicts with the Solano County General Plan and Zoning Regulations, and these impacts must inform the alternatives analysis. Additionally, the DEIR relies on an improperly narrow project objective tied to Corby’s preexisting contractual arrangements, which is then used to reject or discount alternative technologies and sites that could achieve the Project’s other two objectives while avoiding or substantially reducing its significant environmental impacts. CEQA does not permit an agency to avoid objective consideration of alternatives based on commitments or investments an applicant made before completing environmental review under CEQA. (See *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 425 [“We will not accept *post hoc* rationalizations for actions already taken”]; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 735-37 [“Nor can an agency avoid an objective consideration of an alternative simply because, prior to commencing CEQA review, an applicant made substantial investments in the hope of gaining approval for a particular alternative”].)

The DEIR identifies three objectives that guide its alternatives analysis: (1) Construct and operate a 300-megawatt (MW) BESS close to Pacific Gas and Electric Company’s (PG&E) Vaca-Dixon Substation in Solano County **to meet contractual obligations to provide energy storage services**; (2) Develop a BESS that supports grid stability and helps prevent local and regional blackouts; and (3) Develop a BESS that supports the efficient use of renewable energy and California’s Renewables Portfolio Standards (RPS) goals. (DEIR at Alternatives p. 8-4.) The first objective differs materially from the latter two. Rather than describing an underlying energy-storage, grid reliability, or renewable-energy purpose, it incorporates Corby’s existing contractual arrangements, and its selection of a particular location and interconnection point into the definition of what the Project is intended to accomplish.

The DEIR expressly confirms the importance it places on those preexisting contractual arrangements:

“The application states that the construction and interconnection of a BESS to the Vaca-Dixon Substation is a basic objective of the project given existing agreements between the applicant and both PG&E and the California Independent System Operator (California ISO)... CEC staff reviewed the project’s Large Generator Interconnection Agreement (LGIA) that was executed in June 2021 ... The LGIA specifically allows for the interconnection of a 300 MW BESS to PG&E’s Vaca-Dixon Substation. As such, CEC staff acknowledges that construction and interconnection of a BESS to the Vaca-Dixon Substation is a basic objective of the project.” (*Id.*)

This reasoning improperly allows Corby's prior contractual commitments to constrain the range of alternatives considered under CEQA. Corby's agreements with PG&E and California ISO may be relevant to the feasibility of particular alternatives, but they may not be used to define the Project's objectives so narrowly that otherwise reasonable alternatives are rejected simply because they would require a different site, interconnection point, technology, or contractual arrangement. Corby took an inherent risk when it entered its contractual arrangements and purchased the site prior to obtaining the CEQA certification and entitlements needed to move forward. The DEIR cannot shift the consequences of that risk to the public and the environment by using Corby's preexisting commitments to foreclose meaningful consideration of alternatives that could achieve the Project's underlying energy-storage, grid reliability, and renewable-energy purposes with substantially reduced environmental impacts.

Therefore, at minimum, the DEIR must be revised to address the following:

a. Consideration of Alternative Technologies

The Staff Assessment eliminates every technology alternative at the screening stage. Subsection 8.7 at page 8-6 states that the alternatives not carried forward for full analysis include five technology alternatives, and subsection 8.8 at page 8-31 carries forward only the No Project Alternative, the Lambie Industrial Park Alternative and the Central Overhead Gen-Tie Route Alternative. No alternative battery chemistry receives comparative analysis anywhere in the document. Under CEQA Guidelines section 15126.6(c), an alternative may be eliminated from detailed consideration only for stated reasons, and those reasons must rest on substantial evidence. Here, the CEC's reasons given for eliminating the non-lithium chemistries are not supported by substantial evidence.

The sodium-ion screening rests on a factual error about the chemistry being screened. The feasibility discussion at page 8-12 closes by stating that high operating temperatures of 300 to 350 degrees Celsius present safety issues that have caused fires. Those are characteristics of sodium-sulfur batteries, which operate on molten sodium and sulfur at high temperature. Sodium-ion cells operate at ambient temperature. The error is traceable. CEC staff's REV 1 DR ALT-1 requested a feasibility discussion of sodium-ion batteries. The applicant's Data Request Response #3 answered under the heading "Sodium-Ion Batteries" with the statement that sodium-ion batteries, and specifically sodium-sulfur batteries, have relatively high energy density, then analyzed only sodium-sulfur and concluded that sodium-sulfur is an infeasible technology alternative. The Staff Assessment carried that reasoning into its sodium-ion discussion at page 8-12 and then analyzed sodium-sulfur separately at page 8-15. The result is that the chemistry staff itself identifies as having the lowest thermal runaway risk among those considered was rejected in part on the operating characteristics of a different chemistry. The record contains no feasibility analysis of sodium-ion technology conducted on sodium-ion's own characteristics. This analysis must be prepared and the sodium-ion screening conclusion be revised.

The Staff Assessment's own findings also contradict the maturity rationale applied to sodium-ion. Page 8-12 reports that the world's largest sodium-ion battery energy storage system was brought online in China in November 2025 at 500 MW and 2,000 MWh, and that a 720 MWh system is scheduled for deployment in Texas in 2027 with an option to expand to 4.75 GWh. The proposed project is 300 MW and 1,200 MWh. An operating installation with two thirds more energy capacity than the proposed project is not evidence that the technology is unproven at the project's scale. If staff intends to maintain that sodium-ion cannot be deployed at 300 MW and 1,200 MWh, the revised document must explain, with citation to evidence, why a larger operating deployment does not establish scale feasibility.

The applicant's commercial rationale is not a basis for elimination under CEQA. The applicant's responses state that only the most efficient and highest energy density technologies are commercially viable given the competitive nature of the energy storage agreement procurement process, and that non-lithium technologies are uncompetitive in the marketplace and cannot be developed in an economically feasible and commercially financeable manner. That is a statement of the applicant's commercial preference and of the terms of the contractual agreements the applicant has already executed. It is not evidence that an alternative is incapable of being accomplished in a successful manner within a reasonable period of time, which is the standard the Staff Assessment itself quotes from California Code of Regulations, title 20, section 1201(h) at page 8-3. An alternative does not become infeasible because it is less profitable to the applicant or because the applicant's existing contracts assume a particular chemistry.

Most significantly, the technology screening never asks the question CEQA requires it to ask. CEQA Guidelines section 15126.6(b) directs that the alternatives discussion focus on alternatives capable of avoiding or substantially lessening the project's significant effects. The Staff Assessment states at page 8-12 that sodium-ion batteries carry a significantly lower risk of catastrophic thermal runaway due to lower intrinsic reactivity and lower heat of reaction, and a decreased risk of propagation in the event of failure. The Staff Assessment separately finds at page 5.1-31 that during a thermal runaway or fire event the worst-case nitrogen dioxide concentration at the nearest residences could exceed AEGL-1. Thermal runaway is the risk that prompted the County's urgency ordinance, and ultimately the 20-month process supported by a Technical Working Group to develop a permanent ordinance. Thermal runaway is the imminent public safety risk underlying the great majority of public comment on this docket. Notwithstanding all of that, the alternatives analysis nowhere compares any alternative chemistry against the project's potential hazards, public health, worker safety, or wildfire effects, issues that are central to the County's ordinance and to public concern regarding the Project. The comparison is made only against energy density, cost, footprint and commercial maturity, which are the applicant's project economics rather than the environmental effects CEQA mandates the analysis review.

The County therefore requests that the revised document correct the sodium-ion screening, reevaluate each non-lithium chemistry on its own characteristics and against the project's significant land use, hazard, and public health effects rather than against the Project applicant's commercial preference, and carry forward for full comparative analysis in

subsection 8.8 of alternative technologies presenting materially lower thermal runaway risk. The County further requests that the analysis weigh Section 28.83(E)(1) of the Solano County Code, which requires BESS facilities to use commercially available battery technologies that minimize the risk of thermal runaway and which exempts technologies presenting no thermal runaway risk from a series of siting and analytical requirements. Regulatory limitations of this kind are among the feasibility factors the Staff Assessment identifies at page 8-2, and the County's adopted standard is directly relevant to the reasoned choice the alternatives analysis is meant to inform.

b. Consideration of the Lambie Site Alternative

The County appreciates that staff carried the Lambie Industrial Park Alternative forward for full analysis in response to the Board of Supervisors and to public comment. The County's objection is to the analysis itself, which turns largely on a single unexamined staff assumption.

That assumption is stated at page 8-36. Staff assumes that a BESS at Lambie would require a new overhead generation tie line running approximately 14 miles along the PG&E right-of-way to the Vaca-Dixon Substation. Nearly every comparative conclusion in subsection 8.8.2 is then driven by that assumed line rather than by the site. Air quality, greenhouse gas emissions, biological resources, cultural resources, noise, visual resources and land use preclusion are each rated as they are because the corridor crosses 14 miles of agricultural land, railroad crossings and residential areas. The BESS facility itself would occupy 25 acres inside a 1,461-acre industrial park with an Industrial land use designation and Manufacturing General zoning, adjacent to an existing energy center and an operating wind resource area.

The consequences of that assumption are visible in Table 8-3. The table rates the Lambie Alternative as Less, with no impact, for conflict with existing zoning for agricultural use, and as Less, with no impact, for a conflict with a land use plan, policy or regulation adopted to mitigate an environmental effect. Those are two of the proposed project's significant impacts, and the Lambie Alternative avoids both outright. The single impact of the proposed project that cannot be mitigated is the substantial degradation of existing visual character in a non-urbanized area, which the Staff Assessment attributes at page 5.15 to the creation of a new industrial footprint within a rural landscape. Table 8-3 rates the Lambie Alternative as Similar, and significant and unavoidable, for that same impact. A 25-acre BESS facility within an area designated and zoned for industrial development presents a materially different land-use and visual setting from constructing the facility on Agriculture-designated land. The Staff Assessment does not separately evaluate that distinction because its comparison combines the Lambie site with the assumed 14-mile overhead transmission line. The County requests that staff disaggregate the site from the interconnection and state separately whether the Lambie site, as distinct from the assumed corridor, would avoid or substantially lessen the project's unavoidable visual impact.

The interconnection assumption is itself unexamined. Table 8-2 at page 8-32 identifies the Tolenas project, a 400 MW facility with a projected 2031 online date, interconnecting to the

Lambie Switching Station owned by PG&E. The Staff Assessment does not evaluate whether a BESS sited at Lambie Industrial Park could interconnect at or near that switching station rather than run 14 miles to Vaca-Dixon. Neither does it evaluate undergrounding any portion of the assumed route, nor co-location within the existing 500-kV and 230-kV right-of-way that staff states at page 8-36 crosses the southwest corner of the property, nor any route shorter than the point-to-point estimate the applicant supplied. An alternative cannot be rejected on the impacts of an interconnection configuration that the document never tested against reasonable variations.

The County further objects to the role assigned to the applicant's interconnection agreement. At page 8-4 the Staff Assessment accepts, as a basic project objective, construction of a BESS close to the Vaca-Dixon Substation to meet contractual obligations, on the basis of a Large Generator Interconnection Agreement executed in June 2021. At page 8-37 the applicant's minimum site requirements are stated to include a preference for a site no more than 1 to 2 miles from the interconnection substation. Staff is correct to observe at page 8-37 that gen-tie length may exceed 2 miles where a site has fewer impacts to sensitive resources. But an objective defined by the applicant's existing private contract cannot function as a screen that eliminates otherwise feasible locations, because doing so allows the applicant's own transactional choices to determine the scope of the environmental review. Finally, the CEC must state plainly whether the Lambie Alternative was found infeasible. Subsection 8.8 carried it forward as potentially feasible, and the ultimate rejection at page 8-53 rests on comparative severity rather than on a feasibility determination. The distinction matters to the Commission's later findings under CEQA Guidelines section 15091.

c. Consideration of Additional Alternative Sites

The site alternatives screening in subsections 8.7.7 through 8.7.13 examined seven sites. Setting aside Lambie Industrial Park, every site examined is zoned Exclusive Agriculture A-20 or A-40, is designated Agriculture or Public Quasi-Public, or is owned by PG&E and reserved for substation expansion. Each was eliminated in substantial part for the same three reasons, which are that it would convert Important Farmland, that it would affect an established agricultural use, and that its biological resources would be similar to the proposed site because the surrounding habitat is agricultural.

That outcome was determined by the search radius. Because the screening universe was set by the applicant's stated preference for a site within 1 to 2 miles of the Vaca-Dixon Substation, and because the land within that radius is primarily in agricultural designations, the screening could not have produced a site that avoids farmland conversion, and it could not have produced a site where a front-of-the-meter BESS is an allowed use under Chapter 28 of the Solano County Code. Every candidate considered other than Lambie sits in a district where Ordinance No. 2025-1864 prohibits the use. A screening process that forecloses the only category of site the local jurisdiction permits does not satisfy the requirement in CEQA Guidelines section 15126.6(f)(2) that the document consider alternative locations and disclose the reasons if no feasible location exists.

For instance, there is a site that resolves both of the concerns that drove the Lambie comparison. The site consists of approximately 80 acres zoned Manufacturing General, M-G-1/2, located approximately 5.3 miles east of the Vaca-Dixon Substation. Under Table 28.42A of the Solano County Code as amended by Ordinance No. 2025-1864, a Battery Energy Storage System is an allowed use in the M-G-1/2 district subject to a use permit and to the standards of Section 28.83. The site is more than three times the 25-acre minimum the applicant states is required for a 300 MW facility, and it lies at roughly one third of the distance from the point of interconnection that staff assumed for the Lambie Alternative. It is therefore an industrially zoned, ordinance-compliant location that does not carry the interconnection distance on which the Lambie comparison turned.

This site should be added to the alternatives analysis and evaluated at the same level of detail as the Lambie Industrial Park Alternative, including Department of Conservation farmland designations, distances to sensitive receptors, fire hazard severity zone and floodplain status, biological and cultural resources, generation tie routing and length, and conformance with Chapter 28 and Section 28.83. The County further requests that the site screening be reopened using a search radius sufficient to capture industrially zoned land within unincorporated Solano County, and that generation tie length be weighed as one factor among several rather than applied as a threshold screen. The Staff Assessment acknowledges at page 8-37 that gen-tie length may exceed the applicant's preferred distance where a site has fewer impacts to sensitive resources. Applying that principle to the screening rather than only to the single alternative that survived it would produce the reasoned choice CEQA requires.

V. The DEIR Contains Numerous Other Flaws in the Environmental Analysis that must be Corrected to Comply with CEQA.

An EIR is intended to be a technical document and must provide an evidence-based factual analysis of the project's potential direct and indirect impacts on the physical environment, assess the significance of those potential impacts, and recommend mitigations measures, to the extent possible, that would reduce the severity of potentially significant impacts to a less-than-significant-level. CEQA requires an EIR to "include[] sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.)

The following list of items must be addressed in a recirculated DEIR.

a. Water

The DEIR's analysis of water resource impacts in Section 5.16 is inadequate for multiple reasons. First, the DEIR assumes the availability of a water supply that remains speculative. CEQA does not permit an EIR to assume a solution to a project's water supply needs. Identified future supplies must have a reasonable likelihood of actually being available, and

current evidence must support that proposition. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412.) Here, the DEIR identifies two potential sources: (1) Solano Irrigation District (“SID”); or (2) a new onsite groundwater well, which requires findings by the applicable Groundwater Sustainability Agency (“GSA”). Neither SID nor the GSA have provided the necessary agreement or verification. The DEIR fails to analyze the possibility that neither will be available, leaving decisionmakers without substantial evidence regarding feasibility and environmental consequences of the Project’s water supply.

Second, the DEIR fails to adequately analyze the environmental consequences of relying on a new groundwater well. Its reliance on future compliance with SGMA and County well-permitting requirements does not substitute for CEQA analysis of the Project’s environmental impacts. The DEIR should describe the proposed well and evaluate its potential effects on groundwater levels, drawdown, and nearby wells.

The groundwater analysis is also internally inconsistent. Section 5.16 initially identifies the Project as being within the Solano Subbasin, a medium-priority basin under the jurisdiction of the SID GSA, but later refers to the “Westland Subbasin” as a high-priority basin. The revised analysis must identify the correct basin, priority designation, GSA, and applicable groundwater-sustainability requirements. In addition, COC WATER-3 requires a well-installation permit from County Environmental Health without explaining how that requirement would operate under the CEC’s superseding certification authority. The CEC should clarify the County’s review role and establish an enforceable contingency if neither SID water nor a compliant groundwater well is available.

Finally, the DEIR acknowledges the potential for surface water and groundwater contamination from a thermal-runaway fire, but improperly defers meaningful analysis of that impact. COC WATER-5 requires only that the Project owner later prepare a Water Quality Control Plan (“WQCP”) to address accidental release of contaminants. The DEIR does not adequately disclose the potential nature, extent, or consequences of such contamination, including impacts to nearby agricultural and domestic water users. Given the potential consequences for public health and agricultural viability, the DEIR cannot rely on a future WQCP to substitute for disclosure and analysis of the impact itself.

b. Mandatory Opt-In Findings

The net-positive-economic-benefit recommendation at page 10-7 is not supported by a complete fiscal analysis. The Staff Assessment identifies approximately \$1.1 million in local capital expenditures, producing an estimated \$81,100 in sales-tax revenue, of which approximately \$15,100 would accrue to the County. It also estimates approximately \$18.2 million in total construction-related sales and use taxes, with approximately \$3.4 million accruing to the County, and approximately \$70.5 million in lifetime property-tax revenue. However, the Staff Assessment does not adequately disclose the assumptions supporting these estimates, identify the County’s share of the projected property-tax revenue, establish

where taxable transactions would occur, or independently verify the applicant-supplied estimates. Nor does the analysis account for County costs associated with application review, construction and compliance monitoring, emergency response, road maintenance, Agricultural Commissioner responsibilities, Environmental Health and CUPA oversight, or eventual decommissioning. The record therefore does not establish that the Project will provide an overall net positive economic benefit to the County. The revised document must solicit County revenue and cost data and evaluate the Project's economic benefit on a net basis. The community benefits finding at page 10-8 is likewise incomplete. It recites an agreement with the Solano Community Foundation and names four funds but states no dollar amount, term or geographic targeting, and without a stated value the agreement cannot be weighed in any balancing.

c. Statement of Overriding Considerations and Visual Resources Mitigation

The benefits recited in Finding 3 at pages 11-2 and 11-3 are predominantly statewide and regional, while the unavoidable impact is borne entirely within unincorporated Solano County. The revised document must separate local from statewide benefits so that the balancing required by CEQA Guidelines section 15093 is transparent, and must not credit the community benefits agreement as a benefit absent a stated value. Finding 3(j) states that the Vaca-Dixon Substation is the only high-voltage transmission substation within 50 miles. This statement appears inconsistent with Table 8-2 at page 8-32, which identifies the PG&E-owned Lambie Switching Station, approximately 14 miles away, as the proposed interconnection point for the 400 MW Tolenas project. The revised document should define what it means by "high-voltage transmission substation," explain whether and why the Lambie Switching Station is excluded, and provide substantial evidence supporting the claimed 50-mile radius. The conclusion in Finding 2 that no feasible mitigation exists is also reached prematurely. COC VIS-2 contains no performance standard, establishment period, survival rate or replacement obligation, and the document evaluates no non-vegetative mitigation. Perimeter berming, increased setbacks from Byrnes and Kilkenny Roads, and reduced enclosure height must be evaluated, and COC VIS-2 must be revised to specify screening height at maturity, species, irrigation and a minimum five-year establishment and replacement guarantee, before the CEC concludes that mitigation is infeasible.

d. Environmental Justice

Section 6 reports that, of the 56 census block groups within six miles of the Project, 17 have a low-income population at or above the Countywide rate of approximately 22 percent and 29 have a population consisting of more than 50 percent people of color. The DEIR nonetheless reaches a no-disproportionate-impact conclusion for the Project's only significant and unavoidable impact based on a limited viewshed, without characterizing who lives within that viewshed. The revised document must characterize the population within each affected key observation point viewshed at the block group level, state whether it constitutes an environmental justice population, and apply the same screening to the full construction haul route rather than to the Project site alone.

e. Hazardous Materials, Emergency Response, and Waste

Page 5.7-20 states that facilities handling hazardous materials or generating hazardous waste must obtain a permit from the Certified Unified Program Agency (“CUPA”). The CUPA issues no such permit. The business submits a Hazardous Materials Business Plan through the California Environmental Reporting System and the County reviews that submittal. The revised Staff Assessment/EIR must describe the County's role correctly and require submittal within 30 days of bringing reportable quantities on site. The record also does not disclose the proposed inventory of extremely hazardous substances or regulated substances, which must be compared against California Accidental Release Prevention Program thresholds to determine whether a Risk Management Plan is required. The extent of toxic gas detection and off-gas monitoring is not described at a level permitting review, and no condition establishes a notification pathway to County Environmental Health Services and the County Office of Emergency Services during a thermal runaway event. The proposed conditions assign equipment and training obligations to the Dixon Fire Protection District without confirming the District's consent, the funding source, or replacement cost, and without addressing Senate Bill 283. Finally, the revised document must identify the transporter and designated recycling facility for end-of-life battery materials, and Section 5.12 must account for the Project's construction, operational and decommissioning waste against the remaining permitted capacity at the Hay Road and Potrero Hills landfills.

f. County Roads, Emergency Access, and Encroachment

Construction and haul traffic would use Byrnes Road, Weber Road, Kilkenny Road, and North Meridian Road. Although the DEIR discusses construction traffic and COC TRANS-1 generally requires procedures to restore roadway damage, it does not adequately evaluate pavement and structural impacts to County-maintained roads or establish an objective baseline, repair standard, or enforceable allocation of Project-attributable costs.

The revised document must require pre-construction and post-construction pavement-condition surveys for each affected County road segment and a road-maintenance and repair agreement allocating the cost of Project-attributable damage. It must also require County review of oversize- and overweight-load routing and the construction traffic-control plan. The revised document must evaluate whether Byrnes Road provides adequate emergency access for responding fire apparatus, including necessary turning movements and roadway or structure load ratings.

To the extent County permits are superseded by the CEC certification, the design, construction, inspection, and restoration standards ordinarily applied under Solano County Code Chapter 14.12 should be incorporated as enforceable Conditions of Certification.

Conclusion

For the reasons set forth above, the Staff Assessment and DEIR do not provide an adequate basis for the CEC to certify the EIR or approve the Project. CEQA requires recirculation when significant new information is added to an EIR after public notice of the availability of the draft EIR but before certification. Recirculation is also required when a draft EIR is “so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” (CEQA Guidelines § 15088.5.)

The fundamental deficiencies identified in this letter cannot be remedied through minor revisions or responses to comments. Correcting them will require substantial new information and analysis concerning, among other things, the Project’s conflicts with the County’s General Plan, Measure T, and Zoning Regulations; compliance with the County’s BESS Ordinance; impacts to agricultural resources and surrounding communities; public health and safety; and reasonable alternative sites and technologies.

These deficiencies also highlight fundamental questions concerning whether the Project should be approved as proposed. The Project would place a large-scale industrial BESS facility on agricultural land where such a use conflicts with the County’s General Plan and Zoning Regulations designed to protect public health and safety, agricultural and natural resources, and surrounding communities.

The County requests that the CEC not certify the EIR or approve the Project based on the current Staff Assessment and DEIR. Instead, to move forward, the CEC must correct the deficiencies identified in this letter, prepare and recirculate a revised environmental analysis as required by CEQA, and provide the public and affected agencies with a meaningful opportunity to review and comment on that analysis before taking final action on the Project.

Solano County remains committed to working constructively with the CEC to ensure that any future development associated with the Corby BESS Project protects the public health, safety, and welfare of Solano County residents, appropriately protects the County’s agricultural, environmental, and natural resources, and complies with applicable law.

Please do not hesitate to contact me with any questions regarding these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Bezek", is written over a horizontal line.

James Bezek
Solano County Director of Resource Management