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Response to October 20, 2026 Determination; Request for Reconsideration and Chair Review; Failure to Identify Review Rights

Additional submitted attachment is included below.

October 30, 2026

VIA EMAIL AND CEC DOCKET 24-OPT-05

Drew Bohan, Executive Director
California Energy Commission
715 P Street
Sacramento, California 95814

CC: Chair David Hochschild; Chief Counsel Sanjay Ranchod; Commissioners; Director of Audits, Investigations, and Program Reviews

RE: RESPONSE TO OCTOBER 20, 2026 DETERMINATION (TN 273159); REQUEST FOR RECONSIDERATION AND CHAIR REVIEW — CORBY BATTERY ENERGY STORAGE SYSTEM PROJECT, DOCKET NO. 24-OPT-05; FAILURE TO IDENTIFY REVIEW RIGHTS

Dear Executive Director Bohan:

I am responding to your October 20, 2026 letter concerning my September 11 Request for Independent Investigation and Executive Review, submitted September 14, 2026, and supplemented September 16, 2026.

I appreciate the acknowledgment of my request and your direction that Commission staff consider the concerns raised as the environmental review continues. However, I respectfully disagree with the determination that an independent investigation would be premature simply because the California Environmental Quality Act (CEQA) review remains underway.

Your response does not address the fundamental distinction between the Commission's statutory responsibility to prepare an adequate, independently reviewed Draft Environmental Impact Report (Draft EIR) before circulating it for public comment and the separate obligation to evaluate and respond to comments after publication.

The public-comment process is not a substitute for the lead agency's initial investigative responsibilities, technical verification, or independent judgment. Nor does the prospect of correcting deficiencies through a subsequent environmental document resolve the separate question of whether preparation and review of the original Staff Assessment reflected systemic failures in technical oversight, quality control, or treatment of contrary evidence.

The CEC's duty of independent review existed before the Draft EIR was circulated

Public Resources Code section 21082.1 and CEQA Guidelines section 15084 establish the lead agency's responsibility for the adequacy and objectivity of its environmental document. CEQA Guidelines section 15084(e) requires the lead agency to review and analyze a draft prepared by another person and to exercise independent judgment before circulation.

These requirements apply before public circulation. They are not obligations that arise only after members of the public discover errors.

The Commission may obtain data, modeling, technical reports, and environmental studies from an applicant or its consultants. Reliance on applicant-supplied information does not relieve the CEC of its responsibility to critically evaluate material assumptions and ensure a reasonably complete and accurate assessment.

The California Supreme Court has recognized the EIR's central informational function. (Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d

376; Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412.)

The October 20 response does not identify what independent verification occurred before circulation, how Staff resolved contrary evidence, or what quality-control procedures were applied to disputed calculations and significance determinations. Instead, it invokes subsequent public review to postpone inquiry into those procedures.

Public commenters should not be required to perform the Commission's quality-control responsibilities

Your letter states that public review allows the agency to identify and amend errors and deficiencies. I do not dispute that function. But public comment does not diminish the CEC's affirmative obligation to undertake a thorough environmental analysis before publication.

Residents, independent technical reviewers, agencies, and community organizations identified alleged mathematical discrepancies, incomplete field investigations, unsupported assumptions, inconsistent significance thresholds, and omissions across multiple disciplines. My September 11 request documented these concerns and their apparent directional pattern.

Whether every allegation is substantiated is a question for objective examination. The technical specificity and breadth of these concerns merit more than a statement that Staff will consider them in ordinary comment responses. Public review should scrutinize an adequately investigated Draft EIR, not become the principal mechanism for discovering foundational technical deficiencies.

The request concerns institutional quality control, not merely CEQA comment responses

My original request sought independent examination of how the Staff Assessment was prepared, reviewed, and quality-controlled. It asked whether Staff independently verified Applicant-generated biological surveys, models and calculations; whether technical review should have caught mathematical errors; whether contrary evidence was fairly considered; whether Lambie was independently evaluated; and whether different levels of biological investigation at Corby had documented scientific justification.

An ordinary comment response may defend a significance conclusion. It does not necessarily establish whether the original calculation was checked, contrary evidence was fairly weighed, or analytical choices were influenced by unsupported assumptions.

Assigning the original project team to respond to comments may be appropriate under CEQA. It does not supply the structural independence requested to examine that team's own review procedures. I do not presume improper intent; the inquiry should determine whether inadequate quality control, insufficient verification, excessive Applicant reliance, or other systemic problems explain the pattern.

Recirculation does not eliminate the need to examine the original Draft EIR

Your response acknowledges that portions of the Staff Assessment will be updated and recirculated pursuant to Public Resources Code section 25545.7.6(b). This is material. Recirculation is an important safeguard, but it does not establish that the original document received adequate independent technical review or that remaining sections are reliable.

Recirculation does not itself prove misconduct or a CEQA violation. It does warrant examination of whether deficiencies requiring additional review may affect other significance determinations, mitigation, cumulative analysis, or alternatives. Individual corrections should not leave related methodological defects unresolved.

The alternatives analysis warrants independent examination

The record raises substantial questions whether Staff evaluated Lambie Industrial Park using interconnection, transmission, commercial-feasibility, and configuration assumptions influenced by the Applicant's preferred Corby location.

CEQA requires a reasonable range of potentially feasible alternatives that could reduce significant impacts. Applicant commercial preferences may inform feasibility but cannot automatically substitute for independent examination of reasonable alternatives. The CEC should assess whether reasonable interconnection configurations and the industrial site's environmental advantages were meaningfully investigated.

The investigation regulations provide a separate administrative mechanism

My request invoked California Code of Regulations, title 20, section 1231, and your response invokes section 1232. The response does not identify a categorical regulatory prohibition on independent review during an ongoing CEQA proceeding.

Please clarify whether the October 20 letter is a determination under section 1232(a)(1). If so, I request Chair review under section 1232.5. If the CEC considers it another action under section 1232, please identify its regulatory basis and the applicable review mechanism. This protective request does not concede that returning the matter to assigned project staff adequately resolves the independent investigation request.

Failure to identify the available Chair-review procedure

The October 20 letter does not identify the availability of review by the Commission Chair under California Code of Regulations, title 20, section 1232.5, the applicable 15-day filing period, or whether the letter is a determination under section 1232(a)(1). Instead, it directs questions concerning Corby to the project manager. That omission is particularly troubling because my request expressly sought independent review separate from the assigned project team.

Section 1232.5(a) authorizes a requester to seek Chair review of a determination under section 1232(a)(1), by written filing under section 1208 within 15 days after the Executive Director's response is filed. Section 1232.5(b) provides for a written decision within 45 days, with a request deemed denied if no decision issues within that period. Although I have not identified language in these provisions expressly requiring an adverse determination to include appeal instructions, the failure to identify the decision category or available review procedure impedes informed exercise of that regulatory remedy.

I therefore request that this correspondence be accepted, to the extent applicable, as a timely request for Chair review under section 1232.5, without awaiting further clarification. I further request written confirmation of the determination category, the filing date used to calculate the review period, and the procedure by which the Chair will consider this request. If the Commission contends that section 1232.5 is unavailable, please state the specific regulatory basis and identify any other applicable review mechanism.

Requested action

I request that the Commission:

1. Reconsider the determination that independent investigation would be premature and identify its legal and factual basis.

2. Refer the October 20 determination for Chair review under section 1232.5, to the extent applicable, and confirm the procedural status.

3. Arrange an independent preliminary assessment sufficiently separated from the personnel whose work is being examined.

4. Identify prepublication quality-assurance procedures and the independent verification performed on Applicant-generated information.

5. Determine whether documented errors and omissions are isolated or reflect broader methodological and quality-control deficiencies.

6. Determine whether recirculation covers all affected resource analyses, cumulative impacts, mitigation, and alternatives.

7. Preserve technical workpapers, drafts, comments, modeling inputs, surveys, communications, and contrary-evidence review records.

8. Explain how the Commission will ensure the final environmental review reflects independent judgment and reliable technical evidence before certification or approval.

Please expressly address the distinction between CEQA comment responses and the separate institutional examination requested. The Commission’s obligation is not to produce an error-free first draft, but to undertake a good-faith, reasonably thorough and independently evaluated environmental analysis.

Examining systemic concerns before the proceeding concludes offers the greatest opportunity to correct deficiencies before they affect the ultimate decision. I renew my investigation and executive-review request and incorporate by reference my September 11 request, September 16 supplement, and supporting administrative record. Nothing here replaces, narrows, or waives my earlier objections, requests, or docket comments.

Sincerely,

Linda Geller

Linda Geller