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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

November 10, 2025

Renee Longman, Project Manager
California Energy Commission
715 P Street, MS 40
Sacramento, CA 95814
Renee.Longman@energy.ca.gov

Subject: Corby Battery Energy Storage System Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2025101073, Solano County

Dear Renee Longman:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) from the California Energy Commission (CEC) for the Corby Battery Energy Storage System Project (Project). CDFW is taking this opportunity to provide comments and recommendations regarding proposed Project activities that may affect fish and wildlife resources of the State, pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Fish & G. Code, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

The proposed Project would ordinarily have the potential to require one or more discretionary approvals by CDFW because it may result in substantial adverse impacts to fish and wildlife resources such as Lake and Streambed Alteration(LSA) (Fish & G. Code, § 1602); and incidental take of species protected under the California Endangered Species Act (CESA). (*Id*., § 2081, subds. (b)-(c).) CDFW would typically submit comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) However, because the Project proponent opted

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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into the Assembly Bill (AB) 205 certification process, the CEC has exclusive jurisdiction over the proposed Project and is responsible for ensuring any certification of the proposed Project includes all conditions necessary to ensure compliance with the Fish and Game Code and its implementing regulations found in Title 14 of the California Code of Regulations. (Pub. Resources Code, §§ 25545.1, subd. (b), & 25545.5, subd. (a).) Thus, CDFW does not have a direct permitting role in the process that would ordinarily trigger a Responsible Agency role. CDFW instead submits these comments as a Trustee Agency under CEQA.

Pursuant to AB 205, the CEC and CDFW developed a coordination plan through a Memorandum of Understanding (MOU) to ensure that all potential impacts to fish, wildlife, and plant resources, and the habitats upon which they depend, including, but not limited to incidental take of species protected under CESA, are consistent with the Fish and Game Code and its implementing regulations found in Title 14 of the California Code of Regulations. (Pub. Resources Code, § 25545.5, subd. (a).) The MOU also ensures timely and effective consultation between the CEC and CDFW with respect to any proposed CEC findings and actions regarding potential impacts to fish, wildlife, and plant resources. (*Ibid*.) CDFW is thus, also submitting these comments in its **consultation role** under AB 205 and the MOU.

PROJECT DESCRIPTION AND LOCATION SUMMARY

Proponent: North Bay Interconnect, LLC, and Corby Energy Storage, LLC

Objective: The Project proposes to construct a 300-megawatt (MW)/1,200-megawatt-hour battery energy storage system (BESS) facility on an approximately 40.3-acre parcel. In addition to the BESS, the Project will include an associated substation, inverters and other ancillary facilities, such as fencing, a sound barrier, roads, an optional groundwater well, a water tank, stormwater retention basins, storage containers, and a supervisory control and data acquisition system. The Project will connect to the Pacific Gas and Electric Vaca-Dixon Substation via a 1.1-mile-long 230-kilovolt generation tie (gen-tie) line.

Location: The proposed Project is located southwest of the intersection of Kilkenny Road and Byrnes Road and southeast of the City of Vacaville in Solano County, California; Assessor's Parcel Number 0141-030-090. The Project site is located approximately 250 feet southeast of the City of Vacaville jurisdictional boundary and approximately 0.6 mile southeast of Interstate 80.

Timeframe: The Project is anticipated to be built over an approximately 14-month period.

Consultation with CDFW: CDFW appreciates the opportunity to have engaged with CEC staff and the Project proponent in meetings, phone calls and other

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communications, and a site visit on February 21, 2025 for the Project. Consistent with the AB 205 interagency coordination plan required by Public Resources Code section 25545.5, CDFW and CEC met frequently to discuss the Project's data requests until the application was deemed complete by the CEC. CDFW will continue to collaborate with, and provide support to, the CEC throughout the AB 205 certification process.

COMMENTS AND RECOMMENDATIONS

The EIR that will be prepared will disclose the potential environmental impacts associated with the Project. CDFW offers the following comments and recommendations to assist the CEC in adequately identifying the Project's significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources.

Special-Status Species and Habitats: CDFW recommends that the draft EIR provide baseline habitat assessments for special-status plant, fish and wildlife species known to be located or potentially located within the Project area and surrounding accessible lands, including all species considered to be rare, threatened, or endangered species. (CEQA Guidelines, § 15380.) State fully protected species, species listed as threatened or endangered under state or federal law, candidate species for listing under state or federal law, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to, the species listed in **Attachment A**. The draft EIR should describe and analyze impacts to aquatic habitats, such as wetlands or habitats within waters of the United States or waters of the State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for more information about sensitive natural communities, see: https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities).

Western Burrowing Owl: The Project area supports potential western burrowing owl (*Athene cunicularia hypugaea*), burrowing owl) nesting and/or foraging habitat. Based on previous communications between CDFW and the Project proponent, Project-related surveys detected a burrowing owl in the vicinity of the Project area. Burrowing owl is currently a candidate for listing as endangered under CESA. While it is a candidate, it is afforded the same protection under CESA as state-listed threatened or endangered species.

CDFW recommends the draft EIR include a thorough evaluation of the potential for burrowing owl to inhabit the Project site and adjacent lands, and include a habitat assessment as well as results of recent breeding and non-breeding season surveys conducted in accordance with the methodology in Appendix D of the *CDFW 2012 Staff Report on Burrowing Owl Mitigation* (Staff Report) (CDFW 2012).

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Based on previous communications between CDFW, the CEC and the Project proponent, CDFW understands that non-breeding season surveys were conducted on December 23, 2024, and January 7, 17 and 31, 2025. According to the Staff Report, non-breeding season surveys should include at least four visits, spread evenly throughout the non-breeding season (September 1 through January 31). To accurately reflect burrowing owl use of the Project area, CDFW recommends the draft EIR include results of both nesting and non-nesting season surveys that closely adhere to the survey periods outlined in the Staff Report, including non-nesting surveys from the September to November time period that were missed during the initial surveys.

CDFW also recommends that the draft EIR include measures sufficient to fully avoid take[2] of burrowing owl, as described in the Staff Report, including, but not limited to the following: 1) a minimum of two pre-construction surveys, one no less than 14 days prior to initiating ground disturbance activities and one within 24 hours prior to ground disturbance; 2) establishment of no-disturbance buffers around occupied burrows during both the nesting and overwintering seasons; and 3) ongoing monitoring during Project construction by a qualified biologist with expertise in burrowing owl monitoring. In previous discussions with the CEC and CDFW, the Project proponent proposed no-disturbance buffers for burrowing owls ranging from 20 feet (6.1 meters) during the non-nesting season to 300 feet (91.4 meters) during the nesting season around occupied burrows depending on the level of disturbance based on Project activity type. CDFW is concerned that these proposed buffers are significantly lower than the recommended buffers described in the Staff Report which range from 164 feet (50 meters) to 1,640 feet (500 meters). CDFW recommends that the draft EIR include measures that require buffers that more closely adhere to those recommended in the Staff Report.

In addition to the draft EIR including biologically effective and feasible take avoidance measures, CDFW recommends the draft EIR include compensatory mitigation for any permanent impacts (i.e., impacted areas that are not restored to pre-impact condition within one year after the impact occurs) and temporary impacts to burrowing owl nesting and/or foraging habitat in the form of habitat conservation. Compensatory mitigation lands should be conserved in perpetuity under a conservation easement, and long-term maintenance and management of conservation lands should be funded through the establishment of a funding mechanism such as an endowment.

If full take avoidance of burrowing owl is not possible, CDFW recommends the Project proponent obtain take authorization by submitting an Incidental Take Permit (ITP) application through the AB 205 certification process.

[2] Section 86 of the California Fish and Game Code defines ‘take’ as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill”.

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Swainson's Hawk: Based on previous communications between CDFW and the Project proponent, Swainson's hawk (*Buteo swainsoni*), a state-listed threatened species under CESA, has been observed nesting in the vicinity of the Project site. To avoid impacts to Swainson's hawk, CDFW recommends timing Project activities that may disturb nesting Swainson's hawks to outside of the nesting season (approximately March 1 through September 15). If Project activities are expected to take place during the nesting season, CDFW recommends that both protocol-level and pre-construction surveys be conducted following the methodology in the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley,* and, if an active nest is observed, a no-disturbance buffer of a minimum of 0.25 mile be established around the nest. The draft EIR should also include compensatory mitigation for permanent and temporary impacts to Swainson's hawk foraging habitat in the form of habitat conservation. Compensatory mitigation lands should be conserved in perpetuity under a conservation easement, and long-term maintenance and management of conservation lands should be funded through the establishment of a funding mechanism such as an endowment.

If full take avoidance of Swainson's hawk is not possible, CDFW recommends the Project proponent obtain take authorization by submitting an ITP application through the AB 205 certification process.

Crotch's Bumble Bee: According to the NOP and previous communications between CDFW and the Project proponent, Project activities may have an adverse impact to Crotch's bumble bee (*Bombus crotchii*) which is currently a candidate species for listing as endangered under CESA. CDFW recommends that the draft EIR include a thorough evaluation of the potential for Crotch's bumble bee to inhabit the Project area, including a habitat assessment as well as the results of protocol-level surveys following methods described in the *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* document (CDFW 2023).

If suitable habitat for Crotch's bumble bee is present within the Project area, or if the species has been observed during surveys, due to the difficulty of fully avoiding take, CDFW recommends that the Project proponent obtain take authorization by submitting an ITP application through the AB 205 certification process. Furthermore, if suitable habitat for Crotch's bumble bee is present within the Project area, the draft EIR should include compensatory mitigation for permanent and temporary impacts to Crotch's bumble bee nesting and/or foraging habitat in the form of habitat protected in perpetuity under a conservation easement and long-term maintenance and management of conservation lands funded through the establishment of a funding mechanism such as an endowment.

Aquatic Resources: The Project site includes Gibson Canyon Creek, several drainages that flow into Gibson Canyon Creek and a Solano Irrigation District canal. CDFW recommends that the draft EIR include a full analysis of all potential

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impacts of the Project to streams, drainages and canals, including any potential long-term impacts from changes to the site and stream hydrology (e.g., stream incision due to increases to volume and frequency of stormwater runoff). Based on the NOP, the Project may also involve an underground crossing of the Solano Irrigation District canal by the east-west portion of the gen-tie. If the Project will use a method of crossing, such as horizontal directional drilling, such an activity may result in impacts to the canal. CDFW therefore recommends that the Project proponent submit a notification for a Lake or Streambed Alteration Agreement to the CEC through the AB 205 certification process for any activity that may impact the bed, bank or channel of a stream or adversely affect aquatic resources. CDFW also recommends including measures in the draft EIR necessary to address applicable Fish and Game Code section 1602 requirements for impacts to Gibson Canyon Creek and any streams, drainages and canals.

Cumulative Impacts: CDFW recommends that the draft EIR address cumulative impacts for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project. CDFW recommends that the EIR identify past, present, and reasonably foreseeable projects producing related impacts in the Project vicinity and fully analyze any cumulative impacts for which the combined impact of the Project and related projects is significant and the Project's incremental contribution to the impact is cumulatively considerable. (CEQA Guidelines, §§ 15130, subds. (a)-(a)(2) & 15355.)

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP in order to assist the CEC in identifying, analyzing, and mitigating Project impacts on biological resources. CDFW will continue to meet with CEC staff ahead of, and during, draft EIR preparation to discuss potential Project-related impacts and possible avoidance, minimization, and/or mitigation measures for the biological resources that may be analyzed in the EIR, as well as helping to develop measures necessary to address the requirements of Fish and Game Code Section 2081(b)-(c) (ITP pursuant to CESA) and Section 1602 (LSA).

If you have any questions regarding this letter, please contact Gabriele Quillman, Senior Environmental Scientist (Specialist), at (707) 815-9867 or Gabriele.Quillman@wildlife.ca.gov; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
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Erin Chappell
Regional Manager
Bay Delta Region

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ec: Office of Land Use and Climate Innovation (SCH No. 2025101073)
Melissa Farinha, CDFW Bay Delta Region – Melissa.Farinha@wildlife.ca.gov

CITATIONS

California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. Dated March 7, 2012.

California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. California Department of Fish and Wildlife, Sacramento, California, USA.

Swainson's Hawk Technical Advisory Committee. "Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley." *Sacramento, CA* (2000).

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ATTACHMENT A

Common name	Scientific name	Status
Invertebrates		
Crotch's bumble bee	*Bombus crotchiii*	SCE
Monarch butterfly	*Danaus plexippus*	FPT
Amphibians & reptiles		
Northwestern pond turtle	*Actinemys marmorata*	FPT, SSC
Birds		
Tricolored blackbird	*Agelaius tricolor*	ST; SSC
Grasshopper sparrow	*Ammodramus savannarum*	SSC
Western burrowing owl	*Athene cunicularia*	SCE, SSC
Swainson's hawk	*Buteo swainsoni*	ST
Northern harrier	*Circus hudsonius*	SSC
White-tailed kite	*Elanus leucurus*	SFP
Loggerhead shrike	*Lanius ludovicianus*	SSC
Mammals		
Western red bat	*Lasiurus blossevillii*	SSC
American badger	*Taxidea taxus*	SSC
Plants		
Delta mudwort	*Limosella australis*	2B.1

Notes:

FPT = proposed to be listed as threatened under the federal Endangered Species Act; FPE = proposed to be listed as endangered under the federal Endangered Species Act; ST = listed as threatened under CESA; SCE = candidate for listing as endangered under CESA; SSC = state species of special concern; SFP = state listed as fully protected; 1B.1 = rare, threatened, or endangered in California and elsewhere and seriously threatened in California; 1B.2 = rare, threatened, or endangered in California and elsewhere and moderately threatened in California; 2B.1 = rare, threatened, or endangered in California but more common elsewhere and seriously threatened in California