


[EXT]PG&E Comment Letter on DCPD Decommissioning DEIR

Vardas, Kris <KAV6@pge.com>

Mon 9/25/2023 11:51 AM

To: Susan Strachan <sstrachan@co.slo.ca.us>

Cc: Cindy A. Chambers <cchambers@co.slo.ca.us>; Jon Ansolabehere <jansolabehere@co.slo.ca.us>; Trevor Keith <tkeith@co.slo.ca.us>; TPJ2_pge.com <TPJ2@pge.com>; Rebel, Trevor <TDR5@pge.com>; Krausse, Mark <MCKd@pge.com>; Kraska, David (Law) <DTK5@pge.com>

 1 attachments (792 KB)

DCL-23-085.pdf;

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Dear Susan,

Attached please find an e-copy of PG&E's comment letter on the DCPD Decommissioning DEIR. A hardcopy will be delivered at 1 PM today, September 25, 2023.

Please let me know if you have any concerns or questions.

Best regards

Kris

You can read about PG&E's data privacy practices [here](#) or at [PGE.com/privacy](https://www.pge.com/privacy).



**Pacific Gas and
Electric Company**

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PG&E Letter DCL-23-085

Susan Strachan,
Power Plant Decommissioning Manager
County of San Luis Obispo – Department of Planning and Building
976 Osos Street, Suite 200
San Luis Obispo, CA 93401

Subject: DRC2021-00092 – Comment Letter on DCPD Decommissioning Draft
Environmental Impact Report

Dear Ms. Strachan:

On July 28, 2023, Pacific Gas and Electric Company (PG&E) received from the County of San Luis Obispo Draft Environmental Impact Report (DEIR) for Decommissioning of the Diablo Canyon Power Plant. PG&E has reviewed the DEIR and has developed and organized comments as follows:

- Enclosure 1 – Editorial Comments
- Enclosure 2 – General Comments
- Enclosure 3 – Public Access Comments
- Enclosure 4 – Public Safety Comments
- Enclosure 5 – Cultural Resources – Archaeology and Built Environment and Tribal Resources

PG&E would like to meet to discuss enclosures 3, 4, and 5.

PG&E looks forward to continued collaboration with you and your staff on this project. Please contact Kris Vardas at (805) 975-5229 or by email at kris.vardas@pge.com if you have any questions or need additional information.

Sincerely,

Thomas P. Jones

September 25, 2023
Date

Enclosures

cc/enc: Trevor Keith, Director, County of San Luis Obispo Planning & Building
Department

Enclosure 1
PG&E Letter DCL-23-085

Enclosure 1 – Editorial Comments
DCPP Decommissioning Draft Environmental Impact Report

Enclosure 1 – Editorial Comments

Diablo Canyon Power Plant Draft Environmental Impact Report Editorial Comment Form	
Document Reviewed: Draft Environmental Impact Report Dated July 28, 2023	
Date: September 25, 2023	
<u>Commenters</u> BG – Bo Gould ERM – Environmental Resource Management KK – Kelly Kephart KV – Kris Vardas Taggert – Mike Taggert RAM – Ramboll SP – Steve Pengilley TJ – Tom Jones	

Enclosure 1 – Editorial Comments

No.	Section	Page(s)	Comment	Commenter Initials
Executive Summary				
1.	ES.1	5	PG&E applied for a Development Plan/Coastal Development Permit (DP/CDP) only for the ISFSI project. A CUP was not required because the project was entirely within the Coastal Zone.	KV
Chapter 1: Introduction				
1.	1.2.2	8	PG&E is not planning to amend the DC ISFSI license for storage of GTCC Waste. GTCC Waste would be stored on a separately licensed facility.	KV
Chapter 2: Project Description				
1.	2.33	27	The temporary office building would not be installed in the revised OCA – it would be outside the OCA	KV
2.	2.3.21	90	Site Characterization Study will not be completed until 2024-2026, after plant operations discontinue. This is because the baseline conditions might change with operations of the plant.	KV
Chapter 4: Environmental Impact Analysis				
4.3 Terrestrial Biology				
1.	4.3	2	Somewhere in the Environmental Setting section should mention drought in SLO County for more accurate representation of current (and anticipated) site conditions.	RAM
2.	4.3	3	iNaturalist online records should only include verified, “research-grade,” records since it is a crowd-sourced database.	RAM

Enclosure 1 – Editorial Comments

No.	Section	Page(s)	Comment	Commenter Initials
3.	4.3	6	<p>“A total of five special-status terrestrial wildlife species were observed in the Project area....San Diego desert woodrat (<i>Neotoma lepida intermedia</i>) (SSC)”</p> <p>The Biological Resources Assessment (BRA) says: “Undeveloped areas also provide habitat for a variety of amphibians, reptiles, mammals, and birds including some special-status species such as woodrats (<i>Neotoma</i> sp.) which, depending on the species, may be a State Species of Special Concern (CSC).” It was not confirmed that the SSC was observed, but was rather assumed.</p>	ERM
4.	4.3	26	Both crotch bumblebee discussions are very generalized compared to discussion on monarch and morro shoulderband snail, need to beef up known information on this species.	KK
5.	4.3	31	<p>“exists for the latter to access Diablo Creek during periods of high flows and high tides”</p> <p>change to: “exists for the latter to access the lower section of Diablo Creek during periods of high flows and high tides”</p>	KK
6.	4.3	33	<p>“Mammals. San Diego desert woodrat (SSC) was the only special-status mammal detected during surveys conducted for the Proposed Project (PG&E, 2020a) (see Figures 4.3-5 and 4.3-6). There is no critical habitat for federally-listed mammals at any of the Project sites.</p> <p>Although San Diego desert woodrat was not observed during surveys, several middens were recorded within scrub, chapparal, and woodland habitats”</p> <p>In the BRA, it was not verified that it was San Diego Desert Woodrat, just assumed. Please make a clarification.</p>	KK
7.	4.3	51	<p>“A draft of the training program (i.e., video and written materials) shall be provided to the County of San Luis Obispo Planning and Building Department (County) for review and approval no fewer than 135 days prior to issuance of construction permits for any ground disturbance at the DCP, PBR, or SMVR-SB sites.”</p> <p>– 135 days seems like a very large lead time, recommend 60 days.</p>	KK
8.	4.3	53	<p>“The Applicant or its designee shall incorporate all requested revisions in coordination with the County for final approval of Part 1 of the HRRP within 12 months from the start of Phase 1 decommissioning activities.”</p> <p>– Seems like a long lead time, recommend 6 months.</p>	KK

Enclosure 1 – Editorial Comments

No.	Section	Page(s)	Comment	Commenter Initials
9.	4.3	59	<p><i>“Preconstruction weed inventory.</i> The Applicant or its designee shall inventory all areas subject to Project-related vegetation removal or ground-disturbance. The weed inventory shall include vehicle and equipment access routes within the DCPD site and staging and storage yards. Weed occurrences shall be mapped and described according to density and area covered. The map shall be updated at least once a year.”</p> <p>Add clarification: The weed inventory shall include offroad vehicle and equipment access routes within the DCPD site and offroad staging and storage yards.</p>	KK
10.	4.3 Table of potential to occur	App. E2-1	Moderate potential should include that the species was not detected during surveys.	KK
11.	4.3	1	NMFS should be NOAA Fisheries.	BG
12.	4.3	11	ESHA is referenced but there are no specific statements about where such ESHAs occur in the project area. After “...wherever it occurs in the Coastal Zone,” there should be a brief indication of where these actually occur in the project area (which portions of which sites). This comment is global to this section, some vegetation communities have ESHA descriptions that are better described than others.	BG
13.	4.3	18	No mention is given to abundance of invasive bullfrogs detected in Pismo Creek.	BG
14.	4.3	19	Section states no focused insect surveys were conducted, then states shoulderband snails were detected, but does not clearly state that these were determined to NOT be the federally listed Morro Shoulderband snails.	BG
15.	4.3	19	<p>It’s not clear why barriers would lead to only nonnative fish being present. The section lacks sourcing and does not acknowledge that rainbow trout/steelhead occur in the lower reaches of Diablo Creek and are discussed further in later section.</p> <p>Perhaps the introduction to this section should make it clear that special-status species are discussed in a future section.</p>	BG
16.	4.3	25	No Critical Habitat for “terrestrial” species is present in the project area – the section needs to acknowledge that marine Critical Habitat occurs offshore and is discussed in a later section.	BG

Enclosure 1 – Editorial Comments

No.	Section	Page(s)	Comment	Commenter Initials
17.	4.3	27	It should be made clear that no overwintering roost sites are known to exist within the site boundaries.	BG
18.	4.3	35	It should be noted that the Jurisdictional Delineation results (and jurisdictional status of any given mapped drainage feature) need to be verified by the appropriate agencies—the current section speaks about delineated features as if they have already been verified as being jurisdictional by state and federal agencies. The section should also reference the recent Supreme Court <i>Sackett</i> ruling and subsequent revised definition of “Waters of the United States.”	BG
19.	4.3 Table 4.3-5	42	“Entrapment” is not an appropriate impact term for plants. “Future changes to regulatory status and protections” is listed as an indirect impact of the project under several resources. “Indirect impacts” are defined as being “caused by the project” and “related to a project.” It is unclear how changes in regulations would be caused by, or related to, the project. Perhaps the statement regarding changes in regulations would be better made as a disclaimer and not as a project-related impact.	BG
20.	4.3	43	The statement that temporary impact areas would be “restored to correspond with communities of native and non-native vegetation” raises questions. Restoration should use only native species. This statement is repeated in several sections. Does Table 4.3-6 need to include habitats that have a 0.00-acre impact value?	BG
21.	4.3	45	The current figure colors make it hard to determine habitat types (various shades of yellow, etc.).	BG
22.	4.3	55	Page 55 lists restoration success criteria in “percent total cover.” It is unclear whether this is the same as “percent absolute cover” or whether this is “relative cover.”	BG
23.	4.3	71	The statement that “direct impacts to nesting birds would occur...” is misleading. Direct impacts to nesting birds could occur and such potential impacts would be avoided/mitigated through implementation of MM BIO-7.	BG
24.	4.3	100-102	For BIO-11, there is no statement regarding “take” only being authorized by the US Fish and Wildlife Service, like there is for Crotch bumblebee and Monarch butterfly. For BIO-13, it should be noted that Monarch butterfly is currently a candidate species and no formal “take” permit would be required for this species.	BG
4.4 Marine Biology				
1.	4.4	1	Grey whale migration corridor is not mentioned.	SP

Enclosure 1 – Editorial Comments

No.	Section	Page(s)	Comment	Commenter Initials
2.	4.4	8	Spirobranchus spinosus is a polychaete worm, not a snail.	SP
3.	4.4	17	It may be worthwhile to mention that DCPD submits annual sea turtle reports to NOAA Fisheries, documenting sea turtle activity in accordance with the 2005 Biological Opinion.	BG
4.	4.4 Table 4.4-11	33	Should there be a Table titled “Intake Cove Habitat Impact Summary”? There are black abalone and leatherback turtle critical habitat in the Intake Cove.	RAM
4.5 Cultural Resources				
1.	4.5	global	There are no references cited in the text, just a blanket statement that information is derived from three named technical reports making it difficult to substantiate statements presented as fact. EIR should disclose the underlying technical reports.	Taggart
2.	4.5.1.3	5	Suggest rephrasing the first sentence of the fourth paragraph in section 4.5.1.3 that currently states the Chumash “submitted” and were “incorporated” into the mission system.	Taggart
3.	4.5.1.4	7	First sentence of sixth paragraph on page: change “diversity” to “diversify”	Taggart
4.	4.5.1.4	10	Second sentence of first paragraph on page: change “stretching just east of ...” to “stretching northwest...”	Taggart
5.	4.5.1.4	17	Third sentence of fourth paragraph on page uses a direct quote with no citation or attribution.	Taggart
6.	4.5.1.6	20	Last sentence of first paragraph under 4.5.1.6: text references a non-existent commission. Revise to state: “...has not yet been approved by <u>the California Office of Historic Preservation’s Registration Unit.</u> ”	Taggart
7.	4.5.1.6	21	Last sentence of first paragraph under CA-SLO-2 heading, revise sentence to read “ The importance of <u>Site</u> CA-SLO-2 has been determined...”	Taggart
8.	4.5.1.6	22	Second sentence of second paragraph under Built Environment heading: change “Year Built day ” to “Year Built <u>date</u> ”	Taggart
9.	4.5.4	36	Second bullet point on the page cites stop work authority by monitors if “known resources may be impacted in a previously unanticipated manner...” The meaning of “previously unanticipated manner” needs to be defined.	Taggart

Enclosure 1 – Editorial Comments

No.	Section	Page(s)	Comment	Commenter Initials
10.	4.5.4	38	Clarify what is meant by the requirement that the training program include “An overview by a tribal member from the appropriate consulting Tribes.”	Taggart
11.	4.5.4 Mitigation Measure CUL-10 2 nd sentence, 2 nd paragraph	41	Delete word “unintended.”	Taggart
4.6 Tribal Resources				
12.	4.6.1.2	2	Capitalize: <u>N</u> orthern Chumash	Taggart
4.11 Hydrology and Water Quality				
1.	4.11	13	<p>“To ensure that the Construction Drainage Plan and Site Grading and Concrete Re-use Strategy Plan are implemented and adhered to throughout the duration of the Project, MM EM-2 (Project Plan Updating, Tracking, and Reporting) is required to reduce impacts to a less-than-significant level. MM EM-2 would require PG&E to identify the applicable plans, record applicable specific recommendations during Project activities, and provide proof of implementation to the County.”</p> <p>Text is unclear.</p>	ERM
4.15 Recreation and Public Access				
1.	4.15	29	<p>“(Avila Beach Drive at Highway 101 Interchange, #3), a camp ground (Flying Flags Campground, #5), a bike trail project (Bob Jones DCPD Decommissioning Project 4.15 RECREATION AND PUBLIC ACCESS Draft EIR 4.15-30 July 2023 Trail, #5),” Flying flags is #4 on proceeding table – the narrative has two #5s and no #4.</p>	TJ

Enclosure 2
PG&E Letter DCL-23-085

Enclosure 2 – General Comments
DCPP Decommissioning Draft Environmental Impact Report

Enclosure 2 – General Comments

Executive Summary

Comment ES-1

Text on page ES-7 indicates that Pacific Gas & Electric Company (PG&E) would apply for a new or amend California State Lands Commission (CSLC) lease or sublet or identify another arrangement that could allow “a third party” to seek to reuse and operate the Marina for recreational, education, and/or commercial purposes. All relevant references to “a third party” should be edited to state “PG&E or a third party,” as it is possible for PG&E to seek reuse and operate the Marina.

Comment ES-2

Several of the mitigation measures (MMs), such as EM-1 and EM-2, should not apply under Alternative 7 – Delayed Decommissioning Alternative, whereby three buildings would be constructed (primarily in developed areas) and there would be a prolonged period before the onset of the major decommissioning activities. The analysis should clarify the applicability (or lack thereof) and timing of MM implementation for the various alternatives, particularly for alternatives that would have differing levels of impacts at differing times, such as Alternative 7.

Section 1 – Introduction

Comment 1.3.3.1-1

The following information should be noted in Section 1.3.3.1:

In October 2022, PG&E submitted Revision 1 to the Post Shutdown Decommissioning Activities Report (PSDAR) to reflect the 2021 Nuclear Decommissioning Cost Triennial Proceeding. PG&E concluded that, except for the potential impacts associated with cultural, historical, and archaeological resources, the environmental impacts associated with planned Diablo Canyon Power Plant (DCPP) decommissioning activities are small to moderate and are bounded by the impacts addressed by previously issued National Environmental Policy Act reviews. The potential for moderate to large impacts were identified as part of the site-specific evaluation for cultural, historical, and archaeological resources. As PG&E is currently in the planning phase, decommissioning plans continue to evolve. In accordance with 10 CFR 50.82(a)(4)(i), as more detailed plans are developed, PG&E will verify that decommissioning activities that impact cultural, historical, and archaeological resources are bounded by previously issued environmental impact statements or seek appropriate regulatory approval if needed prior to performing the activity.

On June 20, 2023, Nuclear Regulatory Commission (NRC) issued its assessment of the PSDAR, as updated in the notification of changes and Revision 1, and concluded the PSDAR contains the information required by 10 CFR 50.82(a)(4)(i). The NRC staff also finds that PG&E cannot perform the planned decommissioning activities that will

Enclosure 2 – General Comments

have significant environmental impacts to cultural, historical, and archeological resources without approval from the NRC via a license amendment request. As required by 10 CFR 50.82(a)(7), PG&E must notify the NRC in writing and send a copy to the State of California before performing any decommissioning activity inconsistent with, or making any significant schedule change from, the planned decommissioning activities and schedules described in Revision 1 of the PSDAR, including changes that significantly increase the decommissioning costs. In accordance with NRC regulations, PG&E is required to verify, prior to their performance, that decommissioning activities meet the requirements of 10 CFR 50.82(a)(6)(i) through 10 CFR 50.82(a)(6)(iii) or seek appropriate regulatory approval if needed.

Section 4.2 – Air Quality

Comment 4.2-1

MM AQ-1 allows for the use of retrofits if Tier 4 equipment is unavailable but makes no allowances for the case where retrofits are also unavailable. Cases may exist where specialized equipment is needed where Tier 4 or retrofits achieving equivalent emissions are not available.

Comment 4.2-2

The Draft Environmental Impact Report (DEIR) demonstrates that offsite and Phase 2 ozone precursor (NO_x and VOC combined) emissions are below thresholds and are not considered significant. Therefore, MM AQ-2 should only apply to onsite Phase 1 emissions.

MM AQ-2 also applies to diesel particulate matter (DPM) reductions; however, DPM emissions did not exceed significant thresholds and should not be included. Tables 4.2-6 through 4.2-14 do not show any DPM exceedances. Impact AQ-3 references a DPM exceedance in PG&E, 2022a – Table 1.2 (3rd paragraph under Toxic Air Contaminates) but goes on to explain in Table 4.2-15 that cancer risks are below thresholds and concludes that this impact is less than significant.

MM AQ-2 requires the purchase of offsets to reduce emissions down to the Air Pollution Control District (APCD) threshold or a quantity based on the approved decommissioning activity management plan. This creates uncertainty in the requirement. A clarification should be made that the number of offsets required to be purchased would not be more than the amount required if using the APCD thresholds.

MM AQ-2 requires purchasing offsets for existing sources in the western portion of San Luis Obispo County but makes no allowances if there are insufficient offsets available for purchase within this region.

Enclosure 2 – General Comments

Section 4.3 – Biological Resources (Terrestrial)

Comment 4.3-1

Page 4.3-26 of the DEIR states that “soil maps of the DCPD site indicate that some areas may consist of sandy loams yet the scale of these maps do not adequately reflect microhabitat conditions that could potentially support Morro shoulderband snails at the DCPD site.”

Multiple sources have concluded that Morro shoulderband snail (MSS) does not occur south of Montaña de Oro. The Biological Resources Assessment (BRA) supporting development of the DEIR did not indicate that MSS even has a low potential due to a lack of sandy soil substrate. Additionally, please see the report from Tenera Environmental: Diablo Canyon, ISFSI, Submittal of Survey Report – Presence of Morro Shoulderband Snail at ISFSI Material Disposal Sites.

(available at: <https://www.nrc.gov/docs/ML0318/ML031820168.pdf>)

As such, MM BIO-11 is not warranted.

Comment 4.3-2

Figure 4.3-5 is missing a location of California red-legged frog (CRLF) west of the road north of the plant, overlapping with the middle steelhead location. This CRLF was found during surveys described in the BRA addendum.

The statement on page 4.3-31 regarding where CRLF were detected needs to include the additional location described above.

Comment 4.3-3

On page 4.3-54, it should be noted that the restoration plan will include a description of hydroseeding, broadcast seeding, “and/or” container planting (add the word “or”). Species present on the coastal terrace are best restored by seeding. Container plants may not be appropriate for all restoration sites, as they require intensive monitoring and irrigation infrastructure.

Comment 4.3-4

Specific restoration performance criteria included on pages 4.3-54 and 4.3-55, such as specific native and nonnative cover metrics, is preemptively writing the plan; such specifications are not included in other MMs that require development of future plans. As required by the DEIR, a restoration plan containing success criterion will be developed and approved by the County prior to implementation. Specific performance metrics should be excluded from the DEIR and developed when the actual restoration plan is drafted.

This comment also applies to weed eradication timeframes specified on page 4.3-61, along with specified non-disturbance breeding bird buffers, survey buffers, and survey timeframes discussed on pages 4.3-76 through 4.3-77. Such specifications would be

Enclosure 2 – General Comments

included in the Weed Management Plan and Nesting Bird Management Plan, respectively.

Comment 4.3-5

On page 4.3-59, please clarify what “designated noxious weeds” are. These should not be all weeds identified by the California Department of Food and Agriculture, only those that appear on the California Code of Regulations Title 3, §4500 Noxious Weed List.

Comment 4.3-6

Invasive mollusks noted on page 4.3-63 are typically found in waterbodies that are impacted by recreation (boats, fishing, etc.). Diablo Creek is not impacted by these same vectors. In addition, there are no activities proposed to occur in Diablo Creek. These paragraphs and any additional references to them should be removed.

Comment 4.3-7

The non-disturbance breeding bird buffers included on page 4.3-76 (300 feet and 500 feet) are not consistent with those described in the Terrestrial BRA supporting development of the DEIR (Terra Verde 2020). The BRA recommends buffers of 100 feet for passerine species and 300 feet for raptors, which are typical buffers and have been successfully used for other projects. Additionally, such prescriptive buffers should be developed and defined in the Nesting Bird Management Plan.

Comment 4.3-8

Page 4.3-78 describes a notification/approval process being needed for removal of inactive nests. A process for removal of active nests should be in the Nesting Bird Management Plan, including a verification process and notification (likely through regular notification to the County), but why would there need to be an approval process for inactive nests? If it is not an eagle nest, no approval is needed to remove an inactive nest incidental to an otherwise lawful/permitted activity. The approval process referenced for inactive nest removal should be removed.

Comment 4.3-9

Page 4.3-89 includes an irrelevant discussion of chytrid and *Pseudogymnoascus destructans*. There are no planned in-water activities that would spread chytrid fungus. Additionally, *Pseudogymnoascus destructans* thrives in cold, damp places where bats hibernate for the winter. There are no such habitats within the project footprint.

Comment 4.3-10

Measures pertaining to CRLF (BIO-14 through BIO-16) should defer to the incidental take permitting process with US Fish and Wildlife Service. At a minimum, a provision

Enclosure 2 – General Comments

should be added that any permit measure pertaining to the avoidance or minimization of impacts to this species would take precedence over those specified in the DEIR.

Comment 4.3-11

Pursuant to the Terrestrial BRA supporting development of the DEIR (Terra Verde 2020), burrowing owl is not known to nest in the DCPD vicinity (documented occurrences were only overwintering owls). As such, mentions regarding burrowing owl breeding, eggs, or chicks are not relevant for this species and should be revised/removed.

Comment 4.3-12

San Diego desert woodrat was not officially identified during surveys. An assumption regarding potential presence was made. This should be clarified in Appendix E2 and on page 4.3-26.

Comment 4.3-13

Mountain lions are known to occur on the DCPD lands.

Comment 4.3-14

On Figure 4.3-2 it is difficult to tell which areas are in the Coastal Zone (the figure does not indicate on which side of the line the Coastal Zone is). The habitat definition on page 4.3-11 describes Cattail Marsh as being an Environmentally Sensitive Habitat Area (ESHA) within the Coastal Zone at the Pismo Beach Railyard (PBR) site, but no such statements are made on page 4.3-23 and it appears that the mapped Cattail Marsh on Figure 4.2-2 is outside of the Coastal Zone. Page 4.3-110 states that no ESHAs occur in the PBR site.

Comment 4.3-15

According to available US Fish and Wildlife Service and California Herps maps,¹ the project site is outside of the current range of California tiger salamander—this should be included in the discussion on page 4.3-32.

Comment 4.3-16

In the Cumulative Impact Analysis section on page 4.3-95, it is noted that “due to the restorative nature of the Proposed Project at the DCPD site, long-term impacts to terrestrial biological resources would be ultimately beneficial.” There are no other sections in this chapter that disclose these beneficial impacts. The long-term benefits of decommissioning should be noted in the Special-Status Species sections and elsewhere in the section.

¹ See: <https://fws.gov/species/california-tiger-salamander-ambystoma-californiense/map> and <https://californiaherps.com/salamanders/pages/a.californiense.html>. Accessed September 19, 2023.

Enclosure 2 – General Comments

Section 4.4 – Biological Resources (Marine)

Comment 4.4-1

The DEIR does not mention that National Oceanic and Atmospheric Administration has proposed listing of *Pycnopodia helianthoides* (Sunflower Sea Star) as Threatened. DCPD coves include habitat for this species.

Comment 4.4-2

Section 4.3 (page 4.3-31) discusses steelhead as a special-status fish species observed in the project area and has potential to access the lower portions of Diablo Creek “during periods of high flows and high tides,” while Section 4.4 (page 4.4-22) dismisses the anadromous form of the species as highly unlikely to occur and states that the species cannot access Diablo Creek. Section 4.4 should be revised for clarity and consistency with the BRA conclusions, which is reflected in the cited Section 4.3 text.

Comment 4.4-3

The Class 1 impact determination (and rationale) for black abalone is inconsistent with the impact determinations made for other sensitive marine species.

Section 4.4.4 determines that various listed marine species (sea turtles and marine mammals) have potential to be subjected to vessel strikes resulting in injury or death, and that varying degrees of indirect impacts (such as noise from pile driving) could result in injury or behavioral shifts by these species. While various measures are included to minimize the potential for such impacts, the potential for such impacts is not eliminated entirely. In other words, it is acknowledged that there is potential for the project to result in the “take” of various listed marine species, not just black abalone. Throughout the section, a Class 1 impact determination is made (for marine habitat, marine special-status species, and release of pollutants) “because of the uncertainty associated with the success of relocation of black abalone.” In other words, the project has potential to result in the injury or death of black abalone individuals, along with temporary adverse impacts on black abalone habitat (but long-term beneficial impacts on habitat). The same is true for other species, as detailed in the impact discussions, but the DEIR does not explain why injury or mortality of black abalone would be more important (or more of an adverse unavoidable impact) than injury or mortality of other listed marine species, or impacts to the habitats upon which such other species depend.

Based on existing survey data, a total of four black abalone have been observed on the outside of the Intake Cove breakwaters, generally distant from areas that would be subjected to direct project-related demolition/restoration activities. The DEIR does not explain what kind of an impact the project could have on the regional black abalone population as a whole, or how the project would relate to the overall recovery goals for the species.

Enclosure 2 – General Comments

Section 4.5 – Cultural Resources (Archaeology and Built Environment)

Comment 4.5-1

The confidential cultural resources technical reports are erroneously attributed to PG&E authorship. “PG&E, 2020” should be Enright et al. 2021. “PG&E, 2021” should be Laurie, 2021.

Comment 4.5-2

First paragraph under the 4.5.1.3 heading only mentions the Santa Ynez Band of Chumash (located in Santa Barbara County) and does not mention San Luis Obispo (SLO) County tribes, nor the Tribe identified as having ancestral ties to the Diablo Lands per Johnson (2020).

Comment 4.5-3

Last sentence of the second paragraph under 4.5.1.4: incorrectly states that the “DCPP site” is part of the San Miguelito land grant. Only the portion of the South Ranch Diablo Canyon lands located south of Pecho Creek is within the former San Miguelito land grant. The vast majority of the lands, including the part 50 license area, are within Canada de los Osos y Pecho y Islay (also simply Pecho y Islay land grant at a point in history).

Comment 4.5-4

First sentence of first paragraph under DCPP Site History heading: text incorrectly states “DCPP was part of Rancho San Miguelito...” The vast majority of the lands, including the part 50 license area, are within Canada de los Osos y Pecho y Islay.

Comment 4.5-5

First paragraph under CA-SLO-61: discussion doesn’t acknowledge 2015 archaeological work by Applied Earthworks and exclusively references 2011 work.

Comment 4.5-6

The first bullet point of CUL-5 (includes the requirement for unanimous consent among the unnamed “appropriate consulting Tribes” for curation of recovered cultural material) conflicts with a later portion of the MM that indicates that curation may occur following “notification to the appropriate consulting Tribes.” (See second to last paragraph on page 4.5-36)

Comment 4.5-7

In MM CUL-5, the bullet point that reads: “A list of personnel involved in the monitoring activities and their availability” should be deleted since these details will

Enclosure 2 – General Comments

change over time. Suggest relying on the qualifications established in CUL-2 and documentation of monitors in the monthly report prepared as part of CUL-5.

Comment 4.5-8

In MM CUL-5, text in last bullet point is confusing and appears to confer authority to a Most Likely Descendant (MLD) outside the context of a discover of human remains (emphasis added): “Any Chumash cultural materials disinterred as a result of this project shall be curated or reinterred upon *determination by the MLD* after notification to the appropriate consulting Tribes.” An MLD’s authority is limited to the discovery of Native American human remains and associated artifacts per Public Resources Code §5097.98.

The requirement for “Any Chumash cultural materials disinterred...” to be curated “after notification to the appropriate consulting Tribes” contradicts a preceding portion of CUL-5, which requires “approval in writing” from the “appropriate consulting Tribes” for curation of recovered cultural material.

Comment 4.5-9

It is unclear why the MLD would be the responsible party for notification to the County and appropriate consulting Tribes in the event of a discovery of human remains. MLD designation can take up to 48 hours, which is beyond the notification window required elsewhere in CUL-5. Suggest making the applicant the responsible party for such notifications.

Comment 4.5-10

A portion of CUL-5 conflicts with Public Resources Code §5097.98, which gives MLDs the authority to make recommendations for the treatment and disposition of human remains. The law gives MLDs 48 hours to make recommendations or communicate preferences for treatment within 48 hours of being granted access to the site. In the second paragraph of the page, CUL-5 states that “The County [Sherriff Coroner’s Office] and appropriate consulting Tribes shall be given 72 hours from the time of notification to provide comments on the proposed treatment option to the MLD.”

Comment 4.5-11

The National Register Bulletins referenced (30, 36, and 38) provide guidance on evaluation, documentation, and listing on the National Register. They are not instructions for developing “long term management” plans for the resources, which is the point of the stipulation where they are referenced.

Comment 4.5-12

In MM CUL-6, please clarify what is meant by “...redirection of work shall be determined by the Project Archaeologist and Chumash Tribal Monitors.” Monitors don’t direct the location of scope of decommissioning work.

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Comment 4.5-13

MM CUL-7: Duplicative and burdensome requirement that weekly reports are submitted to appropriate consulting Tribes in addition to the monthly reporting required as part of CUL-5. Suggest deleting requirement for weekly reporting. Significant events such as a discovery or non-compliance events require 24-hour notification, further diminishing the need for weekly reporting.

Comment 4.5-14

In MM CUL-8, the EIR should clarify authority to make determinations on the significance of finds and the ability to resume work. First sentence of last paragraph on page 4.5-40 states (emphasis added), "...the Project Archaeologist or Archaeological Monitor and Chumash Tribal Monitor *may record the find and allow work to continue.*" The measure goes on to say that the County "shall be consulted on the determination of significance," which implies that work cannot resume without first consulting the County. Suggest revising to give authority to the Project Archaeologist to decide, with any disputes elevated to the County for resolution.

Comment 4.5-15

Suggest amending last sentence of second paragraph regarding use of protective mats (MM CUL-9) to read "...for removal of any aboveground powerplant infrastructure on non-paved areas or areas otherwise devoid of a protective surface such as existing gravel fill."

Comment 4.5-16

MM CUL-11: The National Register Bulletins referenced (30, 36, and 38) provide guidance on evaluation, documentation, and listing on the National Register. They are not instructions for developing "long term management" plans for the resources, which is the point of the stipulation where they are referenced.

Comment 4.5-17

MM CUL-12: Rights and duties of a MLD are established in Public Resources Code §5097.98, which gives MLDs the authority to make recommendations for the treatment and disposition of human remains. EIR does not supersede State law.

Comment 4.5-18

MM CUL-12: Too many individuals must agree to allow "additional personnel" within 100 feet of discovery (Project Archaeologist, Chumash Tribal Monitors, and appropriate Consulting Tribes). There may be safety issues (radiological remediation, etc.) and engineering considerations that need to be addressed and it is not appropriate to decide by committee. Authority should rest with Project Archaeologist.

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Comment 4.5-19

The list of projects in the Cumulative Impact Analysis is different than those used in the Tribal Cultural Resources and Biological Cumulative Assessments. No rationale is provided as to why the section should use different lists. Section 4.5.5 considers 14 regional projects, while Section 4.3.5 only considers 4 and Section 4.6.5 considers 3. Section 4.5.5 also breaks down the analysis by Project location (DCPP, PBR, and Santa Maria Valley Railyard Facility [SMVR]) whereas the Tribal Cultural Resources and Biological Analysis does not.

Section 4.6 – Cultural Resources (Tribal Cultural Resources)

Comment 4.6-1

Section 4.6, page 4.6-1 erroneously attributes confidential cultural resources technical reports to PG&E authorship. “PG&E, 2020” should be Enright et al. 2021 and “PG&E, 2021” should be Laurie, 2021.

Comment 4.6-2

Section 4.6.1.2, page 4.6-2, ethnohistory does not address the Spanish period and mission system.

Comment 4.6-3

Section 4.6.1.2, page 4.6-2, ethnohistory discusses missions located in San Fernando Valley and Santa Barbara, but doesn't mention the two most proximate to the Project sites: Mission San Luis Obispo de Tolosa and La Purisima.

Comment 4.6-4

Section 4.6.2.1, page 4.6-5, text does not reference other applicable SLO County Land Use Element Goals: CR 1, CR 2, and CR 3

Comment 4.6-5

Section 4.6.2.1, page 4.6-5, add Policy CR 1.1: “Cultural Identity. Establish and support programs that enhance the county’s sense of community and identity, such as the collection of oral histories, cultural and genealogical research, and the acquisition of collections of historic artifacts, documents, and memorabilia relevant to the history of the county.” EIR should disclose the existing genealogical research applicable to the project site as promoted by CR 1.1. text does not reference other applicable SLO County Land Use Element Goals: CR 1, CR 2, and CR 3

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Comment 4.6-6

Section 4.6.2.1, page 4.6-5, add Policy CR 2.1: “Community Participation. The County will actively promote and support community participation in the preservation and enhancement of the county’s culture and history.”

Comment 4.6-7

Section 4.6.5, pages 4.6-9-11, the list of projects in this section is different than those used in the Cultural Resources and Biological Cumulative Assessments. No rationale is provided as to why the section should use different lists. Section 4.5.5 considers 14 regional projects, while Section 4.3.5 only considers 4 and Section 4.6.5 considers 3. Section 4.5.5 also breaks down the analysis by Project location (DCPP, PBR, and SMVR) whereas the Tribal and Biological Analysis does not.

Section 4.7 – Energy

Comment 4.7-1

Text on page 4.7-3 states that “Decommissioning Project would be a consequence of PG&E’s decision to not pursue renewal of the existing licenses to operate the DCPD reactors”. Even if the DCPD operating licenses are extended pursuant to SB 846, decommissioning would eventually occur. Decommissioning timeframes could be affected by the State of California’s energy policies.

Section 4.8 – Geology, Soils, and Coastal Processes

Comment 4.8-1

MM GEO-3 requires a Bluff Retreat and Erosion Monitoring Plan, whereby bluff monitoring is to be conducted every 3 years and following rainstorm events of 2 inches or more in 24 hours. This measure requires it to continue in perpetuity and follow the landowner/lessee.

This measure should have a sunset period clearly identified. For example, if after 10 years of reporting, there is not material erosion documented, perhaps the reporting can be done at longer intervals or ceased altogether since it will have been made clear that the project did not result in a significant impact warranting further mitigation.

Comment 4.8-2

The period of performance for MM GEO-4.2 is not specified. The measure should be revised to clarify that the pre-work training would be required for all new workers involved with ground-disturbing activities within previously undisturbed areas during project Phases 1 and 2.

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Section 4.9 – Greenhouse Gas Emissions

Comment 4.9-1

Under MM GHG-1, the offset credit that could be required should be defined.

The DEIR asserts that greenhouse gas (GHG) emissions are inherently cumulative and combines all project GHG emissions including local, national, and even international emissions, but then compares these cumulative emissions to regional local limits (i.e., SLOCAPCD and SBCAPCD threshold limits) to establish a finding of significance.

The regional local limit is not used for establishing appropriate mitigation. Instead, the measure requires mitigation down to net-zero, which is not consistent with the California Environmental Quality Act impact threshold and is not proportional to the stated impacts. Existing baseline emissions should be subtracted from actual emissions (the calculated Project GHG emissions shown in the DEIR are a reasonable worst case and it's possible other mitigation measures such as AQ-1 could reduce emissions further than what is shown) to determine the net increase. The net increase should be used to determine what mitigation is needed to reduce emissions down to the threshold.

Section 4.10 – Hazardous and Radiological Materials

Comment 4.10-1

Text on pages 4.10-19, 20, 60, and 61 addresses gaseous effluent deposition tritium (H-3) at known high levels on building roofs and that this contributes to groundwater contamination. It notes that current consequences are below Environmental Protection Agency (EPA) drinking water standards.

However, there is no discussion about how cessation of operation and subsequent decommissioning will reduce or increase the levels. Section 4.10.4.2 (Impact HAZ-8: Release of radioactive materials during decontamination and dismantlement activities [Class III: Less than Significant].) discusses the impact of cessation of operation on liquid effluent but does not clarify if this includes the deposition of H-3 vapor.

(Note that this is covered in second paragraph of Haz-9 and would also apply to Haz-8.)

Comment 4.10-2

Text on pages 4.10-19, 20, 60, and 61 addresses gaseous effluent deposition tritium (H-3) at known high levels on building roofs and that this contributes to groundwater contamination. It notes that current consequences are below EPA drinking water standards.

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However, there is no discussion about how cessation of operation and subsequent decommissioning will reduce or increase the levels. Section 4.10.4.2 (Impact HAZ-8: Release of radioactive materials during decontamination and dismantlement activities [Class III: Less than Significant].) discusses the impact of cessation of operation on liquid effluent but does not clarify if this includes the deposition of H-3 vapor.

(Note that this is covered in second paragraph of Haz-9 and would also apply to Haz-8.)

Comment 4.10-3

It is unclear how MM HAZ-1 constitutes mitigation for the impact identified. Other plans and procedures that need to be implemented to ensure no exposure of hazardous materials/waste to workers and the environment (e.g., Spill, Prevention, Control, and Countermeasure; Stormwater Pollution Prevention Plan; California Hazardous Materials Business Plan; Preparedness and Prevention and Contingency Plan; and Emergency Procedures) are included in Part B Permit Operational Plan. For worker safety, implementation of California Occupational Safety and Health Administration regulations (e.g., personal protective equipment, industrial hygiene surveys, Hazard Communication and/or Chemical Hygiene Plan) would address the potential exposure risks. The impact would not be significant when the facility is in full compliance with applicable regulations. Regulatory compliance would negate the need for mitigation, and existing provisions for worker safety are more robust than what is included in the DEIR.

An extension to the Resource Conservation and Recovery Act Part B permit for treatment and storage of hazardous waste could take several years or longer if there are proposed changes to the permit (removal/addition). DCPD would communicate the proposal with California Department of Toxic Substances Control (DTSC). The expiration date of the current permit is September 2028. Significance would be based on the extension requested – with additions or removal (partial closure of waste units) and the time it will take DTSC to process the application and supporting documentation.

Section 4.11 – Hydrology and Water Quality

Comment 4.11-1

The language in the description of MM HWQ-1 is unclear: “The Construction Drainage Plan would identify potential drainage issues and proposed methods for safely conveying containing storm runoff and preventing impacts to coastal water quality throughout construction.”

The language is unclear - Is the intent to “convey and contain as appropriate” or “contain” stormwater during construction?

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Comment 4.11-2

The language in the description of MM HWQ-1 is unclear: “Also, the final site grading must meet Title 23 standards requiring all surface drainage to be retained on site via swales, retention basins, wetlands, etc.”

Title 23 doesn’t appear to require the retention of surface drainage onsite. Specifically, per Title 23 of the San Luis Obispo Land Use Ordinance: 23.05.050.b references requirement for proposed projects to retain off-site natural drainage patterns and to limit peak runoff to pre-development levels; 23.05.050.d references prohibition of stormwater outfalls to coastal bluffs unless demonstrated that it is not feasible to detain stormwater runoff on-site or to direct stormwater runoff to pervious areas; 23.05.050.e.2 references prevention of pollutants in stormwater runoff. Is the intent of the language to mitigate any increase in peak runoff with respect to pre-development level; to restrict stormwater outfalls to coastal bluffs unless absolutely necessary; and to require the treatment of potentially polluted stormwater runoff prior to leaving the site? Additionally, the interpretation of pre-development condition may warrant discussion about reference to DCPD current condition or conditions prior to the construction of the DCPD.

Comment 4.11-3

Text on page 4.11-13 states “Sampling results are submitted to local, state, and federal agencies on an annual basis via the Annual Radiological Environmental Operating Reports.”

The Development Plan/Coastal Development Permit and Conditional Use Permit application assumes a 5-year period.

Comment 4.11-4

Text on page 4.11-15 states “...require a Post-Decommissioning Drainage Plan and a Long-Term Erosion and Sediment Control Plan for the final surface conditions following demolition of all decommissioned structures. The Long-Term Erosion and Sediment Control Plan would be included in the SWMP.” Text on page 4.11-15 states that “the purpose of the SWMP is to implement long-term management of stormwater drainage from the site over the period of time required for revegetation to establish.” As such, the plans referenced in MM HWQ-1 should include a statement that the plans would be implemented until final site restoration activities have been completed (during Phase 2).

Comment 4.11-5

MM HWQ-2 is not clear on what areas are to be included in the Long-Term Erosion and Sediment Control Plan. For example, is the intent to include areas disturbed during decommissioning, exclusion of leased areas, inclusion of proposed new development, including the entire property under PG&E control, etc.?

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Comment 4.11-6

MM HWQ-3 requires that “clean marina lease provisions” be incorporated into the operational plan for the marina. While the California Clean Marina Toolkit is referenced in the measure, the measure does not define the scope or requirements of the provisions that could be included in the project-specific lease. Such provisions would already be defined under any regulatory permits required for the Marina. At a minimum, the CSLC would exercise its leasing authority to govern use of the Marina and would include provisions for maintaining the Marina in accordance with CSLC standards. As such, regulatory compliance would negate the need for this MM.

Also, it should be clarified that the lease holder, rather than the applicant, would be responsible for submittal of compliance reports associated with future uses of the Marina, and the specific timeframes and durations of reporting would be determined based on any regulatory permits issued for the future Marina uses (including the required CSLC lease).

Section 4.12 – Land Use, Planning, and Agriculture

Comment 4.12-1

Figure 4.12-1 on page 4.12-9 incorrectly includes the transmission parcels in the Owner-Controlled Area. These are not to be included.

Comment 4.12-2

Table 4.12-2 on page 4.12-20 identifies that the County of Santa Barbara Development Plan for the Betteravia Site would need to be revised. SMVR would make the site improvements and perform the transloading operations pursuant to their federal railroad preemption. Therefore, there would be no need to revise the existing development plan.

Section 4.15 – Recreation and Public Access

Comment 4.15-1

Text on page 4.15-1 needs to identify that the Intake Structure does not limit coastal access by its presence in operations or decommissioning. It is advantageous to coastal access due to the surrounding infrastructure, facilitating safe access to the water which is otherwise precluded by steep cliff faces.

Comment 4.15-2

Text on page 4.15-13 incorrectly states there are no federal regulations regarding recreation affecting the project. The 2,000-yard exclusionary zone is administered by the US Coast Guard (33 CFR § 165.1155). The section should be updated to include

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a reference to 33 CFR § 165.1155.

Comment 4.15-3

Text on page 4.15-24 states that “The secondary access road to DCP (Pecho Valley Road/North Ranch Road) is approximately 4.5-miles long and extends from Montaña de Oro State Park to the DCP site and is not used for day-to-day plant operations and would not be used to support decommissioning.” This text should be revised for accuracy. North Ranch Road would remain as an emergency access route and is used routinely by DCP Security along with the monitoring and land stewardship teams in support of plant operations and regulatory requirements.

Comment 4.15-4

Text on page 4.15-25 needs to identify that retention of the breakwaters is a benefit to future public access. Even without the proposed improvements to the Marina, it was a safe refuge for boaters. This was a historical practice from construction until September 2001. Numerous fishing boats and recreation boaters would anchor overnight since it is state property.

Enclosure 3
PG&E Letter DCL-23-085

**Enclosure 3 – Public Access Comments
DCPP Decommissioning Draft Environmental Impact Report**

Enclosure 3 – Public Access Comments

On page 4.12-43 of the Draft Environmental Impact Report (DEIR), it states that the project will be conditioned to require the study, development, construction, implementation, and management of a Diablo Lands Connector Trail, that would generally connect the area south of the Diablo Canyon Power Plant (DCPP) site to the area north of the site. The conditions would be presented at the time of Project consideration, along with the certification of the Final EIR. Table 4.12-3 of the DEIR states multiple times that the purpose of the condition is to make up for the assertion that “the public has been precluded from accessing the DCPP shoreline since construction of the plant began in 1968.”

Summary. Due to the lack of nexus and rough proportionality with Project impacts, such a condition would be an unconstitutional regulatory exaction. The trail also should not be required under the San Luis Obispo County (County) Local Coastal Program (LCP), as it would be inconsistent with the protection of fragile coastal cultural and biological resources, agricultural resources would be adversely affected, and coastal access is already provided. Moreover, a coastal access exaction is unnecessary, since decommissioning would remove barriers to coastal access, as certain components along with volunteered access would provide additional coastal access opportunities compared to existing conditions. Future repurposing of DCPP would also provide the County with the opportunity to evaluate whether coastal access should be provided at that time. Moreover, if these conditions were to have any merit, they do not belong in the EIR.

Coastal Access Requirements. The entire 750-acre Nuclear Regulatory Commission-licensed DCPP site lies within unincorporated County, with approximately two-thirds of the DCPP site within the California Coastal Zone. Portions of the site are located within the original jurisdiction of the California Coastal Commission (CCC), the County’s LCP jurisdiction, and the Inland Land Use Ordinance (LUO) jurisdiction of the County.

The LCP’s Coastal Zone Land Use Ordinance (CZLUO) is the implementing component of the LCP. The CZLUO applies to all land use and development activities within the unincorporated areas of the County that are located within the California Coastal Zone, which are not located within the CCC’s original (or retained) jurisdiction.

Section 23.01.031 of the CZLUO requires a Coastal Development Permit (CDP) for development projects. Section 23.04.420 states, in relevant part:

Development within the Coastal Zone between the first public road and the tidelands shall protect and/or provide coastal access as required by this section. The intent of these standards is to assure public rights of access to the coast are protected as guaranteed by the California Constitution. Coastal access standards are also established by this section to satisfy the intent of the California Coastal Act.

LCP Policy 2 (New Development) further provides exceptions to the coastal access requirement that “may occur where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists

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nearby; or (3) agriculture would be adversely affected.” Section 23.04.420(c)(1) of the CZLUO similarly provides that public access shall not be required where “(1) Access would be inconsistent with public safety, military security needs or the protection of fragile coastal resources; or (2) The site already satisfies the provisions of subsection d of this section; or (3) Agriculture would be adversely affected.”

The County’s Coastal Land Use Plan contains the following applicable policy:

Policy 11: Taking of Private Property

In meeting the foregoing policies for ensuring public access to the shoreline, careful consideration must be given to the requirements of Section 30010 which declares that no local governments may "... exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation...."

The Project is located between the first public road and the sea; therefore, pursuant to Coastal Act Section 30604(c), the Coastal Act's public access and recreation policies (Sections 30210 - 30224), as well as the above-cited access provisions of the CZLUO, apply.

Prior DCPD Approvals and Required Coastal Access. In 1983, the CCC approved CDP No. A-4-82-593 for the Trainer/Simulator Building at DCPD. This approval included a special condition to construct and operate the Pecho Coast Trail, which has been operational since 1993. The 3.7-mile-long Pecho Coast Trail runs from DCPD's southern entrance at Port San Luis to the now-retired Point San Luis Lighthouse. There is also a longer trail northward to just beyond Rattlesnake Canyon that can be scheduled for use by the public. The trail ends about four miles south of the DCPD Protected Area and lies within the DCPD Owner-Controlled Area (OCA). The 1983 CDP also required Pacific Gas & Electric Company (PG&E) to develop a public access plan to provide coastal access within the DCPD lands. The resulting Pecho Coast Trail Accessway Management Plan, and a subsequent memorandum of understanding between PG&E and the CCC, provided for public access to the Pecho Coast Trail via docent-led, day use-only hikes. The Plan also included a payment by PG&E into an escrow account to pay for developing and maintaining the trail improvements.

In 2004, the CCC approved CDP No. A-3-SLO-04-035 for the construction and operation in perpetuity of the Independent Spent Fuel Storage Installation (ISFSI) at the DCPD site. This approval mandated the construction of the Point Buchon Trail. The Point Buchon Trail extends from Montana De Oro to Crowbar Canyon on the northern portion of the DCPD Lands.

In 2006, the CCC approved CDP No. E-06-011 and A-3-SLO-06-017 for the Steam Generator Replacement Project (SGRP). The SGRP CDP mandated several public access enhancements including:

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- funding access improvements to the Pecho Coast Trail, which included moving the trail entrance to its current location next to the DCPD Security Station on Avila Beach Drive;
- an access easement for the 1.8-mile Lighthouse Road, which extends from just past the DCPD front entrance to the Lighthouse, for use by the Port San Luis Harbor District; and
- the creation of an approximately 1,200-acre conservation deed restriction around Point San Luis.

Unconstitutional Regulatory Exactions. When an agency conditions approval of a permit on the dedication of property to the public, there must be (i) an essential nexus between the impact caused by new development and the mitigation measures designed to mitigate those impacts and (ii) the dedication must be roughly proportional to the nature and extent of the impact of the proposed development. (Nollan v. California Coastal Commission, 483 U.S. 825, 837 (1987); Dolan v. City of Tigard, 512 U.S. 374, 391 (1994).) Therefore, there must be a connection between a project impact and the required exaction. Further, the exaction must be roughly proportional to the impact.

In Nollan, the United States Supreme Court rejected a condition of approval for the construction of a new home imposed by the CCC requiring the homeowner to provide a lateral public access easement. Because the new home did not affect public access to the beach, the condition requiring the dedication of a public access easement could not be sustained.

In Dolan, the Supreme Court again held that a condition imposed on a land use permit requiring a public access easement was unconstitutional. Although there was a relationship between the required bike/pedestrian path and the impact of the proposed store expansion, the Court concluded that there was not “rough proportionality” between the condition and “the impact of the proposed development.”¹

County LCP / CZLUO Coastal Access Precedent. In analyzing whether to exact coastal access pursuant to the County LCP in prior permit actions, both the County and CCC have carefully considered whether there was a nexus between the proposed

¹ See also *Bowman v. California Coastal Comm'n* (2014) 230 CA4th 1146, 1152 (holding that a requirement that a landowner dedicate a lateral public easement along the ocean, as a condition for a permit authorizing repairs to, and reconstruction of, a private residence located one mile from the ocean, lacked the requisite essential nexus and rough proportionality); *Surfside Colony, Ltd. v. California Coastal Com.* (1991) 226 Cal.App.3d 1260, 1269 (holding there was no substantial evidence to justify the alleged “nexus” between a revetment that a property owner wished to build and a Coastal Commission requirement that the owner grant public access to a private beach in return for permission to build the revetment).

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development and coastal access impacts and, if so, whether the exaction was roughly proportional to those impacts.

ISFSI (CDP No. A-3-SLO-04-035)

As the CCC recognized in its adopted findings for approval of the ISFSI CDP:

In addition to the applicable LCP and Coastal Act policies, and pursuant to state and federal law, public access established as part of a permit decision must generally be based on an appropriate nexus between the proposed project's effects on access and the measures taken to establish access -that is, there must be a credible relationship between any loss of access caused by the project and the measures required to replace or regain that access. Further, those measures must be roughly proportional to the project's effects.

In its approval of the ISFSI, the CCC made detailed findings regarding future loss of public access, including a quantified rough proportionality analysis, to support public access requirements. Notably, the ISFSI findings recognized that DCPD decommissioning will restore rather than impede public access:

Accordingly, but for the construction and operation of the ISFSI, the public would be able to have earlier access to, and enjoy the earlier use of, public trust lands from which they have been excluded during the plant's period of operations and from which they will continue to be excluded until the end of the plant's currently anticipated end of licensed operations in 2025 and subsequent decommissioning....

Therefore, it is likely that but for the ISFSI, the shoreline area from which the public is excluded due to the power plant would be available for public access after the power plant is decommissioned.

Based on these findings, the CCC imposed mitigation to address the loss of access in perpetuity resulting from the ISFSI. (“[B]ecause the ISFSI must be presumed to exist on the site in perpetuity, its associated prohibitions on access due to security concerns are also presumed to exist in perpetuity and will result in a permanent loss of access to roughly two miles of California coastline.” Revised Findings A-3-SLO-04-035, December 16, 2004, at page 42.)

However, prior to the CCC’s action, the County Planning Commission found in its approval of the ISFSI CDP, which was later appealed to the CCC, that there was no nexus to exact coastal access and that, in any case, exceptions to requiring coastal access were present. In particular, the County found that:

proposed access would amount to a “taking,” . . . because there was no nexus. Further, all of the exceptions in Policy No. 2 apply. Specifically, access would be inconsistent with “public safety,” and the protection of fragile coastal resources and agriculture. Also, adequate access exists

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nearby offsite (Pecho Coast Trail) . . . Here, there is no nexus between the impact of the project and public access and therefore, there can be no basis for requiring access (or in lieu fees) . . . Section 23.04.420(3)(a) and (c) provide that new access is not required where "access would be inconsistent with public safety, military security needs or the protection of fragile coastal resources" or "agriculture would be adversely affected . . . The entire 12,000 acre PG&E property surrounding the power plant is within an ESHA designated as the Coastal Terrace of the Irish Hills SRA and much of the PG&E land is used for agriculture (200 acres of prime land for row crops and thousands of acres of the remainder for grazing). Also, adequate access exists nearby. Therefore, the exceptions stated in the referenced sections apply against public access. There currently is public access on the applicant's 12,000 acres of property. This managed access allows groups of people to hike to the historic Point San Luis Lighthouse. Therefore, public shoreline access already exists near the site.

As noted above, the CCC ultimately reached a different conclusion than the County regarding the presence of sufficient nexus to impose a coastal access condition of approval. However, the County's findings nevertheless serve as precedent regarding the applicability of exceptions to the access requirement under the LCP and CZLUO, including the potential for access to impact Environmentally Sensitive Habitat Area (ESHA) and agricultural resources, as well as the availability of nearby adequate public access.

Phillips 66 Remediation Project (A-3-SLO-21-0017)

In the CCC's finding of no substantial issue on an appeal from San Luis Obispo County's approval of a CDP for a soil remediation project covering almost 1.5 acres at the Phillips 66 refinery facility, the CCC addressed an appellant's contention that the County failed to analyze or condition the project related to CZULO Section 23.04.420. The CCC concurred with the County's determination that "there is no nexus for coastal access improvements" as the oil refinery closure would have no impact on public access. The CCC explained:

Importantly, the LCP's access provisions are not sufficient by themselves to compel applicants to provide public access on their property. On the contrary, land use jurisprudence makes clear that access, such as that required by LCP Section 23.04.420, can only be required if 1) there is also a reasonable nexus (i.e., that the project leads to a public access impact requiring mitigation), and; 2) any required access mitigation is roughly proportional to the impact being mitigated (see e.g. Nollan v. California Coastal Commission (1987) 483 U.S. 825; Dolan v. City of Tigard (1994) 512 U.S. 374). Although this LCP does not reference these binding legal requirements (as is not unusual for older LCPs, such as this), these requirements from caselaw continue to apply even if they are not explicitly contained in the LCP.

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Thus, despite Section 23.04.420 of the CZLUO, the County may not impose a coastal access requirement unless it also finds that such a requirement does not constitute an unconstitutional regulatory exaction.

Lack of Nexus and Rough Proportionality for Coastal Trail Easement. The County has proposed to require PG&E to extend the Pecho Coast Trail northward to connect through the entire property as a condition to the Decommissioning Project. As in the cases described above, however, the County cannot establish any nexus with the public access impacts of decommissioning to require the trail easement. Even if there were public access impacts of the Project (which there are none), the DEIR fails to include any analysis or evidence, substantial or otherwise, to support a conclusion that the required trail extension would be roughly proportional to any impacts. Therefore, the County may not condition Project approval on the proposed trail easement.

Decommissioning activities would not interfere with existing coastal access. The Project would not alter existing land uses, such as coastal access areas, and there are no existing public accessways (via recorded or prescriptive claims) that will be affected by decommissioning activities. The closest public roadways are Avila Beach Drive, approximately 5 miles south of DCP, and Pecho Valley Road (about 4.5 miles north) within Montaña de Oro State Park. Access is already provided to DCP lands via (1) the Pecho Coast Trail pursuant to CDP A-4-82-593 granted by the CCC in 1983 and the subsequent 1989 Pecho Coast Trail Management Plan and Memorandum of Understanding, and (2) the Point Buchon Trail in accordance with special condition 3 of the CDP issued by the CCC for the construction of the ISFSI.

The Decommissioning Project does not entail public access impacts that would support conditioning Project approval on the provision of an additional public access easement. Due to safety and security concerns, the public currently does not have direct access to the sea at/from the DCP Site. During the first phase of the Project, public access restrictions would continue but would not be exacerbated. During the second phase of the Project, the OCA would be substantially reduced in size. The substantial reduction of the OCA would facilitate future public access, if warranted in connection with site repurposing. DCP decommissioning will result in opportunities for additional access, as previously found by the CCC. However, until such time, the access exactions imposed in connection with the ISFSI project continue to mitigate in perpetuity, as previously found by CCC, such that there would be no nexus for additional exactions.

The Project is akin to the situation addressed by the CCC in the Phillips 66 refinery facility soil remediation project appeal discussed above. As in that precedent, despite Section 23.04.420 of the CZLUO, the County must conclude that the proposed coastal access trail condition is not consistent with applicable takings caselaw and would result in an unconstitutional regulatory taking, given that the Decommissioning Project does not lead to a public access impact requiring mitigation.

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There are several existing recreational activities on Diablo Canyon Lands and in the vicinity of DCPD, including hiking, camping, picnicking, mountain biking, horseback riding, boating and water sports, sport fishing, and recreational vehicle camping. The Project would not affect access to any of the existing trails, parks (such as Montaña de Oro State Park, as referenced above), or other recreational facilities. Based on land cover acreages presented in DEIR Table 4.3-2, approximately 80 percent of the 750-acre Nuclear Regulatory Commission-licensed DCPD site is currently in natural open space and will remain so during decommissioning activities (Figure 4.3-1). Decommissioning activities would increase the amount of vegetated open space and reduce hardscaped areas by over 80 acres (or remove over 50 percent of existing hardscaped area). A goal of decommissioning is to restore much of the previously disturbed areas of the DCPD parcel to natural conditions, enhancing biological functions and values and creating opportunities for additional coastal access in connection with future site repurposing.

Furthermore, vehicle trips and vehicle miles travelled associated with decommissioning activities would be lower than existing employee traffic associated with DCPD operation. Therefore, vehicular traffic associated with decommissioning would not impact the public's ability to access the coast, and there would be no traffic-related nexus between the Project and any public access requirements.

In short, any potential public access impacts would not occur until the future repurposing of the site, which the Project does not propose and is not known at this time. California Environmental Quality Act (CEQA) does not permit mitigation for speculative, future impacts, if any. (CEQA Guidelines Section 15126.4(a)(1); Section 15121(a).) The County or CCC will have regulatory authority to require public access of any future site development involving impacts to public access. However, as decommissioning alone does not create any public access impact, a requirement to provide a public access easement would be an unconstitutional exaction. It would also contradict Policy 11 of the County's Coastal Land Use Plan regarding the taking of private property. Moreover, because decommissioning would not impact but rather would facilitate future coastal access, a condition of approval requiring coastal access now is not necessary to ensure consistency with applicable LCP and Coastal Act access policies.

Just as the County cannot impose mitigation on a speculative future project (the repurposing of the site), the County cannot impose mitigation now for historic impacts from the original construction of DCPD. Mitigation must be tied to impacts from the project under consideration (the Decommissioning Project). (CEQA Guidelines Section 15126.4(a)(1); Section 15121(a).) As noted above, there is no determination of a significant impact on coastal access from the Decommissioning Project. (CEQA Guidelines Section 15126.4(a)(3) ["Mitigation measures are not required for effects not found to be significant"].) And, as noted above, DCPD already provides significant coastal access; it is improper to state that "the public has been precluded from

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accessing the DCPD shoreline since construction of the plant began in 1968.” (DEIR page 4.12-21.)

LCP Exceptions to Requiring Coastal Access are Applicable. 23.04.420 – Coastal Access Required.

- c. **When new access is required.** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects *except* where:
- (1) Access would be inconsistent with public safety, military security needs or the protection of fragile coastal resources, or
 - (2) The site already satisfies the provision of subsection d of this section; or
 - (3) Agriculture would be adversely affected; or
 - (4) The proposed new development is any of the following:
 - (i) ...
 - (iii) Improvements to any structure that do not change the intensity of its use, or increase either the floor area, height or bulk of the structure by more than 10 percent, which do not block or impede public access and do not result in additional seaward encroachment by the structure. As used in this subsection, "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

The imposition of a coastal trail condition should not be required because multiple exceptions specified under Section 23.04.420 are met, any one of which would negate the need for new public access. First, Exception (c)(1) criteria are met due to the potential for significant impacts to fragile coastal resources, including sensitive cultural sites, threatened/endangered species, and designated ESHAs. The only feasible way to link a south to north trail would be along the existing culverted road over Diablo Creek, which traverses through cultural resources site CA-SLO-2, which is a very large, long-term village site. The lower reaches of Diablo Creek, along with Tom’s Pond that is located on the bluffs northwest of the plant (along the proposed route of the coastal trail) are occupied by the federally listed California red-legged frog (*Rana draytonii*). This species occupies aquatic habitats (pools, streams, coastal wetlands, etc.) and adjacent upland areas, and can traverse upwards of 2 miles from aquatic breeding habitats. Coastal trail construction would likely result in impacts to occupied aquatic and/or upland habitats, and as such, would result in “take” of this federally listed species. Furthermore, the entire property surrounding DCPD is considered ESHA and is designated as the Coastal Terrace of the Irish Hills Sensitive Resource Area. Signage and fencing could be installed around the proposed trail, but there is the potential that hikers would go off trail and plunder artifacts from cultural resources sites and/or further impact or degrade habitat occupied by sensitive plant and wildlife species.

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Second, Exception (c)(3) criteria are also met as the trail alignment would need to pass through portions of the south and north ranches, both of which contain important agricultural lands. Much of the DCPD lands are currently used for agriculture (200 acres of prime land for row crops and thousands of acres of grazing lands).

Third, the criteria for Exception (c)(4)(iii) is met. Decommissioning activities would not interfere with existing coastal access, and no impacts are presented in the DEIR. The Project would not alter existing land uses, such as coastal access areas, and there are no existing public accessways (via recorded or prescriptive claims) that will be affected by decommissioning activities.

Finally, DCPD already provides significant public access (via the Pecho Coast and Point Buchon Trails), which, as noted previously above, has been determined by the San Luis Obispo Planning Commission to be consistent with meeting shoreline access exceptions defined under Policy 2 of the County's Local Coastal Program.

As discussed earlier, in February 2004 the San Luis Obispo County Planning Commission (Commission) held a hearing for the DCPD ISFSI project, which consisted of coastal development on the DCPD site subject to review under the County's Coastal Land Use Ordinance (Title 23). The Coastal Access provisions of Title 23 are the same now as they were when the 2004 ISFSI hearing took place. As discussed in the hearing and documented in the Commission's Development Plan Findings, imposition of additional public access requirements would be considered unconstitutional "taking." Furthermore, the Commission made broad findings regarding the specific Title 23 Section 23.04.420 exceptions that would apply to a new public trail on DCPD lands, concluding that two of the 23.04.420 exceptions cited above would apply: Exception (c)(1) and Exception (c)(3). In addition, the Commission concluded that adequate public access already exists, and there was no nexus to additional public access requirements.

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Public Access Benefits of the Project. Not only would the Project not adversely impact public access, but several aspects of the Project will also improve or remove barriers to coastal access in the DCCP site vicinity:

Reduced OCA. DCCP Decommissioning will substantially reduce the size of the OCA, which would facilitate future public access, if warranted in connection with site repurposing:



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Shore Cliff Road Segment. As shown below, DCPD Decommissioning involves reconnecting Shore Cliff Road with Pecho Valley Road (North Ranch Road) by re-installing a road segment that extends the Primary Access Road to the culvert road over Diablo Creek. Prior to September 11, 2011, the Primary Access Road extended to the culverted road over Diablo Creek. Installing this road segment at the end of DCPD decommissioning will restore historical access through the Diablo Canyon lands. The proposed Shore Cliff Road alignment is situated within the footprint of existing developed areas, which would avoid impacts to nearby sensitive biological and cultural resources.



Public Marina. As shown above, DCPD Decommissioning will provide coastal public access through provision of a Marina that could be used for commercial, education, or recreational purposes.

Decommissioning and Restoration. The Project involves decontamination, building demolition, soil remediation, and site restoration to natural conditions, each of which would remove existing, approved barriers to public access.

While the Project would reverse some of the public access impacts associated with prior approvals at the DCPD site, the corresponding mitigation imposed as conditions on

Enclosure 3 – Public Access Comments

those approvals would remain in place and continue to provide the public with access to the coastal zone. For instance, the Trainer/Simulator Building authorized by CDP No. A-4-82-593 would be demolished, but the Pecho Coast Trail required as a condition of its approval would remain, resulting in a net increase to public access.

Conclusion. DCPD decommissioning would create no impacts to coastal access, and there is no analysis or evidence in the DEIR to the contrary; therefore, the imposition of a condition/mitigation is inappropriate. Moreover, the decommissioning would remove barriers to access created by existing Plant operations. Based on County, CCC, and United States Supreme Court precedent, there is no support for the imposition of a coastal trail requirement on decommissioning, and conditioning the CDP on the provision of coastal access through the establishment of a coastal trail would be an unconstitutional regulatory exaction. Even if there were a nexus, which there is not, there is no analysis or evidence presented in the DEIR supporting how a trail dedication would be roughly proportional to any asserted impacts of decommissioning. Moreover, exceptions to the coastal access requirement would apply here to avoid impacts to fragile coastal resources and because adequate coastal access already exists nearby. Moreover, certain components of decommissioning, along with volunteered access by PG&E, would provide additional public access compared to existing conditions.

This does not mean there will not be an appropriate time to condition development at the DCPD site on the provision of coastal access – rather it means only that decommissioning is not the appropriate time. The County and CCC would have the opportunity to evaluate whether to require coastal access in connection with impacts attributable to any future proposed repurposing of DCPD.

Enclosure 4
PG&E Letter DCL-23-085

Enclosure 4 – Public Safety Comments
DCPP Decommissioning Draft Environmental Impact Report

Enclosure 4 – Public Safety Comments

There are several inconsistencies and issues with the environmental impact analysis and mitigation measures (MMs) contained in Sections 4.10, 4.14, and 4.17 of the Draft Environmental Impact Report (DEIR). As detailed below, MMs PSU-1 and PSU-2 lack nexus and rough proportionality with Project impacts and are not consistent with relevant case law. Moreover, the purported impacts tied to these measures are speculative in nature, conflicting with California Environmental Quality Act (CEQA) Guidelines Section 15126.4, and portions of the measures are unenforceable, relying on discretionary actions that neither the County nor Pacific Gas and Electric Company (PG&E) can make.

On page 4.14-2 under *Fire Protection Services*, it is stated that the Diablo Canyon Fire Department (DCFD) “was established to address the County’s extended response time (over 15 minutes) due to the DCPD site’s remote location.” The DEIR does not disclose the actual primary driver behind establishment and operation of the DCFD, which is to fulfill Nuclear Regulatory Commission (NRC) Fire Protection Requirements defined under Title 10 of the Code of Federal Regulations (CFR), Part 50 (§ 50.48 Fire Protection). The primary function of DCFD is to protect the Power Block of Diablo Canyon Power Plant (DCPP) and prevent fires that could cause a radiological emergency, rather than to respond to wildfires within designated State Responsibility Areas (SRAs). DCPD and surrounding lands are designated SRAs, recognized by the Board of Forestry and Fire Protection as areas where CAL FIRE is the primary emergency response agency responsible for fire suppression and prevention. While it is true that the DEIR-referenced Operational Plan provides for a unified response between CAL FIRE/County Fire and the DCFD during a fire incident at the DCPD, the primary role and function of the DCFD is not disclosed in the DEIR. This omission leads to inaccurate interpretations regarding the nexus between presented impacts and MMs, an issue that is discussed in further detail below.

The DEIR *Fire Protection Services* text on page 4.14-3 goes on to state:

“Fire protection services needs at DCPD would change once all spent nuclear fuel (SNF) has been moved to the Independent Spent Fuel Storage Installation (ISFSI) (i.e., expected to occur from approximately 2025 through 2029). PG&E proposes to amend the Operational Plan to specify the terms of the transition process for fire protection services. Additionally, as noted in Table 2-2 a Transition Plan would be implemented to provide for transitioning fire protection services from the DCFD to the CAL FIRE/County Fire in a manner agreeable to both entities. Section 2.3.23, Site Conditions at End of Phase 1, describes the proposed transition of fire protection services at the DCPD when all SNF has been moved to the ISFSI and all Greater than Class C (GTCC) waste has been moved to the new GTCC Waste Storage Facility. Some DCFD personnel would remain on site for a period of

Enclosure 4 – Public Safety Comments

time during the transfer of SNF to the ISFSI to provide fire protection support.”

PG&E agrees with this text and supports the notion that DCFD will provide current levels of fire protection services *during Phase 1* of the Decommissioning Project, until all SNF has been moved to the ISFSI and all GTCC waste has been moved to the GTCC Waste Storage Facility. PG&E also supports development of a Transition Plan for fire protection services that would be agreeable to both entities, which would be implemented once the SNF and GTCC waste has been moved. Importantly, the California Public Utilities Commission has jurisdiction over any transfer of DCFD facilities and equipment to the County or other parties; such actions are subject to California Public Utilities Code Section 851. Neither PG&E nor the County can unilaterally transfer DCFD facilities or equipment. As such, requiring the transfer of DCFD facilities to the County as part of MMs PSU-1 and PSU-2 would not be enforceable.

The text quoted above from page 4.14-3 of the DEIR is in direct conflict with the following text in MM PSU-2:

“Throughout decommissioning Phases 1 and 2, the Applicant or its designee shall retain the existing DCFD facilities (Fire Station), fire fighting vehicles and equipment, DCFD on-site firefighter positions, and the identified helicopter landing zone(s)...The Applicant or its designee shall continue to provide staffing in accordance with NFPA [National Fire Protection Association] staffing standards and funding for on-site firefighting services and activities until the end of Phase 2.”

In multiple instances, the DEIR acknowledges that fire protection service needs would change prior to Phase 2 (or once the SNF has been moved to the ISFSI), and there are no supporting analyses provided as to why full staffing of DCFD would be required during or throughout Phase 2 (or after the SNF and GTCC waste has been moved). In fact, page 4.10-51 of the DEIR plainly states that “Phase 2 activities would not trigger a wildland fire exposing structures and people to significant risk of loss, injury, or death.” While PG&E is fully committed to providing fire protection services during operation and decommissioning of DCP in accordance with applicable regulatory requirements (as discussed further below), there is no decommissioning-related impact that would require MM PSU-2. On the contrary, decommissioning of DCP would reduce the risks of wildfire on the DCP lands by removing potential ignition sources.

It should also be noted here that, according to the January 2022 Strategic Plan for the San Luis Obispo County Fire Department, multiple fire stations in the County do not currently operate in accordance with NFPA staffing or response time standards—it is unclear why Mitigation Measure PSU-2 imposes a standard that the County Fire Department currently does not itself meet.

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The DEIR on page 4.14-20 states that MM PSU-2 is required to mitigate Impact PSU-1 to a level of less-than-significant:

“Emergency services would be required to respond to potential accidents and provide rescue services. Avila Valley Station 62 has a 17-minute response time to the DCPD site, which is greater than CAL FIRE/County Fire’s target response time of 15 minutes for the full range of service levels for rural areas. Avila Valley Station 62 would not adequately support both the DCPD site and the Avila Beach community if multiple emergency events were to occur simultaneously (San Luis Obispo, 2022). Since the fire station and emergency response equipment would no longer be necessary to support utility services, MM PSU-2 would provide a continuous and acceptable level of service for the site and Avila Beach Community by having CAL FIRE/County Fire assume responsibility, operation, and maintenance of the DCFD facilities, firefighting vehicles, and equipment after the Proposed Project is complete. CAL FIRE/County Fire would provide staffing and emergency services using the retained DCFD facilities, vehicles, and equipment. Impacts would be less than significant with mitigation (Class II).”

The same rationale is provided for Impact HAZ-7 in Section 4.10 of the DEIR and for Impacts WF-1 through WF-4 in Section 4.17 of the DEIR.

According to the January 2022 Strategic Plan for the San Luis Obispo County Fire Department, the performance standard for rural areas is for the first responding unit to arrive on the scene within 15 minutes *at least 85 percent of the time*. If this standard were to be precisely met, the targeted performance standard for the remaining rural responses would allow for response times up to approximately 17.65 minutes.

More importantly, a delayed response time in and of itself does not constitute a significant impact under CEQA. In 2015, the California Court of Appeal held in *City of Hayward v. Trustee of California State University* (2015) 242 Cal. App. 4th 833 that “[t]he need for additional fire protection services is not an environmental impact that CEQA requires a project proponent to mitigate,” and that “[t]he potential dangers associated with delayed response times do not mandate a finding of significance under section 15065, subdivision (a)(4) of the Guidelines.” As such, there is no valid nexus between Impacts HAZ-7, PSU-1, WF-1, WF-2, WF-4 and the above-cited provisions of MMs PSU-1 and PSU-2—these measures represent an unconstitutional regulatory exaction.

As discussed in the cited text from page 4.14-3, a Transition Plan for the DCFD would be implemented as part of the project. Regulatory compliance with NRC Fire Protection Requirements (including applicable NFPA codes and standards and applicable CAL FIRE standards) would ensure that professional fire protection services are provided at DCPD as part of the project. This is affirmed in the DEIR on page 4.10-48:

Enclosure 4 – Public Safety Comments

“PG&E maintains compliance with NRC regulation 10 CFR 50.48 for fire protection, which includes requirements for fire detection and suppression capabilities. PG&E also maintains compliance with applicable National Fire Protection Association codes and standards that are required for compliance with NRC regulations, and applicable CAL FIRE requirements. Compliance with these regulations and standards would continue throughout the Proposed Project.”

As it is acknowledged that regulatory compliance will be maintained throughout the Proposed Project and a Transition Plan will be implemented, DEIR Impacts HAZ-7, PSU-1, and WF-1 through WF-4 relating to DCFD services would all be addressed through regulatory compliance and should be considered less-than-significant, negating the need for MMs PSU-1 and PSU-2. (CEQA Guidelines Section 15126.4(a)(3) [“Mitigation measures are not required for effects not found to be significant”].)

PG&E respectfully requests that the County consider the information presented above and revise the DEIR so that the entire Section 4.14 (and applicable portions of Sections 4.10 and 4.17 containing the same text and relying on the same MMs) are consistent with the quoted text from pages 4.10-48 and 4.14-3. Because (1) PG&E is committed to providing fire protection services in accordance with applicable regulations during operation and decommissioning of DCPD *as part of the project*, (2) the purported impacts are speculative in nature and inconsistent with relevant case law; (3) there is no valid nexus between the cited impacts and MMs PSU-1 and PSU-2; and (4) the cited provisions of MMs PSU-1 and PSU-2 are unenforceable, the MMs should be eliminated in the DEIR for consistency, proportionality, and conformity with relevant Court decisions.

**Enclosure 5 – Cultural Resources – Archaeology and Built
Environment and Tribal Resources
DCPP Decommissioning Draft Environmental Impact Report**

Enclosure 5 – Cultural Resources – Archaeology and Built Environment and Tribal Resources

Native American Stakeholders

The Draft Environmental Impact Report (DEIR) fails to mention or reference the Northern Chumash genealogy study (2020 Johnson Report) that the County required as part of upholding an appeal by the Yak Tiṭu Tiṭu Yak Tihini Northern Chumash Cultural Preservation Kinship to the San Luis Obispo County Board of Supervisors (Board) that was heard on December 10, 2019.¹ This report determined the Tribe with an established ancestral connection to the Diablo Canyon Power Plant (DCPP) lands as defined by Measure A on the 2000 Primary San Luis Obispo County ballot (DREAM Initiative).

Pursuant to the Board's Resolution Number 2019-339 (County File No. DRC2018-00003, Condition 15.c.), a genealogy study was required "to assist in the authentication of the appropriate Native American Community in compliance with Public Resources Code Section 5097.9" and to guide consultation with the appropriate Native American group for projects occurring on and in the vicinity of DCPP lands. By omitting the results of the 2020 Johnson Report,² the DEIR overlooks key facts related to the ethnographic setting and diminishes the standing of the Tribe with an established ancestral connection to the DCPP lands. PG&E feels that it is imperative to follow the previous Board direction and rely on the 2020 Johnson Report.

Mitigation Measure (MM) CUL-1, and throughout other MMs, refers to "appropriate consulting Tribes," who are granted significant decision authority. The DEIR does not specify which Native American tribes among the 10 Tribes the County consulted are included. The DEIR grants broad authority to "appropriate consulting Tribes" and needs to identify which specific Tribes are included in this category.

MM CUL-5 conflicts with Public Resources Code §5097.98, which gives the Most Likely Descendant the authority to make recommendations for the treatment and disposition of human remains within 48 hours of being granted access to the site.

Significant and Unavoidable Impacts

The DEIR finds significant and unavoidable impacts from unanticipated buried resources in Phases I, II, and cumulatively. While impact to one resource (SLO-2) is reasonably foreseeable related to soil remediation during Phase II, assuming impacts to unanticipated buried resources elsewhere is speculative and lacks supporting evidence. Speculation is not substantial evidence of a significant environmental impact (see Cal. Code Regs. Tit. 14, § 15145; and Maacama Watershed Alliance v. County of Sonoma,

¹ A recording of the December 10, 2019, County Board of Supervisor's Hearing is available at: https://slocounty.granicus.com/player/clip/3436?view_id=46&redirect=true&h=889f7d6528792d3e1440c0b80aaf6532

² Johnson, John R. (2020) Descendants of Native Rancherias in the Diablo Lands Vicinity: A Northern Chumash Ethnohistorical Study. Santa Barbara Museum of Natural History. September 2020.

Enclosure 5 – Cultural Resources – Archaeology and Built Environment and Tribal Resources

40 Cal. App. 5th 1007 (2019). The proposed MMs are more than adequate to respond to an inadvertent discovery that might be significant and could be impacted.

The assessment is predicated on the assumption that “the potential for encountering unanticipated buried resources is highly probable even in previously disturbed areas,” representing the entirety of the analysis. The assessment should take into consideration that DCPD and surrounding lands have been intensively studied for over 50 years and the prior extent of prior ground disturbance is well documented. The distribution of resources is not random and has been established through intensive archaeological studies conducted prior to construction and continuing to the present.

A significant impact finding in the absence of substantial evidence is not consistent with the County’s prior determinations on the DCPD lands where permitted projects also had the potential to uncover buried resource, such as the DCPD North Access Road Project (County File No. DRC2018-00003). Such a possibility for buried resources occurs throughout the County, which is routinely mitigated to a less than significant level through implementation of MMs to train workers, recognize resources, stop work, evaluate, and proceed appropriately with stakeholders.

Monitoring

MM CUL-7 requires that archaeological and Tribal monitors conduct “full-time on-site monitoring during all ground disturbing activities, including those occurring in previously disturbed soil, soil sampling associated with the soil characterization study, and Final Status Surveys.” Applicant recommends that the location and intensity of monitoring at specific locations throughout the project site should be specified in the Cultural Resources Monitoring and Discovery Plan (CRMDP) required as part of CUL-5. The prescriptions for monitoring should consider the extent and location of prior ground disturbance and fill, as well as provide a means to adapt monitoring requirements based on ongoing observations. The CRMDP must acknowledge that there will be ground disturbance significantly below depths of any potential cultural strata which would not warrant monitoring. And above all, the CRMDP must acknowledge that some demolition/excavation within the power plant will be too dangerous to directly observe.

Cultural Resources Summary

PG&E respectfully requests that the County revise the EIR to reference the 2020 Johnson Report and incorporate the results by identifying the specific consulting Tribes. Secondly, the EIR needs to be revised to change the impact conclusions to “Less than Significant with Mitigation” for impacts to unanticipated buried resources in Phases I, II, and cumulatively. Lastly, the CRMDP should specify the location and intensity of monitoring at specific locations throughout the project site as part of MM CUL-5 and allow for changes as new information is gathered during monitoring.