

**DOCKETED**

<b>Docket Number:</b>	24-OPT-04
<b>Project Title:</b>	Potentia-Viridi Battery Energy Storage System
<b>TN #:</b>	270191
<b>Document Title:</b>	Potentia-Viridi Administrative Record, Part 3 - April 25, 2026 - May 21, 2026
<b>Description:</b>	POVI 0003822 - POVI 0003837
<b>Filer:</b>	Marianna Brewer
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Energy Commission
<b>Submission Date:</b>	5/22/2026 4:17:33 PM
<b>Docketed Date:</b>	5/22/2026



## **MEMORANDUM**

TO: Docket 24-OPT-04 (Potentia-Viridi Battery Energy Storage System Project)  
FROM: Staff  
SUBJECT: Documents Included in the Record of Proceedings (April 25, 2026- May 21, 2026)  
DATE: May 22, 2026

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### **I. Introduction**

Public Resources Code section 25545.13 provides that a project filed with the California Energy Commission (CEC) under Public Resources Code section 25545.1 is deemed an environmental leadership development project and subject to expedited judicial review if, among other things, the CEC “prepares the record of proceedings concurrently with its review of the application.”

### **II. Record of Proceedings**

California Code of Regulations, title 20, section 1208, requires that all documents submitted in any proceeding, whether by a party, committee, the commission, or any other individual or entity, be filed with the docket. California Code of Regulations, title 20, section 1880.5 further identifies the proceeding’s docket as containing all the documents comprising the record of proceedings and meeting the requirements of Public Resources Code sections 21167.6(e) and 21186.

The attached documents are being added to the Record of Proceedings. In addition to these documents, the Staff Assessment includes a list of references at the end of each section that provides detailed citations and web links to documents staff relied on to develop the technical sections of the Staff Assessment. These linked documents are publicly available and part of the Record of Proceedings.

Documents indexed in the reference sections of the Staff Assessment that do not have web links are copyright-protected records. Public Resources Code section 21186(g) provides that an agency is not required to make copyright-protected records readily accessible in an electronic format. These copyright-protected records may be obtained from the publisher, purchased through a commercial source, or upon arrangement, viewed at the CEC’s office.

**ADMINISTRATIVE RECORD**  
**PART 3 - APRIL 25, 2026 – MAY 21, 2026**

<b>Date/Time</b>	<b>Title</b>	<b>Begin Bates</b>	<b>End Bates</b>
5/12/2026 11:46	Re: Potentia-Viridi Battery Energy Storage System	POVI 0003822	POVI 0003823
5/7/2026 18:13	Follow-up	POVI 0003824	POVI 0003825
5/4/2026 12:41	Errata - Potentia Viridi BESS	POVI 0003826	POVI 0003828
5/15/2026 13:40	Potentia Viridi question	POVI 0003829	POVI 0003829
5/7/2026 12:04	RE: Errata - Potentia Viridi BESS	POVI 0003830	POVI 0003833
5/11/2026 11:29	RE: Potentia request for revisions for possible errata	POVI 0003834	POVI 0003834
5/7/2026 10:09	RE: PoVi-LAND-2	POVI 0003835	POVI 0003837

Message

**From:** Smith, Davina@DOC [Davina.Smith@conservation.ca.gov]  
**Sent:** 5/12/2026 6:46:11 PM  
**To:** Giorgi, Erika@Energy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d171e5d706e34c26ad9d13c230f2349f-1324b266-6e]  
**Subject:** Re: Potentia-Viridi Battery Energy Storage System

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I appreciate the head's up, Erika! I reviewed the additional items in the record and will let the WA team know that the project is scheduled for the 5/26 meeting.

Best,  
Davina

**Davina Smith** (she/her)  
Attorney IV – Legal Office  
**California Department of Conservation**  
715 P Street, MS 19-06  
Sacramento, CA 95814  
T: (279) 220-8316

---

**From:** Giorgi, Erika@Energy <Erika.Giorgi@Energy.ca.gov>  
**Sent:** Tuesday, May 12, 2026 11:32 AM  
**To:** Smith, Davina@DOC <Davina.Smith@conservation.ca.gov>  
**Subject:** Potentia-Viridi Battery Energy Storage System

Hi Davina

The Potentia-Viridi Battery Energy Storage System is scheduled to be heard at the CEC’s Business Meeting on 5/26. The agenda can be found here: [Energy Commission Business Meeting](#)

For awareness, the applicant submitted a request for additional changes to the project:

269926	5/12/2026	<b><u>Potentia Viridi BESS Review of Updated Staff Assessment</u></b> Applicant review of updated Staff Assessment dated April 24, 2026. Biological Resources, Land Use 5 page(s)	CEC/Docket Unit	Clearway Energy Group
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Please let me know if you have any questions,

Erika

Erika Giorgi

Senior Attorney

California Energy Commission – Chief Counsel’s Office, MS-14

715 P Street, Sacramento, CA 95814

(279) 250-8801

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**From:** Ted Harris[tharris@calstrat.com]  
**Sent:** Thur 5/7/2026 6:13:17 PM (UTC-07:00)  
**To:** Bohan, Drew@Energy[Drew.Bohan@energy.ca.gov]  
**Subject:** Follow-up

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Drew,  
Good evening!

Thank you for the progress and great work from you and your team on moving forward the PoVi project.

We're almost there! Do you have a moment this evening, tomorrow, or early next week that we can connect on two final items?

1. The requirement that State approval is needed each time they need to mow (needed for fire prevention), which we discussed a week or so ago, as well as,
2. Removing the LAND-2 Condition regarding the Williamson Act. LAND-2 doesn't resolve Williamson Act issues (AB 205 process, fortunately, overrides it) and, as you've mentioned, the process of cancelling it with the County and any related tax issues with the County are the project's responsibility—not CEC's. LAND-2, however, highlights the pending Williamson Act process and creates more focus and causes more concern from project funders.

Please let me know if you can spare 5 minutes to discuss at (9 [REDACTED]).

Thank you!

Ted  
[REDACTED]

On Apr 17, 2026, at 8:05 AM, Bohan, Drew@Energy  
<Drew.Bohan@energy.ca.gov> wrote:

That one's dead. New number is [REDACTED]4.

**Drew Bohan**  
Executive Director  
California Energy Commission  
[www.energy.ca.gov](http://www.energy.ca.gov)

<Image.png>

<Image.png>

**From:** Ted Harris <tharris@calstrat.com>  
**Sent:** Thursday, April 16, 2026 6:03:09 PM  
**To:** Bohan, Drew@Energy <Drew.Bohan@energy.ca.gov>  
**Subject:** New Cell Number

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Drew,

Also, do you have a new cell number?

Your [REDACTED] says it's disconnected or changed?

Thanks!

Ted

Message

**From:** Nicola Park [Nicola.Park@clearwayenergy.com]  
**Sent:** 5/4/2026 7:41:17 PM  
**To:** Veerkamp, Eric@Energy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a16598e8714e422fb3216b7b05602c48-Veerkamp, E]; Chang, Kaycee@Energy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dd3d2fc8670840bda4acdc455903e787-Chang, Kayc]  
**CC:** Aarty Joshi [Aarty.Joshi@clearwayenergy.com]  
**Subject:** Errata - Potentia Viridi BESS

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Eric, Kaycee,

First, just want to reiterate that Clearway is grateful for the changes the CEC staff made to the conditions in the final EIR, and the efforts made to meet us in the middle. There are just three key conditions where we would appreciate the CEC reconsider, and potentially file an errata to address:

- LAND-2 – we request this condition be deleted since no mitigation should be required and CEC can override incompatibility with 10/10 rule. We still feel strongly that legal precedent is not being set correctly here; even if this change is not made for PV we would like to see it made for future projects. Mitigation when there is a less than significant impact and when CEC is not able to seek mitigation for Williamson Act does not set the right precedent for the opt-in process.
- BIO-10 – Croch’s bumblebee – we still feel strongly that mowing during operations within the project fenceline should not be restricted or delayed especially with respect to wildfire risk, which peaks after spring before vegetation dries out and may be during blooming periods for some plants. Propose adding a clear restriction as we originally proposed, vs. leaving it up to CPM discretion where they would have little latitude given the current definition of vegetation removal below.

Request striking this language:

~~The CPM has authority, based on the timing, intensity, and location of mowing, to determine when mowing constitutes vegetation removal.~~

~~11. Vegetation Removal. Disturbance or removal of vegetation within Croch’s bumble bee habitat shall be kept to the minimum necessary to complete work. Mower blades shall be set at heights no lower than 4 inches off the ground, unless otherwise approved by the CPM. Routine mowing shall be scheduled to avoid the blooming period, unless surveys do not detect the species or as otherwise approved by the CPM.~~

Adding in this language as proposed in our public comments:

2. Overwintering Season Surveys (Pre-Construction and During Operation). If initial ground disturbing construction activities in any given work area occurs during the overwintering season (November 1 through January 31), the CPM approved DBs(s) and/or Biological Monitor(s) shall conduct overwintering season surveys described below within areas of suitable habitat (i.e., where suitable vegetation and floral resources occur) in each area planned for project activities no more than 10 days in advance of vegetation removal (exclusive of mowing) or ground disturbance in that area of the project site. If ground disturbing activities during operation occur within areas of suitable habitat (i.e., where vegetation and floral resources occur) during the overwintering season, the CPM-approved DB(s) shall conduct overwintering season surveys described below throughout the project site in areas planned for ground disturbance no more than 10 days in advance of ground or vegetation removal activities (exclusive of mowing), unless approved by the CPM.

Overwintering season surveys shall look for potential Crotch's bumble bee overwintering queens and hibernacula such as leaf litter, logs, and rodent burrows. If overwintering queens or other Crotch's bumble bee are found utilizing hibernacula during surveys, the project owner shall implement the Overwintering Site Buffer (see Item 5, below).

3. Colony Active Period Season (Pre-Construction and Pre-Maintenance). If initial ground disturbing construction activities, including site mobilization, in any given work area occur during the Colony Active Period (February 1 to October 31), the CPM-approved DB(s) and/or Biological Monitor(s) shall search for Crotch's bumble bee throughout the area planned for project activities in accordance with the Crotch's Bumble Bee Mortality Reduction and Relocation Plan.

Survey efforts for each area shall include at least two visual surveys consisting of meandering transects occurring no more than 10 days prior to the start of ground and vegetation disturbing activities in that area. The CPM approved DB(s) and/or Biological Monitor(s) shall conduct the surveys at least four days apart, with the second survey occurring within two days prior to starting ground and/or vegetation removal activities in that area. The survey duration shall be appropriate to the size of the area planned for project activities plus 50 feet based on the metric of a minimum of one person-hour of searching per three acres of suitable habitat. The CPM approved DB(s) and/or Biological Monitor(s) shall conduct surveys between 7:00 AM and 6:00 PM (Pacific Time) on sunny days between 55- and 95-degrees Fahrenheit with sustained wind speeds measuring less than 10 miles per hour. Survey efforts are further detailed in the Crotch's Bumble Bee Mortality Reduction and Relocation Plan, and any variances to the Survey Protocol, including variances to survey temperatures or timing, shall be submitted to the CPM for review and approval prior to implementation.

If ground disturbing activities (exclusive of vegetation management) occur during operation within areas of suitable habitat during the colony active period, the CPM-approved DB(s) and/or Biological Monitor(s) shall search for Crotch's bumble bee throughout the areas planned for ground disturbance in accordance with the Crotch's Bumble Bee Mortality Reduction and Relocation Plan. If ground disturbing activities are halted for longer than three days within a work area supporting suitable habitat during the Queen Flight Season (February 1 through March 31), the CPM approved DB(s) and/or Biological Monitor(s) shall perform a minimum of one additional survey in the work area in accordance with the Crotch's Bumble Bee Mortality Reduction and Relocation Plan prior to reinitiating project activities in the work area.

If a Crotch's bumble bee nest is detected during project surveys or any project activities, the project owner shall implement the Crotch's Bumble Bee Mortality Reduction and Relocation Plan unless the nest can be avoided per the Crotch's Bumble Bee Nest Site Buffer measures (Item 6).

4. Overwintering Site Buffer (Construction and Operation). If any overwintering Crotch's bumble bee are found during focused overwintering surveys, during ground and/or vegetation disturbing activities, including site mobilization or construction activities, ~~or during operation of the project,~~ the project owner, in consultation with the CPM approved DB(s) and/or Biological Monitor(s) shall immediately stop and prohibit all ground disturbing activities within 50 feet of the queen and/or hibernaculum. The project owner shall delineate the 50-foot buffer and notify all workers not to enter the environmentally sensitive area. This buffer may be adjusted with the approval of the CPM based on project activities and potential to disturb the nest.

Alternatively, another way to rephrase this would be "exclusive of vegetation management for fire prevention."

- BIO-26 HM Lands – over the past 5 years ITPs have only required documentation to support presence, not successful breeding, for Red-Legged Frog. We think CTS and RLF may have been lumped together inadvertently. We think our secured mitigation lands can meet this requirement as written, but don't want to leave room for future CDFW/ CPM interpretations on this which could delay or impact our selected mitigation lands, nor do we want to create a new precedent for RLF.

c. HM Lands Approval. The project owner shall obtain CPM written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months **90 days** before acquisition and/or transfer of the HM lands, documentation identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the project's impacts on Covered Species. HM lands shall meet the minimum habitat requirements for the Covered Species **for the required species** including, but not limited to one or more aquatic features on-site which have been documented to support presence for Red Legged Frog, and successful breeding for CTS, in an average or below average rainfall year (abundance and distribution) or adjacent to aquatic features which have been documented to support presence for Red Legged Frog, and successful breeding for CTS, in an average or below average rainfall year (abundance and distribution) and already conserved and managed to the satisfaction of the CPM for the Covered Species; no less than 100 acres of suitable upland or adjacent to suitable upland already conserved and managed for the **species** Covered Species;

We appreciate your consideration of these changes and only want to open this up to an errata filing if these specific changes are made. We certainly don't want to open up an errata with new conditions, new language we haven't seen, or any other changes that are not previewed by us in advance. Please let us know if a call makes sense to discuss these; happy to find the time whenever works for your team.

Thanks again,

Nicola



**Nicola Park**  
Clearway Energy Group LLC  
Director, Development  
+1 (949) 439-3349 cell

Message

**From:** Knight, Eric@Energy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BE42548337F44852A291A9845F226F62-KNIGHT, ERI]  
**Sent:** 5/15/2026 8:40:45 PM  
**To:** Lopez, Albert, CDA [albert.lopez@acgov.org]  
**Subject:** Potentia Viridi question

Hi Albert -

We received a comment letter from the applicant on Condition of Certification LAND-2 that I was hoping to discuss with you. Their comment letter is here <https://efiling.energy.ca.gov/GetDocument.aspx?tn=269926&DocumentContentId=107079>. COC LAND-2 is the condition CEC staff has recommended for partial conformance with Alameda County's Williamson Act rules. We modified LAND-2 for the Updated Staff Assessment based on prior comments from the applicant received during the Staff Assessment public comment period.

**LAND-2** Prior to any grading or development for the permanent project facilities under CEC jurisdiction **and in order to ensure compliance with local ordinances regarding land subject to the Williamson Act**, the project owner shall **either: 1) obtain partial cancellation of the existing Williamson Act contract from Alameda County, removing the project site from the contract; or, 2)** conserve agricultural land at an amount equivalent to the Grazing Land lost to project development. Options include conservation easements with the Tri-Valley Conservancy or California Rangeland Trust, or other arrangements, including fees for agricultural conservation.

**Verification:** At least 60 days prior to any project grading or building, the project owner shall provide documentation to the CPM **detailing** verifying implementation of the selected option(s) and acceptance by Alameda County.

Hoping we could talk on Monday, Tuesday at the latest.

Best regards,

**Eric Knight**  
Program Manager  
Siting and Environmental Branch  
Siting, Transmission, and Environmental Protection Division  
(916) 591-9931  
California Energy Commission  
[www.energy.ca.gov](http://www.energy.ca.gov)



Message

**From:** Nicola Park [Nicola.Park@clearwayenergy.com]  
**Sent:** 5/7/2026 7:04:18 PM  
**To:** Veerkamp, Eric@Energy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a16598e8714e422fb3216b7b05602c48-Veerkamp, E]  
**Subject:** RE: Errata - Potentia Viridi BESS

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Thanks Eric, will do.

Before I forget when do you expect to have an agenda for the meeting on May 26<sup>th</sup>?

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**From:** Veerkamp, Eric@Energy <Eric.Veerkamp@energy.ca.gov>  
**Sent:** Thursday, May 7, 2026 7:55 AM  
**To:** Nicola Park <Nicola.Park@clearwayenergy.com>; Aarty Joshi <Aarty.Joshi@clearwayenergy.com>  
**Cc:** Crisp, Ann@Energy <Ann.Crisp@energy.ca.gov>; Chang, Kaycee@Energy <kaycee.chang@energy.ca.gov>  
**Subject:** RE: Errata - Potentia Viridi BESS

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Nicola,

To try to not leave anything unsaid, please be clear about the plan to mow the 6.7 acre area that is the area that is to be restored, are you requesting unrestricted mowing? And is this the only area (6.7 acres) or is there additional area to be mowed? To this point, the only area mitigated for temporary impacts is the 6.7 acre portion (1:1 ratio).

TY.

**Eric W. Veerkamp**  
Project Manager  
Siting, Transmission, and Environmental Protection Division

---

**From:** Veerkamp, Eric@Energy  
**Sent:** Thursday, May 7, 2026 9:51 AM  
**To:** 'Nicola Park' <Nicola.Park@clearwayenergy.com>; Chang, Kaycee@Energy <kaycee.chang@energy.ca.gov>; Crisp, Ann@Energy <Ann.Crisp@energy.ca.gov>  
**Cc:** Aarty Joshi <Aarty.Joshi@clearwayenergy.com>  
**Subject:** RE: Errata - Potentia Viridi BESS

Good Morning Nicola,

In anticipation of your filing to the docket of Clearway's finalized request for CEC staff's consideration for modifications to COC's, with respect to BIO-10, please include as much detail as you can justifying the request regarding mowing; i.e. what time of the year do you expect mowing to occur, the time of day, the duration of mowing, the anticipated number of times, the reason you are required to mow, and other details.

TY.

**Eric W. Veerkamp**  
Project Manager  
Siting, Transmission, and Environmental Protection Division

**From:** Nicola Park <Nicola.Park@clearwayenergy.com>

**Sent:** Monday, May 4, 2026 12:41 PM

**To:** Veerkamp, Eric@Energy <Eric.Veerkamp@energy.ca.gov>; Chang, Kaycee@Energy <kaycee.chang@energy.ca.gov>

**Cc:** Aarty Joshi <Aarty.Joshi@clearwayenergy.com>

**Subject:** Errata - Potentia Viridi BESS

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Hi Eric, Kaycee,

First, just want to reiterate that Clearway is grateful for the changes the CEC staff made to the conditions in the final EIR, and the efforts made to meet us in the middle. There are just three key conditions where we would appreciate the CEC reconsider, and potentially file an errata to address:

- LAND-2 – we request this condition be deleted since no mitigation should be required and CEC can override incompatibility with 10/10 rule. We still feel strongly that legal precedent is not being set correctly here; even if this change is not made for PV we would like to see it made for future projects. Mitigation when there is a less than significant impact and when CEC is not able to seek mitigation for Williamson Act does not set the right precedent for the opt-in process.
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3. Colony Active Period Season (Pre-Construction and Pre-Maintenance). If initial ground disturbing construction activities, including site mobilization, in any given work area occur during the Colony Active Period (February 1 to October 31), the CPM-approved DB(s) and/or Biological Monitor(s) shall search for Crotch's bumble bee throughout the area planned for project activities in accordance with the Crotch's Bumble Bee Mortality Reduction and Relocation Plan.

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4. Overwintering Site Buffer (Construction and Operation). If any overwintering Crotch's bumble bee are found during focused overwintering surveys, during ground and/or vegetation disturbing activities, including site mobilization or construction activities, ~~or during operation of the project,~~ the project owner, in consultation with the CPM approved DB(s) and/or Biological Monitor(s) shall immediately stop and prohibit all ground disturbing activities within 50 feet of the queen and/or hibernaculum. The project owner shall delineate the 50-foot buffer and notify all workers not to enter the environmentally sensitive area. This buffer may be adjusted with the approval of the CPM based on project activities and potential to disturb the nest.

Alternatively, another way to rephrase this would be "exclusive of vegetation management for fire prevention."

- BIO-26 HM Lands – over the past 5 years ITPs have only required documentation to support presence, not successful breeding, for Red-Legged Frog. We think CTS and RLF may have been lumped together inadvertently. We think our secured mitigation lands can meet this requirement as written, but don't want to leave room for future CDFW/ CPM interpretations on this which could delay or impact our selected mitigation lands, nor do we want to create a new precedent for RLF.

c. HM Lands Approval. The project owner shall obtain CPM written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months **90 days** before acquisition and/or transfer of the HM lands, documentation identifying the land to be

purchased or property interest conveyed to an approved entity as mitigation for the project's impacts on Covered Species. HM lands shall meet the minimum habitat requirements for the Covered Species **for the required species** including, but not limited to one or more aquatic features on-site which have been documented to support presence for Red Legged Frog, and successful breeding for CTS, in an average or below average rainfall year (abundance and distribution) or adjacent to aquatic features which have been documented to support presence for Red Legged Frog, and successful breeding for CTS, in an average or below average rainfall year (abundance and distribution) and already conserved and managed to the satisfaction of the CPM for the Covered Species; no less than 100 acres of suitable upland or adjacent to suitable upland already conserved and managed for the **species** Covered Species;

We appreciate your consideration of these changes and only want to open this up to an errata filing if these specific changes are made. We certainly don't want to open up an errata with new conditions, new language we haven't seen, or any other changes that are not previewed by us in advance. Please let us know if a call makes sense to discuss these; happy to find the time whenever works for your team.

Thanks again,

Nicola



**Nicola Park**  
Clearway Energy Group LLC  
Director, Development  
+1 (949) 439-3349 cell

Message

**From:** Nicola Park [Nicola.Park@clearwayenergy.com]  
**Sent:** 5/11/2026 6:29:53 PM  
**To:** Veerkamp, Eric@Energy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a16598e8714e422fb3216b7b05602c48-Veerkamp, E]  
**CC:** Aarty Joshi [Aarty.Joshi@clearwayenergy.com]  
**Subject:** RE: Potentia request for revisions for possible errata

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Eric,

Just tried giving you a call to discuss. Is there a good time to reach you and discuss where we are at on the comments we plan to file today?

Thanks,

Nicola



**Nicola Park**  
Clearway Energy Group LLC  
Director, Development  
+1 (949) 439-3349 cell

---

**From:** Veerkamp, Eric@Energy <Eric.Veerkamp@energy.ca.gov>  
**Sent:** Monday, May 11, 2026 7:29 AM  
**To:** Nicola Park <Nicola.Park@clearwayenergy.com>  
**Cc:** Aarty Joshi <Aarty.Joshi@clearwayenergy.com>  
**Subject:** Potentia request for revisions for possible errata

**CAUTION:** This message originated from an external sender.

Good Morning Nicola,  
Hope you had a good weekend and a good Mother's Day. Checking in to request you give me a quick status update on any pending filing to the docket. TY.

**Eric W. Veerkamp**  
Project Manager  
CEQA Project Management Unit  
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Message

**From:** Mudge, Annie E. [amudge@coxcastle.com]  
**Sent:** 5/7/2026 5:09:29 PM  
**To:** Giorgi, Erika@Energy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d171e5d706e34c26ad9d13c230f2349f-1324b266-6e]  
**Subject:** RE: PoVi-LAND-2

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Thanks so much, Erika. I appreciate your response. I think the disconnect here is that I believe that where a proposed non-agricultural structure (here a BESS) fails to meet the 10/10 rule in Alameda County Uniform Rule 2 Section I.B.3.c (“no more than 10% of the contracted property, or 10 acres, whichever is less”), it is “game over” on compatibility. Where a project fails to meet the 10/10 rule, the County (and by extension the CEC) cannot “revive” compatibility by demonstrating that the structure nonetheless meets the first two principles of compatibility in Sections I.A.1 and I.A.2 based on mitigation measures or conditions. Since the principles of compatibility cannot be demonstrated once a non-agricultural structure fails the 10/10 test, there is no obligation to do so.

If the County declines to cancel the contract (which we think is unlikely), we believe that a CEC certification of the BESS will supersede the inconsistency, full stop. Because a conservation easement would not and cannot make the BESS compatible if it fails to meet the 10/10 rule, an easement requirement bears no reasonable relationship to a compatibility “goal” and therefore should not be required.

Anne E. Mudge



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**From:** Giorgi, Erika@Energy <Erika.Giorgi@Energy.ca.gov>  
**Sent:** Wednesday, May 6, 2026 9:15 PM  
**To:** Mudge, Annie E. <amudge@coxcastle.com>  
**Subject:** RE: PoVi-LAND-2

Hi Annie

Thank you for your email- It has been a very busy day and my apologies for not getting back to you sooner. A discussion on this would probably be helpful. Unfortunately, tomorrow is also busy, but I could make time on Friday.

As you know, the final staff analysis proposes to supersede the 10/10 rule (Alameda County’s Uniform Rule 2, Section I.B.3.c) pursuant to Public Resources Code 25545.1.

LAND-2 addresses an additional and separate Williamson Act non-conformance issue. Staff did not propose LAND-2 to address incompatibility with the 10/10 rule. Staff found that the project is inconsistent with the first two principles of compatibility listed under section I.A. of the county’s rules. LAND-2 was added to fulfill the requirements of the *exception* to the findings required under Section III.B.4. Staff did not recommend that Alameda County’s Uniform Rule 2, Section IA or III.B.3 needed to be superseded.

In response to concerns about the cost of implementing LAND-2 and cost of Williamson Act contract cancellation, LAND-2 was revised in the final analysis.

Regardless of our differing views on interpretation, the issue still remains that the proposed project is inconsistent with the first two principles of compatibility. We have proposed LAND-2 to address the non-conformance which would fulfill the requirements of the exception. Do you have alternative language to suggest for LAND-2 that would fulfill the requirements of the exception? Or is the request for CEC to supersede Alameda County's Uniform Rule 2, Section IA and III.B.3? If the later, I will need more information to be able to discuss further with staff.

Thank you,  
Erika

Erika Giorgi  
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**From:** Mudge, Annie E. <[amudge@coxcastle.com](mailto:amudge@coxcastle.com)>  
**Sent:** Wednesday, May 6, 2026 2:34 PM  
**To:** Giorgi, Erika@Energy <[Erika.Giorgi@Energy.ca.gov](mailto:Erika.Giorgi@Energy.ca.gov)>  
**Subject:** PoVi-LAND-2

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Hi there Erika— I hope you are well. I'm hoping you will consider the following and am happy to discuss by phone at your convenience.

I'm reaching out again on the proposed purchase of a conservation easement as an alternative to cancellation of the Williamson Act under LAND-2. I see no legal basis for imposing a conservation easement as a potential condition in this situation. Either the County agrees to cancel or it doesn't. The conservation easement doesn't solve that problem.

Gov. Code 51238.1(c) allows a County to find compatibility with the contractual obligation to keep the land in agricultural production if conditions can be imposed that prevent the use from "significantly displacing or impairing" ag. operations. But even if a conservation easement *on other lands* could address sections (1) and (2) of section 51238.1(a) by somehow "softening" the agricultural impairment and displacement caused by the BESS *on this land* (a potentially questionable proposition itself), a conservation easement on other lands would not and cannot address lack of compliance with the 10/10 rule. Because it would not resolve the incompatibility, I don't see how a conservation easement is an alternative to cancellation of the contract. If the County for some reason declines to cancel, a conservation easement on other lands does nothing to resolve the Williamson Act issue. If that is true, there is therefore no legal basis to require it.

Thanks very much for considering.

Best regards,

Annie

**Anne E. Mudge**



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