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Subject: Agenda Item 10 — MCE is in Breach of its JPA Agreement by contracting with Corby LLC

From Wendy Breckon <wbreckon7@yahoo.com>

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Dear Directors:

The staff report misstates the facts and law in material respects that are critical to the Board's policy discussion for the Corby project. It is incumbent for MCE to objectively assess whether MCE has breached its JPA agreement with Solano County concerning the Corby contract and act in good faith to remedy the situation.

The issue is whether MCE has had the authority to contract with Corby LLC for a BESS located on agricultural land in Solano County.

Section 2.7 of the MCE Joint Powers Agreement states as follows:

2.7 Compliance with Local Zoning and Building Laws.

Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings or structures located,

constructed or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed. (italics are added for emphasis)

On October 19, 2023, MCE Directors voted to enter into a contract with Corby LLC to cause to be constructed within the territory of the Authority, and the local jurisdiction of Solano County, a lithium-ion BESS facility on agricultural land. As discussed below, the Corby BESS does not comply with the General Plan or zoning laws of Solano County. Thus, MCE has been and is currently in breach of its JPA agreement vis a vis Solano County. Furthermore, the phrase “Notwithstanding any other provisions of this Agreement or state law” means that that the drafters' intent is to supersede conflicting provisions within both the agreement itself and any applicable state law. In this case, there is no conflicting provision or state law as there is no provision or law in place that requires CCA's to contract with parties that are violating a County's General plan.

The Corby BESS Project

The Corby BESS project will destroy Prime Agricultural land, Farmland of Statewide Importance and Unique Farmland.

- The Corby project site is mapped by the Farmland Mapping and Monitoring Program (FMMP) as a combination of Prime Farmland (12.9 acres), Farmland of Statewide Importance (9.0 acres), and Unique Farmland (18.4 acres).
- The project is expected to result in the conversion of approximately 40.3 acres of farmland to a non-agricultural use.

MCE Is Violating It's JPA by Contracting With a BESS Project in Violation of a Voter Initiative and Solano County's General Plan

First, Staff's own materials acknowledge the project site is on land designated exclusively as Agriculture. This zoning is based on a Voter Initiative in place since the 1980's. In November 2007, Measure T readopted the orderly growth initiative's city centered development policy of locating residential growth in the county's seven cities, not in the unincorporated areas. The measure also maintains the strict limit on the board of supervisors' ability to change the designation of "agriculture" or "open space." Measure T protects the County's agriculture businesses as well as the environment, and prevents piecemeal amendments of the Solano County General Plan that would allow development on agricultural and open space land.

Second, as Solano County had no appropriate mechanism to adopt a conditional use permit for lithium-ion BESS, the Board of Supervisors adopted an ordinance in August 2025, based on Measure T, that limits industrial-sized battery energy storage to industrial and manufacturing zones. These facts, on their face, put the Corby BESS project in conflict with the County's land-use laws.

At all relevant times, Solano County's land use and zoning policies have been based on a Voter Initiative, Measure T, which is incorporated in the General Plan. Relevant provisions follow (see attachment).

1. Overview of Permitted Agricultural land Uses and Policy Direction

- The Solano County General Plan prioritizes agricultural use on lands designated as Agriculture and emphasizes the protection and viability of agricultural operations, particularly in regions with large parcel sizes such as those with 40-acre minimums.
- The plan seeks to ensure that uses in agricultural areas are compatible with continued agricultural operation, stating that “agricultural service uses should be limited to those uses where a rural location to service agriculture is necessary” and, in regions that do not allow for agricultural service uses, only those uses compatible with continued agricultural operations should be allowed.
- Limited industrial development may be allowed in certain areas only if it is compatible with continued agricultural operations. Any rural residential or industrial use should be located and confined so as to minimize conflicts with agriculture.

2. Specific Policies Impacting Conditional Use Permits for Industrial Uses

- **Minimum Parcel Size for Compatibility:** Policy AG.P-1 requires maintenance of agricultural parcels at a sufficient minimum parcel size to remain a farmable unit. This is defined as the size a farmer would consider viable for leasing or purchasing for agricultural purposes.
- **Limitation of Non-Agricultural Development:** Policy AG.P-4 mandates farmland conversion mitigation for both General Plan amendments and development permit applications that change the use of land from agricultural production to a nonagricultural use, regardless of the General Plan designation.

- **Discouragement of Incompatible Industrial Uses:**

Policy AG.P-15 permits limited agricultural service uses that support local agricultural activities and are not harmful to the long-term agricultural use in the surrounding area, specifically noting that such uses should be located in areas designated Limited Industrial and Agriculture on the Land Use Diagram.

- **Discouragement of Inappropriate Development:**

AG.P-18 calls for support of the long-term viability of commercial agriculture and the discouragement of inappropriate development of agricultural lands within the Delta, with a focus on preserving agricultural land use as predominant.

- **Parcel Size Enforcement and Redesignation**

Restrictions: AG.P-31-34 strictly define and limit the redesignation of agricultural parcels, generally maintaining large agricultural parcels for continued agricultural use, only permitting redesignation in limited circumstances and with numerous findings supporting lack of agricultural suitability and ensuring no piecemeal conversion to other uses.

- **The Corby Project is clearly incompatible with the above use provisions:**

A 40-acre parcel containing an industrial-sized battery energy storage facility would constitute a large-scale industrial use. This is not an agricultural use, an agricultural processing facility, or an agriculturally necessary support service intended or supported by the General Plan policies for agricultural land. Such a use is incompatible with definitions of maintaining parcels as “farmable units” or as necessary for agricultural viability.

- **Impacts on Agricultural Viability:** Policies emphasize that land should remain available and suitable for ongoing agricultural production. The conversion of 40 acres of Farmland, including prime farmland, for industrial storage would directly reduce the agricultural base, violate minimum parcel standards for farmable units, and disrupt the patterns of agricultural land continuity protected by the cited policies.
- **Specific Prohibition:** Policy AG.P-4 is triggered by “an application for a development permit that changes the use of land from production agriculture to a nonagricultural use,” requiring mitigation (minimum 1.5:1) and further review. In addition, AG.P-31 and related provisions restrict the redesignation of agricultural parcels for non-agricultural uses except in narrow, strictly delineated circumstances, especially for prime farmland.
- **Designation Restrictions:** Lands designated “Agriculture” may only be redesignated to intensive agricultural or specific rural residential uses under listed findings, including the explicit finding that the land is not prime agricultural land (AG.P-32(b)).
- **Policy Intent:** The General Plan’s intent and policy framework are to preserve prime farmland for ongoing agricultural production, not industrial use. A battery energy storage system occupying 40 acres of such land is inconsistent with both the letter and intent of the General Plan.

We note that the above provisions and AG P-15 and AG I-4 do not contemplate general industrial use, such as an industrial-sized BESS, on agricultural land because it is an incompatible and inappropriate use of Agricultural land. Only limited

industrial is allowed and only if it supports agricultural services. The Corby lithium-ion BESS, including its toxic emissions when thermal runaway occurs, would permanently remove the agricultural land from use.

A battery energy storage facility on agricultural land, including on prime agricultural land, is inconsistent with the Solano County General Plan provisions, which require agricultural land to be preserved for viable, ongoing agricultural production, limit non-agricultural uses to those that directly support agriculture, and strictly prohibit conversion and redesignation of prime farmland except under extremely limited and regulated circumstances. Large-scale industrial battery energy storage use does not meet these criteria, would result in the direct loss of valuable agricultural land, and triggers policies that would result in denial under the County's policy framework.

The MCE Joint Powers Agreement (JPA) restricts its projects such that MCE cannot cause construction of facilities that do not comply with local zoning, the local General Plan, and local codes. By contracting with Corby, MCE is clearly in violation of its own JPA agreement to the detriment of its member, Solano County. Yet staff stop short of acknowledging this and do not provide an opinion on General Plan compliance. Instead, staff confuse the issue by pivoting to MCE's financial and/or compliance needs, which are irrelevant to the issue of General Plan compliance in the Joint Powers Agreement.

In addition, Staff claims that MCE can ignore the Corby contract issue because SB 254 supersedes all local laws. Public Resources Code section 25500 states in relevant part,

"[t]he issuance of a certificate by the commission . . . and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or

federal agency to the extent permitted by federal law.”
(Bold added for emphasis)

Staff does not explain how this language referring to the CEC requires MCE to contract with a party that is violating a voter initiative and the County’s General Plan. Furthermore, staff does not explain how the statute supersedes a voter initiative without explicit legislative intent to restrict the initiative power. California courts have established a strong presumption against restricting the initiative power, a power reserved by the people under Article II, Section 8 of the California Constitution. Staff’s materials contain no discussion of the Voter Initiative “Measure T” (on which the General plan is based) or how Public Resources Code section 25500 allegedly supersedes a voter initiative.

More importantly, the above statutory language does not address the issue that the JPA is an agreement between the parties, and that Solano County relied on the contract terms when entering into the contract.

Joint powers agreements serve as the controlling documents that define the scope, limitations, and obligations of JPAs. The Court of Appeal in *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* emphasized that "joint powers agreements must expressly state not only the purpose of the power to be exercised, but also provide for the manner in which the power will be exercised" *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority*, 72 Cal.App.4th 366 (1999). When a JPA acts outside the terms of its governing agreement, it exceeds its delegated authority.

Ultra Vires Doctrine and Contract Validity

When a JPA violates the terms of its joint powers agreement by entering into contracts that contravene specific restrictions,

such as a requirement to abide by local general plans, the JPA's actions constitute ultra vires conduct. California courts have consistently held that "an agency that exceeds the scope of its statutory authority acts ultra vires and the act is void". Water Replenishment Dist. of Southern California v. City of Cerritos, 202 Cal.App.4th 1063 (2012). This principle applies equally to JPAs that exceed their delegated authority under their governing agreements. See also Quantification Settlement Agreement Cases, 201 Cal.App.4th 758 (2011). This means contracts entered into in violation of joint powers agreement terms are wholly void and unenforceable.

The recent decision in County of Los Angeles v. Quinn Emanuel Urquhart & Sullivan, LLP reinforced this principle, citing G.L. Mezzetta, Inc. v. City of American Canyon for the proposition that "'a contract entered into by a local government without legal authority is wholly void,' ultra vires, and unenforceable" County of Los Angeles v. Quinn Emanuel Urquhart & Sullivan, LLP, 115 Cal.App.5th 489 (2025).

Conclusion

The Corby BESS project faces fundamental land use conflicts (see the extensive record submitted by Supervisor Mitch Mashburn) and unresolved legal issues that were not disclosed at the time of entering into the contract with Corby LLC. As stated in Keep Vacaville Safe's January 12, 2026 email, this contract was entered into based on misrepresentations made to the Board.

Requested Board actions for Item 10 discussion:

1. At minimum, the Board should direct staff to obtain an accurate legal analysis by a third-party law firm. This

analysis should ascertain whether the Corby BESS site's agricultural designation is inconsistent with and incompatible with Measure T and the General Plan, whether the MCE violates the JPA provision, and whether the contract with Corby LLC is void and/or voidable.

2. Direct staff to present contingency procurement options to preserve legal compliance and reliability.
3. Direct staff to put this item on a future agenda to decide whether there is sufficient evidence to terminate the Corby BESS contract.

I look forward to participating in the Corby discussion on January 15.

Respectfully,

Wendy Breckon, Attorney

Keep Vacaville Safe

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