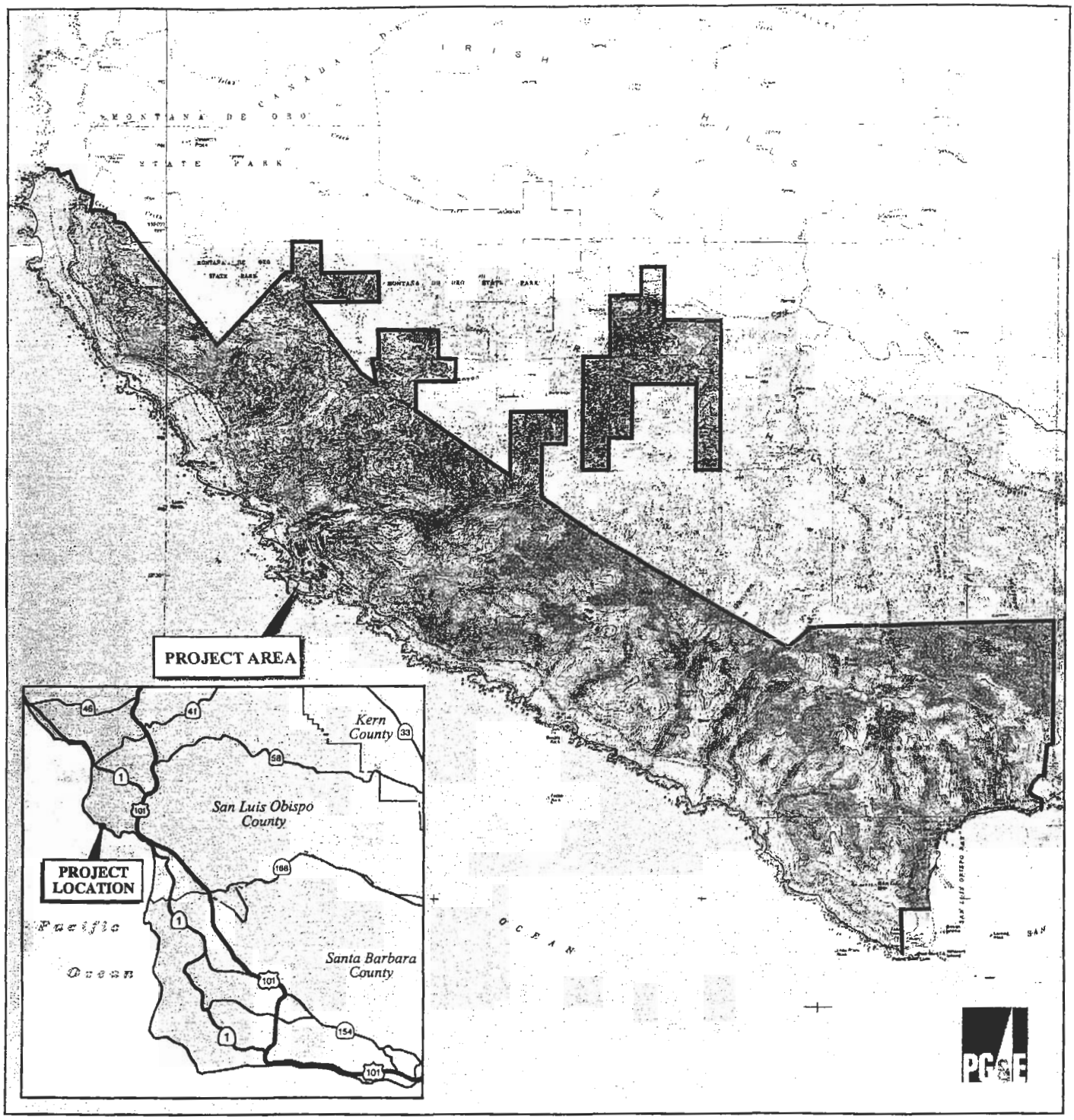


SOURCE: USGS 7.5' QUADS - PORT SAN LUIS, MORRO BAY SOUTH, & PISMO BEACH, CA.

N

0 3000 6000 Feet

EXHIBIT NO. 1

APPLICATION NO.

E.06.011

A.3.SLO.06.017

PG&E
Steam Generator
Offloading Activities

Coastal Development
Permit

General Location

Figure 1

I:\PGE430\G\ - 1/21/05 - General_Loc_outlet.cdr

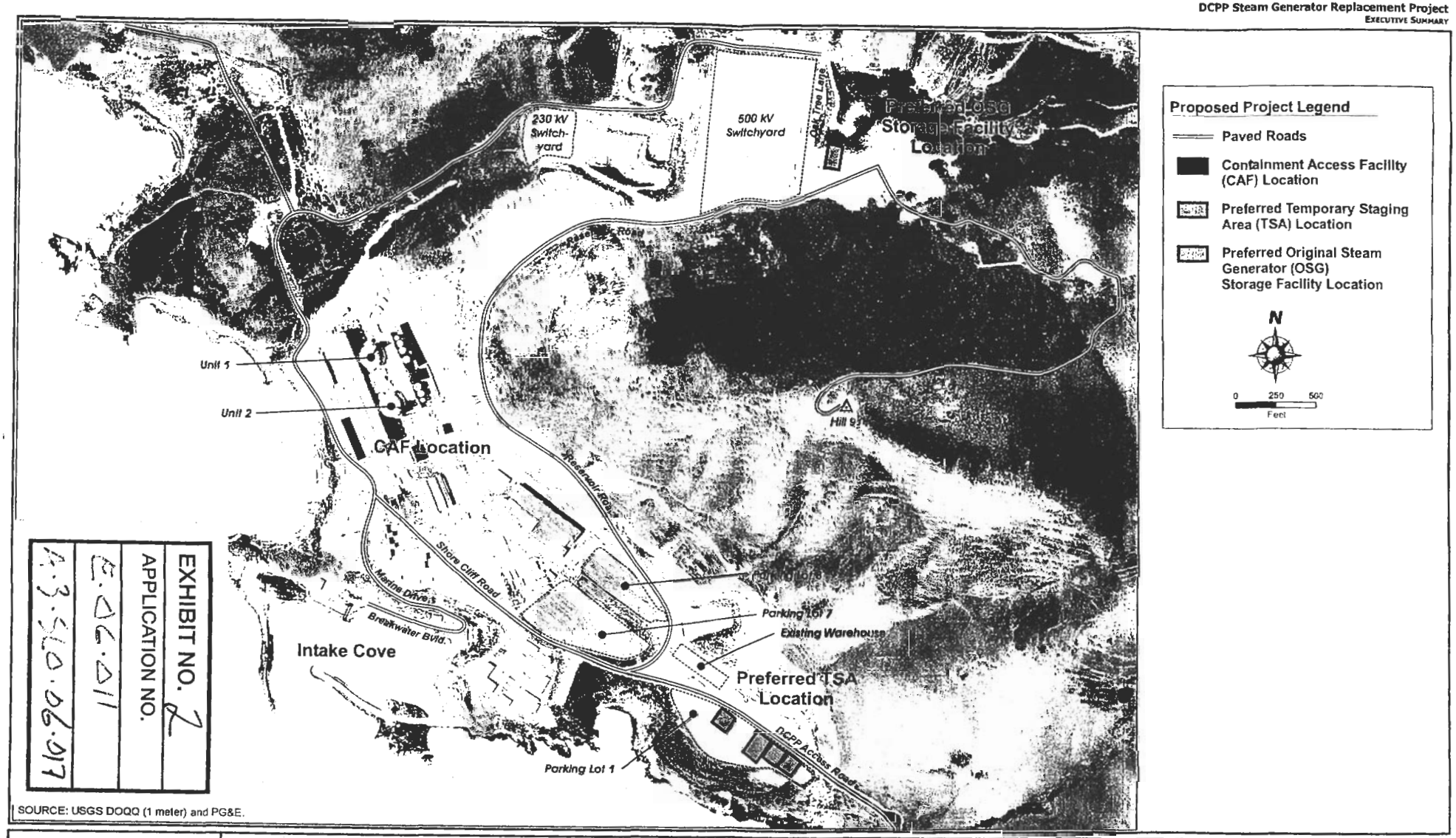


EXHIBIT NO. 2
APPLICATION NO. E.06.011
A.3.510.06.017

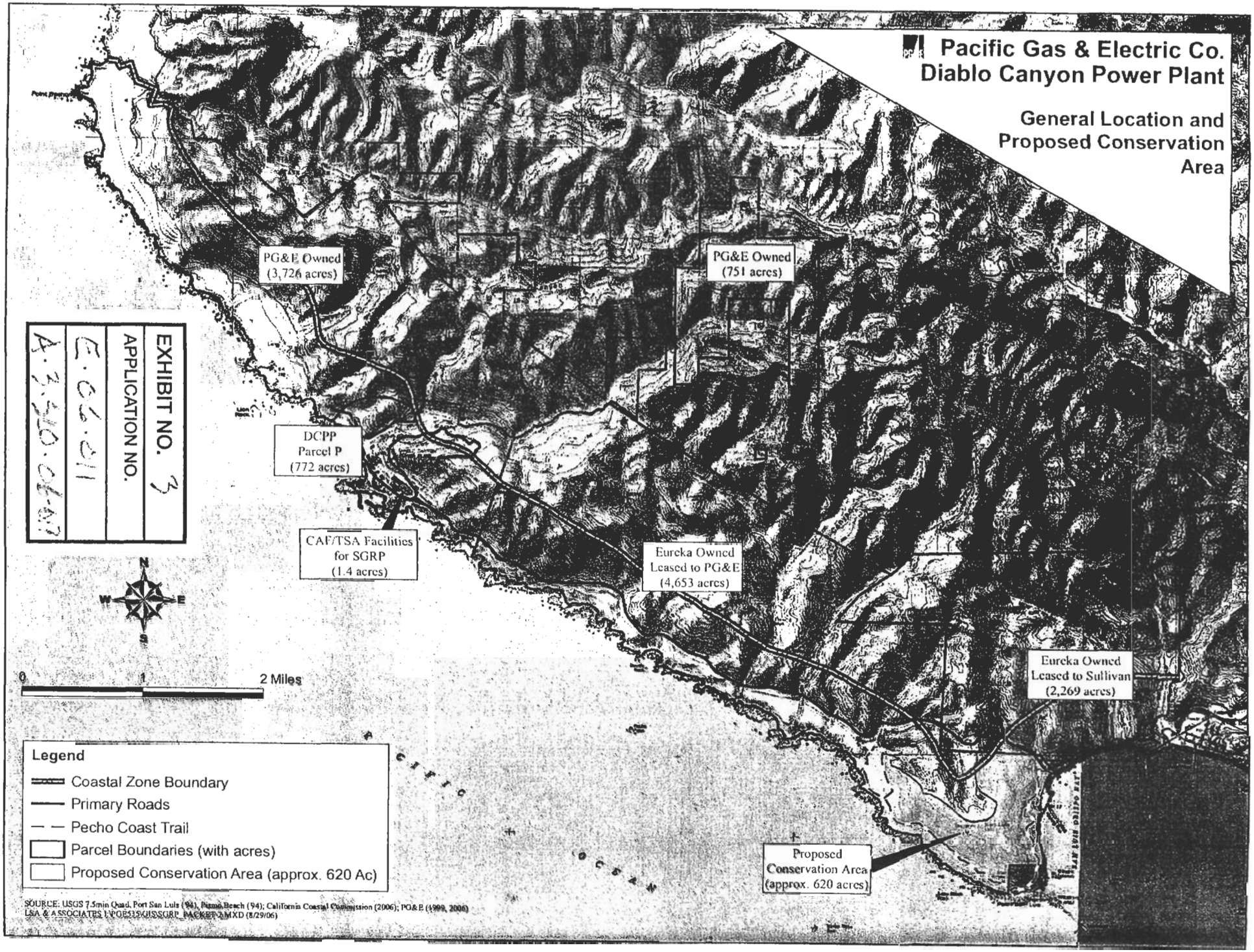
SOURCE: USGS DOQQ (1 meter) and PG&E.

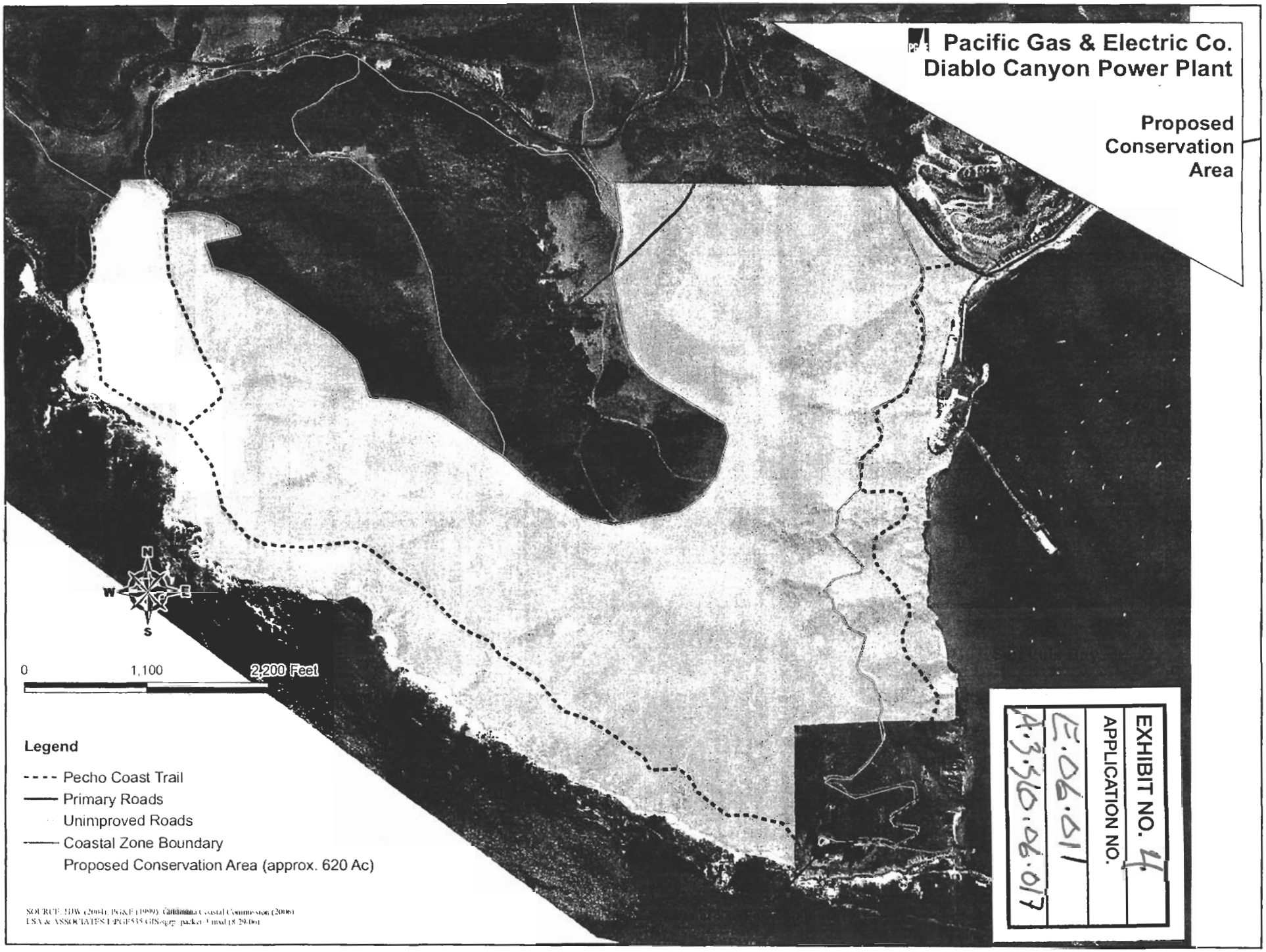
Aspen Environmental Group

Proposed Project

DCPP Steam Generator Replacement

Figure ES-2


Pacific Gas & Electric Co.
Diablo Canyon Power Plant
General Location and Proposed Conservation Area
PG&E Owned (3,726 acres)
PG&E Owned (751 acres)
DCPP Parcel P (772 acres)
CAF/TSA Facilities for SGRP (1.4 acres)
Eureka Owned Leased to PG&E (4,653 acres)
Eureka Owned Leased to Sullivan (2,269 acres)
Proposed Conservation Area (approx. 620 acres)
EXHIBIT NO. 3
APPLICATION NO.
E-06-011
A-3-SLO-06-020
N
W
E
S
0
1
2 Miles
Legend
Coastal Zone Boundary
Primary Roads
Pecho Coast Trail
Parcel Boundaries (with acres)
Proposed Conservation Area (approx. 620 Ac)
SOURCE: USGS 7.5min Quad, Port San Luis (94), Pismo Beach (94); California Coastal Commission (2006); PG&E (1999, 2006)
LSA & ASSOCIATES I:\PGE515\GIS\SGRP_PACKET-2.MXD (8/29/06)


Pacific Gas & Electric Co.
Diablo Canyon Power Plant
Proposed Conservation Area
N
W
E
S
0
1,100
2,200 Feet
Legend
Pecho Coast Trail
Primary Roads
Unimproved Roads
Coastal Zone Boundary
Proposed Conservation Area (approx. 620 Ac)
EXHIBIT NO. 4
APPLICATION NO.
E-06-011
4-3-56-06-017

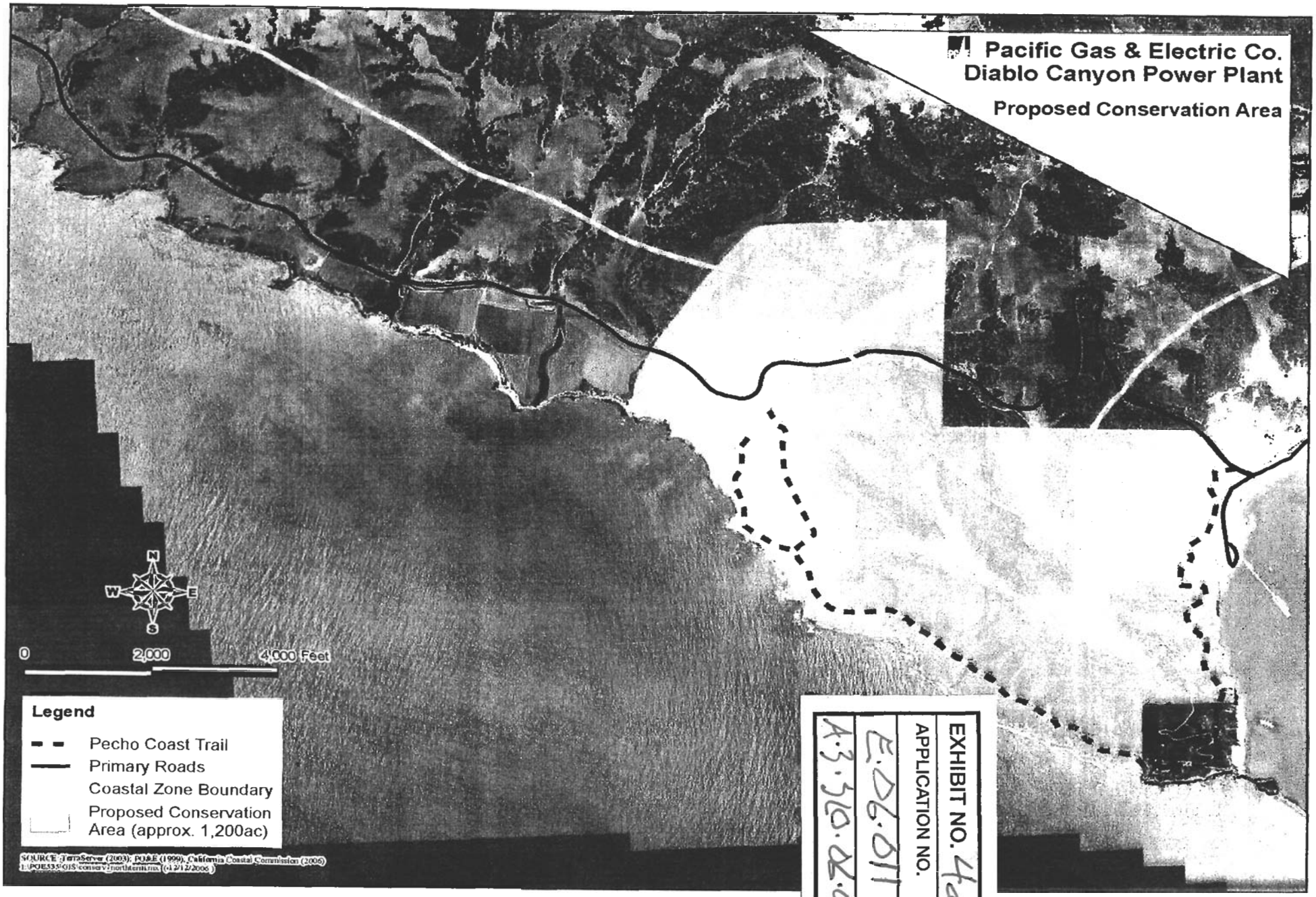


EXHIBIT NO. 4a
APPLICATION NO.
E-06-011
A-3-SLO-02-017

STATE OF CALIFORNIA

COASTAL COMMISSION

UNCERTIFIED DRAFT COPY

PACIFIC GAS & ELECTRIC CO. DIABLO CANYON NUCLEAR POWER PLANT; NORTH OF AVILA BEACH COUNTY OF SAN LUIS OBISPO	Appeal No. A-3-SLO-06-017 Application No. E-06-011

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Thursday
December 16, 2006
Agenda Items Nos. 6.a. & b.

Hyatt Regency Embarcadero
5 Embarcadero Center
San Francisco, California

EXHIBIT NO. 5
APPLICATION NO.
E-06-011
A-3-SLO-06-017

STATE OF CALIFORNIA

COASTAL COMMISSION

CERTIFIED COPY

PACIFIC GAS & ELECTRIC CO. DIABLO CANYON NUCLEAR POWER PLANT; NORTH OF AVILA BEACH COUNTY OF SAN LUIS OBISPO	Appeal No. A-3-SLO-06-017 Application No. E-06-011

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Thursday
December 16, 2006
Agenda Items Nos. 6.a. & b.

Hyatt Regency Embarcadero
5 Embarcadero Center
San Francisco, California

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4
5 COMMISSIONERS
6 Meg Caldwell, Chair
Patrick Kruer, Vice Chair
7 Khatchik Achadjian
William A. Burke
8 Larry Clark
Bonnie Neely
9 Steve Padilla
Dave Potter
10 Mike Reilly
Dan Secord, Alternate
11 Mary Shallenberger
Sara Wan
12 Michael Chrisman, Resources Agency
13
14 STAFF
15 Peter Douglas, Executive Director
Hope Schmeltzer, Staff Counsel
16 Matt Rodriquez, Deputy Attorney General
Tom Luster, Staff Environmental Specialist
17
18
19 -oOo-
20
21
22
23
24
25

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1 California Coastal Commission
2 December 14, 2006
3 Pacific Gas and Electric Company
4 Appeal No. A-3-SLO-06-017; Application No. E-06-011
5 * * * * *
6 2:10 p.m.
7 EXECUTIVE DIRECTOR DOUGLAS: ...so, with that,
8 unless there are other comments, what we are doing here, is
9 we are actually hearing a. and b. together, and I would like
10 to make some introductory comments here, and then turn it
11 over to Tom Luster, who is going to be making the detailed
12 presentation.
13 But, I think it is important for the Commission to
14 understand what is before you here today. And, I think, in
15 that context, it is important that the Commission realize
16 this is the first time that this Commission has had the
17 opportunity, with the legal authority, to review and act on
18 the Diablo Canyon Power Plant, with its major adverse impacts
19 to the environment. You have not had that ability before.
20 You heard yesterday from Dr. Raimondi, just how
21 vast the impacts are from this power plant, and that to
22 compensate for the impacts that have occurred so far -- just
23 that alone -- would require, approximately, 300 to 1,000
24 acres of new or restored marine habitat.
25 It is important to recognize that the adverse

1 impacts to the marine life and habitat are uncompensated, at
2 this point. There is no mitigation or compensation for those
3 impacts. And, the *Coastal Act* does require this Commission
4 to protect the biological productivity of coastal waters, and
5 that is the major issue that is before you.
6 The fact is that but for the replacement of the
7 steam generators at Diablo, this plant would have to shut
8 down in about 10 years, well short of its license period of
9 operation. The license period of operation is really
10 irrelevant to the Commission's role and responsibility here
11 today.
12 You have to look at whether this project, which
13 includes the intake and discharge of warm waters, with the
14 enormous destruction of marine life that accompanies that
15 entrainment -- as you heard yesterday in the workshop --
16 whether that can be approved.
17 The continued operation of the plant, as it now
18 is, continues without -- or as it now is the plant can
19 continue to operate without the Commission's approval. You
20 have no jurisdiction over that.
21 However, without this replacement of the steam
22 generators, without this replacement project, the plant will
23 have to shut down, and the adverse impacts to marine
24 environmental resources will end, as well as the cessation of
25 withdrawals from Diablo Creek with the impacts that has.

By approving this project, the Commission will be approving a development with significant adverse impacts to the coastal ocean, and again, you have to remember from yesterday's workshop, the larval impacts, the origin of the larvae that are drawn into the intake come from a very large area, and not just the cove outside, to which the intake pipe is connected, in fact, it is dozens of square miles. And, as I indicated, the water extraction from Diablo Creek has its own impacts.

The Commission could deny this permit due to the adverse impacts, but we don't recommend that given the importance of this facility. But, if it is approved, it is essential to mitigate the significant adverse environmental impacts through compensation, or offsets. That is what our condition, which is in contention here, is really all about.

The conservation easement, the staff is asking for, and recommending, is intended to, in part, offset those significant adverse environmental impacts that have not been compensated, and would not be compensated if you don't have mitigation attached to this. It covers the coastal water sheds, and insures that in perpetuity the area that included in the conservation easement remain as it is, and that land based discharges into the marine environment would not occur. That is a very significant provision. Obviously, that is the major one that is in contention, but I think it is really

1 important to understand what your authority is, and what you
2 can do here, and what is at stake.
3 So, with that, let me turn it over to Tom to make
4 the presentation. I may have some additional comments later.
5 ENVIRONMENTAL SPECIALIST LUSTER: Thank you, and
6 good afternoon Chair and Commissioners.
7 This item is a proposal by the Pacific Gas and
8 Electric Company to replace 8 steam generators at the Diablo
9 Canyon Nuclear Power Plant located north of Avila Beach in
10 San Luis Obispo County. Staff is recommending approval with
11 conditions of both the appeal permit from the county, and the
12 permit for activities within the Commission's retained
13 jurisdiction.
14 The main project related activities include
15 constructing 5 temporary buildings at the Diablo Canyon
16 complex, removing the existing generators from the power
17 plant, and transporting them to a storage site behind the
18 power plant, shipping new generators to the site by barge,
19 and then installing the new generators.
20 The project is needed because the existing
21 generators need to be replace due to their experiencing a
22 higher than expected rate of corrosion. The Nuclear
23 Regulatory Commission, or NRC, allows a certain level of
24 corrosion in the generators, but at the expected rate of
25 degradation the generators would create undue safety risks,

1 or significantly increased maintenance costs over the next
2 several years.
3 Without the project PG&E estimates that Diablo
4 Canyon would have to shut down by 2014, but with the project,
5 the power plant is expected to continue operating until at
6 least the end of its NRC license term in 2025.
7 PG&E contends that the project is exempt from the
8 Commission's permit requirements because the parts of the
9 project within the Commission's retained jurisdiction do not
10 consist of development, as defined by the *Coastal Act*. We
11 disagree. Staff has concluded that the proposed project
12 involves several types of development within the Commission's
13 jurisdiction that require Coastal Development Permit.
14 Along with the immediate activities associated
15 with the project, such as removing and replacing a temporary
16 dock, and causing runoff from the site into the sea, the
17 project will have longer term consequences due to it causing
18 the withdrawal and discharge of large amounts of sea water
19 for an additional 10 years that would otherwise not occur.
20 These activities are all considered development pursuant to
21 the *Coastal Act* and are subject to the Commission's permit
22 requirements.
23 PG&E also characterizes the proposed project as
24 repair and maintenance, and therefore believes that it should
25 be exempt from permit requirements. Again, we disagree. The

1 project involves replacing the existing generators, rather
2 than repairing them. The Commission's repair and maintenance
3 exemption does not apply to projects such as this one that
4 involves mechanized equipment and the placement and removal
5 of materials within 20 feet of coastal waters.
6 PG&E cites a 1978 policy statement adopted by the
7 Commission describing various repair and maintenance
8 activities that may be excluded from permit requirements;
9 however, that policy does not apply to projects that will
10 have substantial adverse effects on ESHA, such as this one.
11 And, in fact, that policy itself references the adopted
12 Commission's regulations as be applicable.
13 The proposed project has also not been considered
14 repair and maintenance during its prior environmental and
15 permit reviews. For example, in its role as lead CEQA
16 agency, the state PUC reviewed the project under full
17 environmental impact report, rather than the repair and
18 maintenance exemption available under CEQA. The
19 environmental review resulted in substantial mitigation
20 elements that go far beyond what could be required for repair
21 and maintenance projects.
22 Additionally, during the 2 years of the PUC's rate
23 setting proceedings, PG&E did not characterize the project as
24 repair and maintenance, but in fact provided testimony that
25 replacing the generators was different from repairing and

1 maintaining the generators.
2 Similarly, the county, in reviewing the project
3 under the LCP did not characterize the project as repair and
4 maintenance, but considered it a significant project
5 requiring substantial mitigation measures.
6 Despite its contentions about the proposed project
7 not needing a permit, being eligible for repair and
8 maintenance exemption, PG&E nevertheless submitted an
9 application for a Coastal Development Permit, which is the
10 subject of today's hearing, along with the appeal of the
11 county's permit.
12 The remainder of our staff presentation today will
13 focus on the mitigation necessary to address the proposed
14 project's impacts to marine biology, water quality, and
15 sensitive habitat.
16 As you know, Diablo Canyon's seawater cooling
17 system causes unmitigated, extensive, and significant
18 entrainment impacts to the local and regional marine
19 environment, and the proposed project would continue and
20 possibly exacerbate those impacts. As discussed in detail in
21 the staff report, and as you heard from Dr. Raimondi
22 yesterday, recent entrainment studies done at Diablo Canyon
23 show that the power plant causes substantial entrainment
24 impacts. Those adverse effects extend along about 50 miles
25 of shoreline, and cause a loss to marine life each year

1 roughly equivalent to that produced by 300 to 1000 acres of
2 rocky reef habitat. Without the proposed project, these
3 significant adverse effects would end about 2014, with the
4 project, they would continue for about an additional decade.
5 To address these adverse effects, staff reviewed
6 potential mitigation options that have a nexus to the
7 proposed project's impacts, and might be available to
8 mitigate at least some of those impacts. They include the
9 creation of artificial reefs, operation of a fish hatchery,
10 funding for marine reserves, and others. Many of these
11 mitigation options are under review by the Central Coast
12 Regional Water Quality Control Board, but they have not yet
13 been adopted, or required. Staff determined that many of
14 these options are infeasible, or would provide only limited
15 mitigation value.
16 Of the available options, staff concluded that the
17 conservation easement described in Special Condition 7, would
18 be feasible and would provide proportional and suitable
19 mitigation for some of the proposed project's impacts to
20 marine biology and water quality.
21 Staff determined the necessary size and scope of
22 this recommended easement by applying standard mitigation
23 sequencing methods, and mitigation ratios. Those methods
24 suggest that the conservation easement could actually be
25 somewhat larger than the recommended 9,000 and some acres;

however, staff believes that it would be infeasible to require PG&E to put under easement more coastal lands than it currently has.

The recommended conservation easement over about 9,000 acres is intended to maintain continued biological productivity and water quality benefits in near shore waters along about 10 miles of shoreline. The easement would also allow PG&E to continue and enhance its existing uses of this land, including open space, public access, sustainable coastal agriculture, and energy transmission.

Although the easement would provide mostly out-of-kind mitigation, it would result in clear benefits to the affected marine environment, both through protection of about 10 miles of the near shore environment, that is affected by the power plant's cooling system, and through water quality benefits and habitat protection in the nearby riparian and upland areas that are part of the affected coastal watersheds.

We note that similar mitigation approaches have been used in other recent power plant related projects. For example, the Energy Commission required wetland restoration for the offshore cooling water impacts at the Huntington Beach power plant, and its mitigation requirement at the Moss Landing power plant focused, primarily, on upland protection and restoration.

1 We also note that PG&E has previously agreed to
2 provide a similar easement over a portion of these same
3 Diablo Canyon lands as part of a draft settlement agreement
4 with the regional board. That easement was part of a
5 proposed mitigation package meant to address the power
6 plant's cooling system impacts, though neither the mitigation
7 package, or the settlement agreement, have yet been adopted
8 or required.
9 Nonetheless, PG&E's acceptance of that easement
10 provides additional confirmation of the nexus between the
11 proposed project's impacts and your staff's recommendation
12 conservation easement. Staff recognizes that this easement
13 represents a substantial mitigation measure, but also
14 recognizes that it is necessary, given the even more
15 substantial adverse effects that would be caused by the
16 proposed project.
17 Another issue of concern is PG&E's withdrawal of
18 water from Diablo Creek. The creek flows through the power
19 plant site, and although sections of it have been culverted,
20 it still provides valuable riparian habitat, and is
21 considered ESHA. It also represents historic steelhead
22 habitat, which may be eventually returned after
23 decommissioning and restoration to the power plant site.
24 PG&E obtained a water right in 1968, allowing it
25 to withdraw up to 34-acre feet per year from the creek, for

1 dust control during the power plant construction. PG&E now
2 uses the creek water to augment the water produced by the
3 desalination facility within the power plant, used to produce
4 high purity water needed for power plant operations. That
5 facility produces portable water by withdrawing up to 450
6 gallons per minute of seawater from Diablo Canyon's 2.6-
7 billion gallon per day cooling water flows.
8 Staff is recommending in Special Condition 5 that
9 PG&E stop its water withdrawal from the creek no later than
10 the start of commercial operation of the new generators.
11 This would provide PG&E the time to adjust its desalination
12 system as necessary. PG&E objects to this condition,
13 however, staff believes the condition is necessary because
14 the proposed project would result in about 10 more years of
15 these withdrawals, causing further harm to the creek.
16 Stopping the withdrawals provides a feasible
17 mitigation measure that results in direct environmental
18 benefits. The creek has highly seasonal flows, and dries up
19 during parts of the year, with some of its low flows
20 exacerbated by PG&E's water withdrawals.
21 We note that while 34-acre feet per year, or about
22 11-million gallons, is a substantial amount of water for the
23 creek and associated riparian system, it is a relatively
24 small amount of water compared to the power plant's water
25 use. For example, PG&E's entire annual allowable water

1 withdrawal from the creek represents about 6 minute's worth
2 of the power plant's cooling water flows. Additionally, on
3 an average daily basis, replacing the 34-acre feet withdrawn
4 from the creek would require only about a 5 percent increase
5 in the desalination facilities' current capacity.
6 The condition, therefore, is both feasible and
7 would result in avoidance in one of the proposed project's
8 adverse impacts to coastal resources.
9 In closing, staff is recommending approval of the
10 proposed project, along with conditions necessary to insure
11 its conformity to applicable *Coastal Act* provisions.
12 Finally, as noted earlier, you received an
13 addendum earlier today that includes some minor corrections
14 and clarifications to the staff report.
15 That concludes this part of staff's presentation,
16 and I am available for questions.
17 EXECUTIVE DIRECTOR DOUGLAS: Well, there was one
18 other modification to the staff report that we wanted to
19 make, and that was to add the following language -- well, it
20 would refer to property owned by PG&E, leased by the harbor
21 district, that abuts the northern edge of district property
22 on Harbor Terrace, that the transfer of that title to the
23 property, identified in the Port Master Plan to the district,
24 it would enable them and insure the availability of low-cost
25 visitor-serving uses, and this transfer would be of title.

1 It is my understanding it covers about 12 acres, and that
2 PG&E has no problem with adding that language.
3 Again, I want to reiterate the license for this
4 facility and operation of the facility is really irrelevant
5 to what you are dealing with today, because the reality is
6 what you are dealing with is that but for the approval of
7 these steam generators, this plant would have to cease
8 operating and its significant adverse environment impacts
9 would stop within about 10 years.
10 But, by virtue of approving this, you are saying
11 that they will be able to carry out a project with major
12 adverse environmental impacts on the biological productivity
13 in marine waters, which is directly your responsibility.
14 That issue has never been addressed before. This is the
15 first time you have had an opportunity to address that issue.
16 And, again, that is what you are looking at, because that is
17 the reality of the project that is before you.
18 I think that is it for the staff.
19 CHAIR CALDWELL: Let's have ex parte communi-
20 cations, please, starting on my right.
21 Commissioner Burke.
22 COMMISSIONER BURKE: Yes, I had a conversation
23 yesterday for about 30 seconds with Donna Andrews, who
24 indicated that they were in favor of the staff recommend-
25 ations, except for the size of the commitment.

1 COMMISSIONER REILLY: Madam Chair, I think all of
2 my ex partes are on file, with the exception of one
3 conversation here at the hotel, Tuesday evening, with Dave
4 Neish, who indicated to me that PG&E had determined that they
5 were going to, roughly, double the amount of land they were
6 offering as a voluntary dedication.
7 CHAIR CALDWELL: Thank you, Commissioner Reilly.
8 Commissioner Neely.
9 COMMISSIONER NEELY: Thank you, Madam Chair.
10 I had a conference call with Pat Mullens and Dave
11 Neish, on December 4, and also a conversation Wednesday
12 morning here at the hotel, went over the background
13 information in these two brochures that everybody received,
14 and talked about the voluntary conservation offer, and the
15 nexus issue.
16 CHAIR CALDWELL: Commissioner Secord.
17 COMMISSIONER SECORD: Thank you, Madam Chair.
18 On the 15th day of December I met with both of the
19 Neish's and we went over several things, the contention of
20 PG&E that this is repair and maintenance project, and that
21 the voluntary dedication of land to the coastal staff has
22 increased, and that, in their view, there was no nexus
23 between the request that they put a conservation easement
24 over a substantial amount of their acreage in return for this
25 permission to do this repair and maintenance project.

1 CHAIR CALDWELL: Commissioner Kruer.
2 VICE CHAIR KRUER: Yes, Tuesday afternoon, after
3 the hearing, I ran into Dave Neish, and my ex parte is the
4 same as Commissioner Reilly reported, and had to do with the
5 change in the offer they were making, and the conservation
6 easement.
7 CHAIR CALDWELL: Commissioner Padilla.
8 COMMISSIONER PADILLA: Yes, thank you, Madam
9 Chair.
10 On Monday, the 11th, I had conversation with Dave
11 Neish Sr. and Junior, and, substantially, exactly the same
12 substance and content as described by the previous
13 Commissioners.
14 CHAIR CALDWELL: Commissioner Clark.
15 COMMISSIONER CLARK: Thank you, Madam Chair.
16 On Tuesday evening I had a discussion with Pat
17 Mullens and both Neish's, substantially, again, the same as
18 has been reported by other Commissioners. They expressed
19 concern over the size of the proposed staff conservation
20 easement, but indicated some flexibility from their
21 perspective on that.
22 This morning I had a brief conversation with Mark
23 Massara concerning this item, and his concern about the
24 environmental impact of the plant going forward, and concern
25 over the size of the conservation easement being reduced from

1 what staff has recommended.
2 Thank you.
3 CHAIR CALDWELL: Commissioner Padilla.
4 COMMISSIONER PADILLA: Thank you, Madam Chair.
5 I had forgotten that earlier today, in the lobby,
6 briefly, I did have a conversation with Mark Massara, with
7 regard to this matter. He indicated that this was an
8 historic opportunity to achieve conservation easement on an
9 area that is, essentially, impacted by an ongoing operation
10 subsidized by rate payers.
11 CHAIR CALDWELL: Commissioner Kruer.
12 VICE CHAIR KRUER: Yes, just walking in the door
13 for the hearing, I ran into Mark Massara, and he had the same
14 discussion with me that Commission Padilla just reported.
15 CHAIR CALDWELL: Commission Achadjian.
16 COMMISSIONER ACHADJIAN: Thank you, Madam Chair.
17 My ex partes are on file with the exception that
18 today, this morning during my break, I had a conversation
19 with Ms. Moffatt who represents the Harbor District, about
20 the addendum that Mr. Douglas just introduced, and asking for
21 support.
22 This afternoon, I had a question to PG&E about
23 their property taxes, that was my approach, and that is what
24 is in my file. This is all new short meetings that took
25 place.

1 CHAIR CALDWELL: Are they current? just kidding.
2 All right, we will go to the public hearing then, if there
3 are no more ex partes to report.
4 Commissioner Chrismen.
5 COMMISSIONER CHRISMEN: Yes.
6 CHAIR CALDWELL: Any ex partes on this item, sir.
7 COMMISSIONER CHRISMEN: No.
8 CHAIR CALDWELL: All right, very good.
9 Then PG&E, your first speaker is Donna Jacobs, I
10 believe, and if you can state your name for the record, and
11 tell me how much your full presentation will be.
12 MS. JACOBS: Thank you, Madam Chair, I am Donna
13 Jacobs, Vice President Nuclear Services for Pacific Gas and
14 Electric at Diablo Canyon Power Plant. I would like to
15 request 20 minutes for prepared remarks, and another 5
16 minutes for rebuttal at the end.
17 CHAIR CALDWELL: All right, the appellant will
18 have the same amount of time.
19 MS. JACOBS: Thank you. So, good afternoon. I
20 would like to introduce, also, people that are with me today
21 from my team, Pat Mullen, Director of Government Relations,
22 also, Bob Exner, who is the Project Manager for the steam
23 generator replacement project. I would also like to thank
24 staff for their hard work over the last year and a half, as
25 we worked towards this hearing date, as well as the work we

1 have had on the north property, which talked about the status
2 earlier this morning, and we do, too, look forward to opening
3 up those properties.
4 I am pleased to support the staff recommendations,
5 except for special conditions that would impose infeasible
6 modifications to the security gate, a prohibition on Diablo
7 Canyon withdrawals from Diablo Creek, and most importantly, a
8 conservation easement of over 9,000 acres spanning nearly all
9 of PG&E's land.
10 In a moment I will touch upon those concerns, but
11 what I would like to do first is to give you some background
12 on the project.
13 The steam generator replacement project is
14 important to the State of California. Diablo Canyon produces
15 10 percent of all of the power generated in the State of
16 California. The plant provides low cost electricity for over
17 1.6 million homes and small businesses. And, the plant, as
18 we talked about relating earlier to the workshop that we had
19 this morning, the plant does not emit any greenhouse gasses.
20 We also have a large economic engine and impact
21 for the county and for the state. We have a total economic
22 impact in San Luis Obispo County of over $650 million
23 annually, and for the state, over $100 million with 1400
24 employees.
25 Concerning steam generators, when nuclear plants

1 were originally constructed it was thought that steam
2 generators would be able to last for the 40 year NRC approved
3 life of the plants. The steam generators have aged more
4 quickly than predicted, and this is not unusual for Diablo
5 Canyon. It is consistent with the nuclear industry, and in
6 fact, may nuclear plants, if not already replacing their
7 steam generators, have plans in place to replace their
8 generators.
9 The CPUC has approved this project. We have a
10 certified EIR through the CPUC, and that concluded that the
11 project would have no significant unmitigated impacts on the
12 environment. The county has also approved this permit for
13 the project.
14 The first CDP is for 5 temporary buildings. These
15 are to be placed on parking lots, and other previously
16 disturbed land. These buildings are to allow housing of
17 individuals coming in to support the project, as well as a
18 temporary location for the steam generators, before they are
19 installed in the plant, and then also support equipment that
20 would be used.
21 The second CDP is for the off-loading of the
22 replacement generators, and was submitted at the request of
23 Commission staff.
24 We have a few pictures here to give you an idea of
25 the steam generators, the size, and what it takes to install

1 them.

2 This is from the Callaway Nuclear Power Plants in
3 Missouri. They replaced their steam generators last fall.
4 You see a steam generator in the horizontal position being
5 lifted by a large crane. When in operation, these steam
6 generators are in a vertical location. It is in a horizontal
7 location to be able to be put in through the equipment hatch,
8 and that is similar to how we will enter those into
9 containment for Diablo Canyon. We have an equipment hatch
10 that those will go through.

11 This picture, this next one, is of the new steam
12 generators, when they were originally shipped to Diablo
13 Canyon, the ones that are in place now. In December of 1972,
14 they arrived via Avila Bay at a construction pier that was
15 put there, and ours will arrive similarly on a barge.

16 This is an overview of the proposed temporary
17 facility. The buildings that you see in blue would be placed
18 on an existing parking lot. The additional facilities you
19 see, the CAF, a containment access facility, is a facility to
20 allow workers to access the areas needed to replace the
21 generators, and is on a paved area that is just west of our
22 turbine building. By 2010, all of these temporary structures
23 will be removed, and the site will be returned to its current
24 condition.

25 Before I discuss concerns that we have with the

1 staff's conditions, I would like to explain why we believe
2 the project, and the off loading, are exempt and have no
3 significant impacts.
4 The steam generator project is an exempt repair
5 and replacement maintenance project under the local coastal
6 program and the *Coastal Act*. The exemption applies because
7 the plant's existing steam generators will be replaced, like
8 for like, with new steam generators. We have the same
9 specifications for the replacement steam generators as the
10 original ones. They will not produce any change in the
11 output, and they are also the same size. There were be no
12 expansion of the plant's development footprint.
13 While we filed the CDP application to cover the
14 off loading activities, we believe that these activities are
15 all exempt from the *Coastal Act* permitting requirements,
16 because, first, they are temporary activities. The event,
17 itself, of off loading one of these barges with four
18 generators will take, approximately, one week. The first
19 shipment will be in 2008, and the next will be in 2009. And,
20 we also believe it is exempt because it is part of the
21 overall repair and maintenance project.
22 Even if these CDPs weren't exempt, there are no
23 significant impacts. There is no loss of coastal access
24 because the facilities only are temporarily located in
25 central portions of the plant, which are already developed

1 and are close to public areas for safety reasons.
2 There are no other impacts to coastal resources
3 because they are constructed on paved lots, an improved
4 drainage plan will be followed to insure runoff is
5 controlled, and no grading is required.
6 There is no significant impacts to coastal
7 resources for the CDP for off loading either. There is no
8 impacts to marine resources because the barge carrying the
9 replacement steam generators will dock at existing mooring
10 points, and it will not touch the ocean floor.
11 There is no significant impacts to coastal
12 resources, due to the steam generator transport and
13 replacement. Again, it will occur on existing pavement.
14 There is no grading, and no terrestrial habitat will be
15 disturbed.
16 And, finally, under CEQA, the baseline is that the
17 operating plant -- and that there are no changes to the
18 baseline operations, especially as the result of these CDPs.
19 With that background regarding the project, I
20 would like to address our concerns with the staff's
21 recommendations. We still have significant concerns with 3
22 conditions, and I will address each one of those separately.
23 Special Condition 3, while PG&E stands by its
24 financial commitments to the county, and to the port, we do
25 have significant concerns about the new restrictions placed

1 on those funds by Special Condition 3. This restricts the
2 use of the funding to two infeasible measures, which are
3 moving the plant security gate, or constructing a road around
4 it. The condition also required PG&E to select one of these
5 infeasible options prior to steam generator delivery. Since
6 both options are infeasible, this would hold up delivery of
7 the steam generators.
8 These measures are infeasible because both would
9 require widening of the road. This would, in fact, effect
10 ESHA as designated by the Commission last month. It would
11 also impact cultural resources, and would require significant
12 land-form alteration.
13 We also note that there has been no environmental
14 impact assessment or agency approvals for these particular
15 improvements. We continue to believe that the better
16 alternative is using these funds for programs like enhanced
17 public access, which do not impact coastal resources.
18 Special Condition 5, PG&E has riparian rights to
19 withdraw creek water, and it has been doing so since the
20 1970s. While we do have a desalination plant, it does not
21 meet the needs of supplying all water needs for the plant.
22 In fact, approximately, half of the water the water that we
23 use each year comes from the creek, and that is on an annual
24 basis.
25 The plant's desalination facility does not have

1 sufficient capacity to provide all of the plant's water
2 needs, and it would need to be expanded, and this would
3 require up to $3 million in a capital expenditure, and a
4 monthly expenditure for operating costs.
5 Additionally, the creek withdrawal facilities are
6 located outside of the coastal zone, and that is outside of
7 the jurisdiction of this Commission.
8 We also see no nexus to project impacts. Creek
9 withdrawals are not affected by the steam generator
10 replacement project. The creek withdrawals will remain the
11 same before, during, and after the project. And, even if
12 continuing plant operations were subject to review, the staff
13 report fails to develop the required nexus and proportion-
14 ality for this condition, and the staff identifies no
15 significant impacts from the creek withdrawals.
16 Special Condition 7, we opposed Special Condition
17 7 for the following reasons: first, because the repair and
18 maintenance exemption applies, and exempts the project as a
19 whole from review. Second, the proper environmental baseline
20 is an existing operational plant, as defined in the final
21 certified EIR.
22 The steam generator reliability project will not
23 affect the plant's cooling water system. It will remain
24 unchanged before, during, and after the project, and impacts
25 from the cooling system are thus unrelated to the project.

1 Third, even if the Commission could consider
2 impacts from continuing plant operations, including cooling
3 water system impacts, Special Condition 7 lacks the required
4 nexus and proportionality to these impacts. Therefore, there
5 is no nexus. Conservation of upland habitat does not prevent
6 or lessen the impacts identified by staff, and this amounts
7 to an out-of-kind and offsite mitigation. There is also no
8 proportionality. Over 9,000 acres would far exceed the value
9 of cooling system impacts.
10 Although PG&E objects to this requirement, PG&E
11 does take seriously our commitment to conservation, coastal
12 access, and preservation of coastal resources, and so has
13 voluntarily committed to provide the county a generous
14 package of coastal access enhancements, and in connection
15 with this proceeding, we are offering even further
16 enhancements that I will touch on shortly.
17 So, in addition to the $1.8 million for the
18 coastal access enhancements, PG&E has also agreed to dedicate
19 public access easement over the lighthouse road, and we have
20 provide, approximately, $1.6 million worth of fire prevention
21 and response training and equipment.
22 Even though we believe that this project is exempt
23 and creates no impacts, because of the importance of this
24 project to the State of California, and the over 1.6 million
25 homes and small businesses that depend on our facilities,

1 PG&E is willing to offer the permanent protection of 1200
2 acres of pristine coastal property, including the entirety of
3 Port San Luis.
4 Now, we have nearly doubled our voluntary offer
5 from the 620 acres to 1200 acres. This increase was made
6 after careful consideration of the importance of the project
7 to the state, our commitment to our customers, to our
8 environment, and our shareholders, and our desire to gain
9 approval of the permits today.
10 This 1200 acres provides permanent protection
11 against development, and a permanent buffer around the
12 historic Port San Luis Lighthouse, and the Pecho Coast trail.
13 It compliments existing coastal access and conservation
14 opportunities that PG&E has already provided.
15 And, I am also pleased to offer that any
16 agricultural operations on these 1200 acres will use
17 sustainable agricultural practices in accordance with
18 approved stewardship plan.
19 We also believe this provides PG&E with an
20 opportunity to demonstrate our long standing commitment to
21 protecting the environment, promoting land conservation, and
22 supporting the local community. And, we also believe that
23 this permanently protects one of the most significant views
24 and features on the central coast.
25 To get an idea of what this is we have a map, and

1 this map shows the boundaries of PG&E's 1200-acre
2 conservation proposal, shaded in green. It also shows, with
3 more detail, the location of the Pecho Coast Trail, which is
4 the red dotted line which follows the coast, and it also
5 shows the buffering around, and provided to the lighthouse.
6 At 850 times the size of the area where the temporary
7 facilities will be located, PG&E is voluntarily offering a
8 significant amount of land for permanent conservation.
9 At this time we want to show a video of this land.
10 I think it is really important to understand just how
11 pristine this is. And, I might mention that those who want
12 to see it may want to move to this side of the room, in order
13 to get a good view.
14 So, if you will go ahead and start it, please.
15 [Video Presentation]
16 This is a view of the proposed conservation area,
17 looking from Shell Beach and Highway 101 across Avila Bay.
18 The entrance to the plant is over on the right, and the Pecho
19 Trail is also over there, and the lighthouse will be on our
20 left, just around that corner, and we will see it
21 momentarily.
22 Here, we are flying south viewing a portion of the
23 proposed conservation area that faces the ocean, with the
24 Pecho Coast Trail just crossing the bluffs -- you can just
25 see that. It is quite a gorgeous view from this direction,

1 and even better from the other direction.
2 We are now showing the Port San Luis Lighthouse,
3 which, of course, is a destination along the Pecho Coast
4 Trail, and as you can see, it has got some incredible views,
5 as does most of the trail, itself.
6 Now, we will start to swing across Avila Bay, and
7 as we do we will start to see the entrance for the plant. As
8 we come in here, if we could go ahead and freeze it. I know
9 there has been some discussion from the staff about their
10 concerns about widening the road.
11 And, the portion that was declared ESHA at last
12 month's committee meeting is the portion that is right to --
13 so it is this portion right here, that comes over to the
14 south side, this portion that comes to the south side of the
15 access road, and back over to the north side is where we see
16 significant impacts to that land, as well as potential
17 impacts to some of the cultural regions in that area.
18 If you would go ahead and push "play" it will take
19 us down by the plant access, to the security gate, and also
20 to where the trail leads.
21 Here is a view of one of the roads going in,
22 another -- you will see it a single lane, quite steep in some
23 areas, and turns, quite a bit.
24 And, here you are going to start to get an idea of
25 the kind of vistas that you will see along the trail. This

one looks across. It was Pismo Bay over to the dunes, and then back over to the west.

And, in this last shot, we are flying east over Avila Bay, looking, again, at the proposed conservation. There is the trail etched along, and then even behind that, you see the road that is there. And, it is, simply a beautiful area, and one that we are happy to make part of this voluntary package.

Honorable Commissioners, I thank you for your time, and on behalf of PG&E, our customers, I urge you to approve this project today. My team and I are happy to answer any questions you may have, thank you.

CHAIR CALDWELL: Thank you.

Next, we will go to the appellant. There is an organized presentation, starting with Andrew Christie, then Morgan Rafferty and Mark Massara.

EXECUTIVE DIRECTOR DOUGLAS: And, Madam Chair, if I may point out, as I forgot to mention it at the beginning, that our staff report was in error, in terms of who could testify. Since this is a de novo hearing, anybody who is interested in this matter, can testify today, and the question of who is an appellant and who is not is really not relevant for the public hearing, but he is an appellant.

CHAIR CALDWELL: Mr. Christie, how much time do you intend to take?

1 MR. CHRISTIE: Me, personally?
2 CHAIR CALDWELL: No, your entire group.
3 MR. CHRISTIE: No more than 15 minutes.
4 CHAIR CALDWELL: Okay, I note that you are
5 entitled to 20 to 25, but I did speak with Mr. Massara and he
6 thought you would only need 15 --
7 MR. CHRISTIE: sure, fine.
8 CHAIR CALDWELL: -- and that is fine.
9 And, for all other individuals who have signed
10 speaker slips, you will each have 2 minutes, thank you.
11 MR. CHRISTIE: Good afternoon, Honorable
12 Commissioners. My name is Andrew Christie. I am Chapter
13 Director for the Santa Lucia Chapter of the Sierra Club, and
14 I am speaking today on behalf of our 2500 members in San Luis
15 Obispo County.
16 Throughout the past year the writing has been
17 increasingly clear on the wall for the future of once-through
18 cooling for coastal power plants in California, and the
19 nation. Draft, or final resolutions of the state Water
20 Resource Control Board, the State Lands Commission, the
21 California Energy Commission, the Ocean Protection Council,
22 and its member agencies have made clear that state policy
23 will shortly be foreclosing of use of this technology.
24 The impacts of this project are not primarily from
25 the removal and replacement of the generators, but the impact

1 of facilitating the operation of a power plant beyond the
2 year 2014, the point at which the impacts would otherwise
3 cease.
4 As your staff report states, the proposed
5 project's ongoing withdrawal of over 2 billion gallons per
6 day of the habitat provided by seawater does not allow it to
7 maintain biological resources, or sustain the biological
8 productivity of coastal waters, as is required by *Coastal Act*
9 *Section 30230*, neither does its use of ocean water conform to
10 the requirement of the adverse effect of entrainment be
11 minimized, as is required by *Coastal Act Section 30231*.
12 The only way the proposed steam generator
13 replacement project could conform to these requirements would
14 be through avoiding the use of once-through cooling. Thus,
15 the state's top elected and appointed officials have agreed
16 that this antiquated technology needs to be phased out.
17 They concur with your staff that once-through
18 cooling causes significant devastating impacts to
19 California's coastal ecosystems. We concur with staff's
20 finding that the compensatory mitigation options that were
21 considered as part of the Regional Water Board's review, have
22 largely not been adopted due to infeasibility, due to the
23 lack of a nexus between the cooling system's impacts and the
24 mitigation benefits, or because the options need substantial
25 further study, before their value or appropriateness as

1 mitigation can be determined.
2 That merits closer examination, in terms of the
3 decision before you today, and the resolution of those issues
4 is crucial, and highly problematic.
5 In *Surfrider Foundation v. U.S. EPA*, Phase One,
6 concerning the use of once-through cooling for new power
7 plant, the *Second Circuit U.S. Court of Appeals* ruled that
8 restoration measures are plainly inconsistent with the *Clean*
9 *Water Act*. The court added that:
10 "Restoration measures, however beneficial
11 to the environment have nothing to do with
12 the location, the design, the construction,
13 or the capacity of cooling water intake
14 structures because they are unrelated to
15 the structures themselves. Restoration
16 measures correct for the adverse environmental
17 impacts of impingement and entrainment, they
18 do not minimize those impacts in the first
19 place." end quote.
20 The court concluded that the EPA exceeded its
21 authority by allowing compliance through restoration methods,
22 and remanded that aspect of the rule.
23 The decision in the Phase Two case, concerning
24 existing power plant, is expected next year. It is unlikely
25 that it will greatly differ from the prior decision.

1 The Regional Water Quality Control Board has
2 elected to await the outcome of this case, before approving
3 PG&E's NPDES permit, and proposed mitigation. The Coastal
4 Commission should follow the Regional Board's example and
5 exercise the same prudence before considering approval of
6 this permit.
7 The Commission should not consider permitting this
8 project until the State of California and the *Second Circuit*
9 *Court of Appeals* have decided the fate of Diablo Canyon's
10 cooling system, whether its adverse environmental effects
11 are, indeed, minimized to the maximum extent feasible, and
12 whether this project is, thereby, exempt from its multiple
13 inconsistencies with the *Coastal Act*. As none of those
14 decisions have yet been made, a decision on this permit today
15 is premature. However, should the Commission decide
16 to act today, we urge you to insist on a bar to withdrawal of
17 water from Diablo Creek, and the full mitigations required in
18 the staff's recommendation of Special Condition 7, as your
19 staff found it is the primary remaining feasible option of
20 the scale needed to address the SGRP's cooling water impacts,
21 a conservation easement over the nearby Diablo Canyon lands.
22 As noted, this is an out of kind, and offsite
23 mitigation, and as protection from development it has low
24 current value as mitigation, since the land cannot be
25 developed for as long as the plant operates, and continues to

1 do substantial and increasing harm to the coastal
2 environment. Its mitigation value is long term, after the
3 end of the plant's operating life, as protection for the
4 watershed that is critical to the health of this coastal
5 environmental.
6 Should you choose to decide this matter today, the
7 conservation of these 9,130 acres is the only proportionate
8 level of mitigation available to you. Nothing else will do.
9 Thank you.
10 CHAIR CALDWELL: Thank you, sir.
11 Next speaker.
12 MS. RAFFERTY: Good afternoon, Chair,
13 Commissioners, my name is Morgan Rafferty. I am the
14 Executive Director of the Environmental Center of San Luis
15 Obispo. I am here today in my capacity as the project
16 manager for the Mothers of Peace intervention in PG&E's
17 application for ratepayer funding for this project with the
18 PUC.
19 San Luis Obispo's Mothers for Peace is one of the
20 two left organizations that have filed an appeal with San
21 Luis Obispo County's decision --
22 CHAIR CALDWELL: Ms. Rafferty, if I could just
23 stop you for a second.
24 MS. RAFFERTY: Um-huh.
25 CHAIR CALDWELL: Can you pull that mike closer to

1 you, and just speak a little more slowly.
2 MS. RAFFERTY: Okay.
3 CHAIR CALDWELL: Thank you.
4 MS. RAFFERTY: The Mothers for Peace began work on
5 this issue when PG&E applied to the CPUC for ratepayer
6 funding for replacement of the steam generators.
7 In our work as interveners in the case, we brought
8 expert testimony on seismic concerns, terrorism risk, and
9 aging plant components, among other issues.
10 We are a local group that has been a legal
11 intervener for over 3 decades of controversy concerning the
12 construction, licensing, and operation of the Diablo Canyon
13 Nuclear Power Plant. The Mothers for Peace have been
14 involved in litigation in public hearings that have addressed
15 a variety of issues, including operating licenses, seismic
16 safety, county emergency response plan, high level radio
17 active waste storage, extension of operating licenses, rate
18 structure, and deregulation.
19 The Mothers for Peace generally concerns itself
20 with issues of peace, social justice in a safe environment.
21 We have reviewed the staff report in detail, and
22 have found that the report is closely reasoned with well-
23 supported conclusions. We have also found that the concerns
24 for coastal access and resource management are far outweighed
25 by the extension of the operating life of this potentially

1 dangerous industrial facility.

2 The utility has managed to incrementalize the
3 decision making process on three important coastal
4 development decisions. The first was the independent spent
5 fuels storage facility, that is now under construction. In
6 fact, the Mothers for Peace were forced to file suit in
7 federal court over the NRC's lack of analysis of the security
8 risks for that project. Mothers for Peace was victorious in
9 the *Ninth Circuit Court of Appeals* on that case.

10 The next incrementalized decision is before you
11 now. The replacement of the steam generators will allow the
12 plant to operate for, at least, an additional 10 years, and
13 through an anticipated license renewal period. Instead of
14 finding ways to extend the life of this aging and outdated
15 nuclear power plant, we should be looking at ways to replace
16 the energy production in a way that is safer for all of us.

17 Yet, a third incrementalized decision will be
18 coming up soon, and in PG&E's current PUC case, PG&E has
19 asked the ratepayers to fund a $19 million study focused on
20 potential relicensing of the plant. To date, 23 license
21 applications have been approved nationwide by the NRC. They
22 have not yet denied an application for relicensing.

23 This type in incrementalized decision making
24 process is destructive to the normal comprehensive coastal
25 planning approach used for other major coastal development.

1 In seeking to partially correct this incrementalized
2 approach, your staff has acknowledged that steam generator
3 replacement will lead to the extended operation of this
4 facility. The extended operation will lead to the continued
5 impacts to the marine environment, and public health and
6 safety.
7 Your staff's approach is consistent with the
8 comments from numerous agencies and organizations that
9 reviewed and commented on the PUC's draft EIR for this
10 project. The County of San Luis Obispo, your Commission, the
11 Port San Luis Harbor District, the California Department of
12 Forestry, and local Citizen Advisory Council, all asked for
13 the PUC to acknowledge that this project would extend the
14 plant's operating life. But, the PUC refused to acknowledge
15 the proper baseline. We applaud your Commmission's correct
16 approach to this issue.
17 It is very telling and understandable that your
18 staff was unable to find mitigation that adequately addresses
19 the marine impacts of the continue operation of this
20 facility. The conservation easement on the 9130 acres seems
21 to be the best of very poor options to mitigate the myriad
22 impacts from the ongoing operation of a nuclear power plant.
23 The easement should be recognized as the very
24 least that PG&E can do to address the impacts of the plant's
25 operations. We are impressed with your staff's nexus and

1 rough proportionality analyses in support of the conservation
2 easement. The analyses closely parallels both the county and
3 Coastal Commission nexus and rough proportionality analyses
4 prepared for the independent spent fuel storage facility.
5 We especially support the mitigation ratio of 30:1
6 but want to see it recognized that nothing short of cessation
7 of plant operations could even begin to mitigate for all of
8 the damage caused by the plant's operation to date.
9 We are also pleased to see that the staff report
10 calls for improved access to the lighthouse, the funding for
11 public access as requested by the county, the cessation of
12 withdrawals from Diablo Creek, sustainable coastal
13 agricultural practices, and best management practices to
14 reduce the impacts of cattle raising in the Coon Creek
15 watershed.
16 County residents showed their support for a
17 conservation easement over the Diablo Canyon lands in 1999
18 with 75 percent of voters approving the dream initiative.
19 The proposed conservation easement is consistent with that
20 initiative.
21 In conclusion, we suggest that you consider denial
22 of these permits based on the substantial and ongoing marine
23 impacts from the continued operations of the plant.
24 If you approve these permits, please include all
25 of your staff's recommended conditions. These conditions,

1 including the conservation easement of over 9000 acres of
2 Diablo Canyon lands, could not possible mitigate for all of
3 the damage caused by the operations of a nuclear power plant
4 on our coast line. These conditions are the very least you
5 can do, to reduce all of the negative impacts of the plant
6 operations.
7 Thank you.
8 MR. MASSARA: Madam Chair, Commissioners, I am
9 Mark Massara, and I direct the Sierra Club's Coastal
10 Programs.
11 We strongly urge the Commission to account for the
12 immeasurable, catastrophic, unending marine coastal resource
13 and terrestrial damages associated with the ongoing and
14 future operations of PG&E's Diablo Canyon Nuclear Power
15 Plant.
16 By approving this permit without lessening, or
17 stripping it of the mitigations and proposals from your
18 staff, you will dramatically improve public access and
19 prevent future development of nearly 10,000 acres of pristine
20 wildlife and agricultural habitat, and coastline adjacent to
21 the plant.
22 And, just like you saw before lunch, with the
23 spectacular trail located north of the plant, which PG&E
24 fought strenuously before you two years, ago, we believe that
25 some day, should you follow staff's recommendation, today,

1 both you and PG&E will be proud of your accomplishments, and
2 that these legal posturing and threatening letters that you
3 are receiving from PG&E today will amount to nothing.
4 The question before you today is not the size of
5 the impacts, they are gigantic, beyond description, and will
6 plague the coast of this state, our resources, our fisheries,
7 and our future generations for thousands of years.
8 The question for you is what is fair? Of course,
9 closing the plant yesterday would help. In lieu of that, we
10 urge that you respond to the will of the public, and not the
11 lobbyists of PG&E, and do something that will protect the
12 public and coastal resources forever, by insuring this
13 special place is not developed like the lands surrounding the
14 San Onofre Nuclear Power Plant. Anything less sells the
15 public short. And, make no mistake, it is the millions of
16 members of the public, the ratepayers, who have invested
17 billions of dollars in the Diablo Canyon plant, it is the
18 millions who deserve your support at this time, and make no
19 mistake, what land is left unprotected at the end of the day,
20 is at risk for development. It is not the public or the
21 ratepayers who will benefit from development of this
22 property, but investors, stockholders, and lobbyists, and
23 executives.
24 And, make no mistake, this is a once in a lifetime
25 opportunity. If we fail to require this mitigation now,

1 today, it will slip through our fingers like sand and be lost
2 forever.
3 Just yesterday, this Commission praised your staff
4 for its excellent success in the public education programs,
5 with respect to the clean beaches and coastal conservation
6 efforts underway under your name. You were proud, and that
7 pride and success carries with it expectations that you will
8 follow through and seize historic opportunities to
9 permanently protect our coast for future generations, and not
10 bow to lobbyists or developers.
11 Follow through today, is what we urge you to do.
12 Don't speculate or cower in response to PG&E's legal threats.
13 Let your attorney general support your decision, supporting
14 what is best for the public and the coast.
15 Your staff urges you to follow through today.
16 Today, California's leading environmental organizations urge
17 and ask that you follow through -- and, we will submit this
18 letter from California's largest environmental organizations
19 for your review.
20 Today, members of the public, and PG&E ratepayers
21 from throughout California urge that you follow through, and
22 we'll submit over 325 letters from throughout California
23 today urging that you follow through, and do this little
24 favor for future generations, to mitigate and compensate for
25 the massive unending damage associated with the operation of

1 Diablo Canyon.
2 Please protect all of PG&E's Diablo Lands, not a
3 fraction, not a part, not half, but all.
4 Thank you.
5 CHAIR CALDWELL: Thank you, sir.
6 Next speaker is -- and I'll read a couple of
7 speakers at a time, so that you can get ready and come up to
8 the microphone in a more efficient manner.
9 Carolyn Moffatt, then Craig Kreowski, then Susan
10 Devine.
11 MS. MOFFATT: Good afternoon, Madam Chair and
12 Commissioners. I am Carolyn Moffatt. I am president of the
13 Port San Luis Harbor Commission.
14 The district supports the goals of the Coastal
15 Commission and PG&E in development of a plan for increased
16 public access to the coast. We acknowledge and appreciate
17 the pro-active development of mutually acceptable conditions
18 by PG&E and the inclusion of the transfer of properties
19 leased to the harbor district, as amended by your staff, as
20 well as lot line adjustments along the Diablo Road.
21 I thank you very much for this opportunity to
22 address issues of coastal access. We are coming very close
23 to realizing the potential to implement our master plan that
24 you approved last month.
25 Thank you, very much.

1 CHAIR CALDWELL: Thank you, Ms. Moffatt.
2 MR. KREOWSKI: Madam Chair, Commissioners, it is
3 pleasure to be before you today.
4 CHAIR CALDWELL: Your name for the record.
5 MR. KREOWSKI: Brian Craig Kreowski, Port San Luis
6 Harbor Commissioner. It is a pleasure to be before you
7 today. I didn't address at our local coastal plan update;
8 however, at that meeting there was much recognition of the
9 need for increased access to the lighthouse, and many of the
10 pictures and photographs that you saw presented here today
11 were of facilities that are out at Port San Luis.
12 We encourage the Commission to adopt staff's
13 recommendations. There has been a lot of collaborative work.
14 PG&E is to be commended, relative to the work on the
15 mitigation suggested.
16 The one that I would like to address specifically
17 though, is the access -- the van access that is being
18 suggested. We would like the allocation of those funds to
19 the district, and that they not be earmarked specifically for
20 the purchase of a van, but rather they could be allocated
21 towards van access, such as ride-on, or some other
22 alternative, giving flexibility in the access, and also
23 giving flexibility to those parties who are implementing the
24 access.
25 Secondarily, but not specifically to the

1 mitigation suggested. If there is continued discussion about
2 entrainment and impacts, I would also like the Commission to
3 consider some of the existing programs and necessities for
4 research relative to MPAs. CalPoly San Luis Obispo has a
5 facility at Port San Luis. We have existing programs like
6 central coast salmon enhancement. We also have marine
7 science education programs which are established and
8 recognized, tidepool treasures, and a number of outreach
9 programs that are very beneficial to the community.
10 So, I don't mean to diminish staff's assessment of
11 that, but if those are considered, I would suggest the
12 Commission keep an eye on those, as well.
13 Thank you.
14 CHAIR CALDWELL: Thank you.
15 Ms. Devine, then Robert Vessely, then Carl Dudley.
16 MS. DEVINE: Madam Chair, Commissioners, good
17 afternoon. I am Susan Devine from San Luis Obispo. I will
18 confine my comments to the mitigation on this project,
19 specifically, that which affects the Port San Luis light
20 station.
21 As a board member and current vice-chair of the
22 Port San Luis Lighthouse Keepers, I remain vigilant in my
23 efforts to make this special site available to the public.
24 Collaborative efforts in the last year, between
25 the lighthouse keepers, Port San Luis Harbor Commissioners,

1 the Avila Valley Area Council, and PG&E, has resulted in the
2 proposed mitigation items in Condition 3, for which we are
3 pleased.
4 In Condition 3.a.2. a contribution of $300,000.00
5 is offered, quote: to remove barriers to the coastal access.
6 The primary barrier is, of course, the gate to the nuclear
7 power plant, which precludes access to the lighthouse without
8 following PG&E's protocols. Bypassing the gate would allow
9 visitors to the 26-acre coastal site without crossing this
10 armed site.
11 I speak now as an individual, and I am not a
12 developer, and I am not an engineer. I don't know how far
13 $300,000.00 will go towards removing this barrier, but I will
14 say that PG&E's gate must be bypassed, so that a private
15 corporation no longer controls the ability of the public to
16 visit our lighthouse.
17 And, no matter what anyone tells you, and no
18 matter how easy PG&E may have made it for you to visit the
19 site, when I go to Diablo's gate with visitors, I must always
20 exit my vehicle, I must cross the area of the road to FAX
21 documents to the watch commander for PG&E, in front of a
22 guard, knowing that a an automatic weapon is one finger away
23 from being used. Plus, I have to leave my visitors
24 unattended in a vulnerable situation. It is never a warm and
25 fuzzy experience. And, all of this to visit a lighthouse

1 that is funded by local tax dollars, and owned by the public.
2 I urge you to support moving the PG&E gate so the
3 public's right to access the coast is not impeded by a
4 private corporation, and we can move forward in our vision to
5 include access to the light station by all of the public.
6 Thank you, very much.
7 CHAIR CALDWELL: Thank you, Ms. Devine.
8 Mr. Vessely.
9 MR. VESSELY: Good afternoon, Madam Chair and
10 members of the Commission. I am Robert Vessely, and I am a
11 member of the Port San Luis Lighthouse Keepers Board.
12 I am here today to say that I support the
13 conditions that have been proposed by the staff on this
14 project, but I just have one concern about those, and that
15 has to do with the dollar amounts in Special Condition 3.
16 I know these conditions get a little overlapped
17 with the dry cast storage project that you heard a
18 presentation on earlier, but I am fully confident that the
19 staff can straighten these out.
20 My concern is that the dollar amounts that are in
21 the report were developed more than a year ago, and as I am
22 sure many of you are aware construction costs have gone up
23 quite substantially in recent years.
24 I suggest a couple of options here, one would be
25 to raise the amounts in there by 15 or 20 percent across the

1 board, and another would be -- which I think is a more
2 equitable solution, since the idea of these measures is to
3 open the coast for access, would be to remove the dollar
4 amounts from small Roman numeral "i" and double "ii" and just
5 require PG&E to build a road and to reconfigure the gate.
6 We have an idea of what the road project is,
7 because the plans have been prepared. They are now being
8 reviewed by the county, and I think they are just about to
9 have a building permit for that construction, so it is not an
10 open-ended project.
11 One of the things, with regard to the gate, I am a
12 licensed civil engineer, practiced here in the State of
13 California for 25 years. I have reviewed the site of the
14 gate. I have reviewed the topography of that area. I have
15 reviewed the layout of utilities of that area. And, to say
16 that it is infeasible to reconfigure that gate, I found to be
17 less than credible.
18 Thank you, very much.
19 CHAIR CALDWELL: Thank you, sir.
20 Stu Jenkins, Henrietta Groot, and Patricia
21 Wilmore.
22 MS. DUDLEY: Good afternoon, Madam Chair,
23 Commissioners. My name is Carl Dudley. I am a resident of
24 San Luis Obispo County, and I am here today to speak in favor
25 of the applicant's amended version.

1 PG&E has proven over the years to be an excellent
2 steward of the coastal land in question. Delays may end up
3 in a deal that is not as beneficial to our community, and at
4 the very least, we have a diminishing value due to the
5 increased costs for their time.
6 San Luis Obispo County, and the region's economy,
7 are hanging in the balance. The loss or curtailment of jobs
8 would have a very negative impact on our communities in our
9 area. PG&E has been a good neighbor and friend to our region
10 by offering numerous grants to a wide range of nonprofit
11 organizations, encouraging their employees to give back to
12 the communities through volunteerism, and preserving the
13 lands and vistas surrounding the power plant.
14 I believe there is a true understanding by the
15 executive management and staff of PG&E about their
16 responsibilities, not only for the safe operation, but also
17 the environment surrounding the plant.
18 Thank you for your attention. I urge you to
19 approve the permits with the modifications that have been
20 suggested, thank you.
21 CHAIR CALDWELL: Thank you, sir.
22 Next speaker.
23 MR. JENKINS: Good afternoon, I am Stu Jenkins,
24 San Luis Obispo, California.
25 When I was a Cub Scout in San Luis Obispo, there

1 were twice as many cows as people, and we hiked out to the
2 lighthouse, and we hiked out to the area that is now offered
3 by PG&E as a conservation easement. We didn't have a gate
4 with a 50-caliber machine gun preventing us from going. And,
5 even though there is a public park now, owned by the public
6 at the Point San Luis Lighthouse, only about 40 people a week
7 get to go to their public park.
8 It is very important to have open access for the
9 public to Point San Luis, and what I would suggest to you is
10 that the condition for access is not met by creating a
11 conservation easement. It does preserve, but it does not
12 replace the access that is lost for the next 760 million
13 years where the plant is, to the public.
14 So, it is important, I would suggest that this
15 Commission take a look at my submission of July 25, and grant
16 public ownership as a condition to what is now offered by
17 PG&E as a conservation easement.
18 It is important that there be enough funding for
19 the completion of the road to the lighthouse, in order to
20 open access to the public, and replace the access that was
21 lost to those of us who could hike out there as kids, and
22 can't go out there now because of the gate.
23 It is important to move the gate. It is not
24 infeasible. It may be more expensive, but there is a perfect
25 location for moving that gate right behind Pecho Creek. It

1 is much more defensible. It makes for a more secure plant.
2 And, it opens public access to the public's coast.
3 Thank you, very much.
4 CHAIR CALDWELL: Next speaker.
5 MS. GROOT: Good afternoon, my name is Henrietta
6 Groot. There are many issues involved here.
7 I want to point out that I believe the two most
8 important issues are that, one, we may have an endless stream
9 of spent fuel parked on our coast, as a result of -- as a
10 distant result of today's deliberations.
11 And, the second, very important issue is that of
12 the marine impacts. And, I want to thank staff for the
13 excellent report, and for pointing out these important
14 impacts.
15 Now, what do I think we should be doing? I think
16 we should be requiring PG&E to switch over to renewable
17 energy, which they claim they are working on, anyway. We see
18 the ads on the television. There is no reason PG&E couldn't
19 start to have acres and acres of solar panels on the grounds
20 at Diablo, and wind turbines would be excellent in that
21 location, too. The more of those renewables could be used the
22 less the power plant -- the nuclear plant would be to run,
23 and the impact on the marine environment would be less and
24 less.
25 Thank you, very much.

1 CHAIR CALDWELL: Thank you, Ms. Groot.
2 Patricia Wilmore is next, then Joseph Haraburch,
3 Scott Raty, and then Heidi Finberg.
4 And, I note that there are a number of speakers
5 from different Chamber of Commerce. If you are going to be
6 repeating each other, we are not going to be very happy about
7 that. So, if you can try not to repeat each other, or just
8 stand up and say, "I endorse what the previous speaker just
9 said," that would be fine, thank you.
10 MS. WILMORE: Thank you. As a matter of fact, I
11 am Patricia Wilmore from the San Luis Obispo Chamber of
12 Commerce.
13 I think that my perspective will be somewhat
14 unique.
15 CHAIR CALDWELL: Well, I chose you first, for a
16 reason.
17 MS. WILMORE: Thank you, and that is as part of
18 the County of San Luis Obispo, and an important part, our
19 organization is the oldest non-profit membership organization
20 in the county.
21 I think it is only fair to show you another side
22 of what the public in San Luis Obispo County thinks. You
23 have heard a somewhat impassioned plea about protecting us,
24 about protecting the land, et cetera, as if we all think of
25 PG&E and Diablo Canyon as some boogieman in our midst.

1 Well, the fact of the matter is many of us do not
2 feel that way. Our chamber members demand balance. What
3 they demand from us is not just economic vitality and
4 support, they demand environmental support, as well. The
5 tell us that our community exists on the foundation of the
6 quality of life.
7 We have been long time opponents of offshore oil
8 drilling. We have supported the Cariso Plain National
9 Monument [sic.]. We are environmentalists, as much as a
10 Chamber of Commerce ever will be.
11 So, we hope that your decision today will be a
12 balanced one, and that would be to approve the permit, which
13 our county has said is good. It meets county land use
14 standards. It does not result in disturbance of the site,
15 that you will approve that you will accept the very generous
16 offer that PG&E has made, 1200 acres is a wonderful advantage
17 for our county. Access to the lighthouse is a wonderful
18 advantage.
19 And, we believe that working together in our
20 county is much better than pulling apart. So, please approve
21 this, thank you.
22 CHAIR CALDWELL: Thank you.
23 Next speaker.
24 MR. EDWARDS: Joe Haraburta, who is with the
25 Oakland Chamber of Commerce, unfortunately, had to leave. I

1 am also with that -- combine two chambers into one time slot.
2 CHAIR CALDWELL: Okay.
3 MR. EDWARDS: So, I am Reed Edwards, chairman of
4 the Oakland Chamber of Commerce, representing 1400 rate paid
5 PG&E businesses in the Oakland area.
6 And, I just wanted to say that I would like the
7 Commission to support the PG&E application, and its voluntary
8 mitigation efforts.
9 I must say it seems to me that they have gone a
10 long ways towards this. They have already gone through a
11 CEQA process, that requires them to mitigate any environ-
12 mental impacts, and for the Commission then -- as was
13 mentioned by the staff -- to use this opportunity for steam
14 generator replacement to go after PG&E for yet mitigations
15 that have absolutely nothing whatsoever to do with the
16 project.
17 In my mind, this puts them into some kind of
18 mitigation double jeopardy, which I, frankly, find offensive,
19 and so I would strongly encourage you to, not only, approve
20 the project, but approve PG&E's voluntary efforts.
21 Thank you.
22 MS. EDWARDS: My name is Merlin Edwards, and I
23 represent over 400 African-American businesses in the east
24 bay.
25 This is the type of investment that we should be

1 encouraging, the steam generation project. It is a huge
2 investment in California's beleaguered infrastructure. We
3 need updated power plants, and this permit will help and
4 continue securing large amounts of clean energy for our PG&E
5 customers.
6 We all need dependable power. This permit will
7 allow for the plant to continue making the power we all count
8 on. If this permit is not given, where we will get our lost
9 power. Diablo Canyon is an important part of a diversified
10 energy portfolio for California. The citizens of California
11 cannot afford to lose this power.
12 So, we in the African-American Chamber of Commerce
13 urge you to approve this permit.
14 Thank you.
15 CHAIR CALDWELL: Thank you, both of you.
16 Next speaker.
17 MR. RATY: Madam Chairman, Commissioners, Scott
18 Raty, Hayward Chamber of Commerce. And, I absolutely respect
19 your desire to get out of here sometime today.
20 I don't want to be repetitive. I'll just make a
21 couple of quick points, absolutely, in agreement with prior
22 speakers from Chambers of Commerce. I am also joined in the
23 back with San Leandro Chamber of Commerce representatives.
24 We have over 800 member firms, who employ over 35,000 bay
25 area residents.

1 And, I just want to add to what they have said, in
2 terms of -- with all due respect to staff's viewpoint on it,
3 it is a maintenance and repair project. At times, it makes
4 more sense to replace rather than a repair. And, we all do
5 that, but on much simpler levels than this one is. This is a
6 far more complex project, but it is a matter of maintenance
7 and repair.
8 California's energy situation is far from being
9 great -- and why is this guy from Alameda County up here,
10 when this is down in San Luis Obispo County? We have been
11 leading advocates in our own backyard for two energy
12 projects, one recently approved, the Russell City Energy
13 Center, several years ago, and then a small direct grid
14 backup plant that is currently in the process. We think it
15 makes great sense for California and for businesses to
16 proceed in this direction.
17 Thank you.
18 CHAIR CALDWELL: Thank you, sir.
19 MS. FINBERG: Good afternoon, Heidi Finberg,
20 representing the government affairs committee for the San
21 Leandro Chamber of Commerce.
22 CHAIR CALDWELL: I apologize for mispronouncing
23 your name. Sometimes I don't read these slips as well as I
24 can.
25 MS. FINBERG: Just like it sounds, Finberg.

1 Anyway, thank you, very much for allowing us to speak today
2 on behalf of small businesses.
3 San Leandro has been, and continues to be a
4 heavily industrial town. We count on our industrial
5 businesses to contribute to the quality of life in San
6 Leandro. And, having efficient cost-effective energy is
7 essential for us to continue to do business in our city and
8 in our state.
9 PG&E has been a wonderful partner with business
10 through the years. We appreciate all that they have done to
11 continue to allow us to stay in the state, and to not have
12 our businesses having to move to Nevada and other states that
13 offer opportunities to operate less expensively.
14 I encourage you to approve their application. I
15 think coming forward with the land offers they are making for
16 coastal preservation is extremely generous and much more than
17 many public utilities have offered to do.
18 And, we encourage you, on behalf of small business
19 to approve their application.
20 Thank you.
21 CHAIR CALDWELL: Thank you.
22 Reed -- and I apologize, I can barely read the
23 last name, something like Edmunds, or Belmont -- pretty
24 pathetic on my part, I know. It is somewhere in between
25 those two. This is from the Oakland Chamber of Commerce.

1 [No Response]
2 Kris Hunt.
3 [No Response]
4 David De Lange.
5 MS. HUNT: Hi, mine was easy on you, right? Hi, I
6 am Kris Hunt, and I am the executive director of the Contra
7 Costa Taxpayers Association, and our 300 members are both
8 users and big supporters --
9 CHAIR CALDWELL: Can you pull the mike closer to
10 you, please.
11 MS. HUNT: I can do that for you.
12 We are not one of those taxpayers organization who
13 opposes all taxes or bonds. That is our reality check. You
14 need that to run a good government. And, your reality check
15 needs to be to that. This is a repair and maintenance issue,
16 despite what -- and I will admit that I was quite shocked at
17 the staff report, that somehow this is a chance to get PG&E.
18 You have the rule of law here, and what this is is
19 a maintenance project, a repair, and you need to look at it
20 from that point of view.
21 And, the reality is they don't need to have all of
22 these mitigations that the staff is suggesting are required.
23 They made very generous offers, as part of this permit
24 process, and that should be taken into consideration, and go
25 forward with it -- go forward and accept the permit.

1 This facility provides 10 percent of California's
2 power, and to suggest that it could be shut down casually is
3 just insane, in terms of what it would do to our environment
4 -- our fiscal environment, and our other environment, as
5 well.
6 So, I suggest that you do go ahead, accept the
7 permit with the requirements that PG&E has suggested, and go
8 forth generously, and take those 1200 fabulous acres, and
9 enjoy them.
10 Thank you.
11 CHAIR CALDWELL: Thank you.
12 I just want to make it clear that no one is
13 suggesting that the plant be shut down.
14 MS. HUNT: I know, but some people were suggesting
15 that it be shut --
16 CHAIR CALDWELL: David De Lange.
17 MR. DE LANGE: David De Lange, Coalition to Save
18 the Marina.
19 This one has my head spinning in circles. There
20 are values that conflict within the left and right, but when
21 it comes to the staff's recommendation, the Coalition to Save
22 the Marina certainly supports the staff recommendation for
23 these beau coo acres of conservation easement, and many other
24 public benefits the staff has managed to put together in
25 order to make sort of a replacement offer, or effort, for the

steam generators at Diablo Canyon, somewhat more palatable. It is somewhat more palatable to me.

I don't have some of the adverse responses because I don't have the favoring of renewable sources of energy as an alternative as a value, or a thing that I think is wise.

My reading of this is that the Coastal Commission does not have much say, to begin with, in not approving this application, which is different than possible actions to continue the plant operations, relicensing that comes up in the future. So, it is pretty impressive the amount of conservation easements that has been proposed here, and apparently is agreed to by PG&E.

My head spins, though, you know, because of the general issue of nuclear energy, and its conflicts with other things. This is on the coast. It is using water in a way that I hate, resources in a way I hate seeing them used. If this were almost anywhere else, I would be much more in favor of it, but because it is fissionable energy, and it does promise, if expanded as a thought, a plan for the survival of civilization over the next hundreds of years, until we can get fusion in place, and then in the longer run along with the replaceable resources, I have to stay with the idea of nuclear fission. I just wish it weren't sitting, plunked on the coast.

Thanks.

1 CHAIR CALDWELL: Thank you, sir.
2 Walt Mankins, Baha Horari, and then David
3 Weinsoff.
4 MR. MANKINS: Hello, Commissioners, this is my
5 first time before you, very humbled, and very proud to speak
6 before you.
7 CHAIR CALDWELL: Your name for the record, sir.
8 MR. MANKINS: My name is Walt Mankins, and I am a
9 member of the Operating Engineers Local No. 12. I am here
10 today representing the Tri-Counties Building and Construction
11 Trades Council, and that encompasses Ventura, Santa Barbara,
12 San Luis Obispo Counties.
13 I just wanted to come right up front and tell you
14 guys that we urge you people to please endorse this project
15 in its entirety. I was asked to come up today because Steve
16 Weiner, the executive secretary could not make it, couldn't
17 be present, but I am here as the president's representative
18 to ask you guys to do that.
19 We have worked very closely with PG&E for many
20 years. It has been my experience that PG&E has done their
21 utmost best to be fair, to not only the community, but its
22 members. Their safety factor is what is out there at their
23 plant is just beyond belief. We have no injuries. People
24 are happy to go out there.
25 We are seeking, all of the time, to have local

1 jobs for our members. We have thousands of members. I know
2 Local 12, alone, there are over 24,000 members. I can't
3 speak for all of the other crafts, but they are just beyond
4 belief.
5 I mean, they have -- a lot of these people depend
6 upon Diablo to bring money home to their families so that
7 they can stay in the community to raise their families. If
8 it wasn't for Diablo, a lot of these members would have to go
9 elsewhere, and they could give a damn about the coast,
10 because they couldn't be here to enjoy it.
11 PG&E is bending over backwards. I mean, it is
12 just unbelievable to me what they are giving up, what they
13 are allowing. People talk about the lighthouse, it is a
14 wonderful thing, it really it. You can have access to it.
15 Because the environment -- this is me speaking --
16 because the environment we are in today, with the terrorism
17 and all of this, I don't know how many of you have been there
18 to get in. I don't know where they would put the entrance to
19 that thing, to be safe to get in, for the entrance. They
20 have a very good vantage point to see.
21 CHAIR CALDWELL: Sir, can you sum up?
22 MR. MANKINS: Yes.
23 My point being, as a representive for very, very
24 many union and members, we all urge you guys to please push
25 this process through. Let's get it done, and go on to

1 another topic. You know, we need this energy. We need this
2 project to go through.
3 Thank you.
4 CHAIR CALDWELL: Thank you.
5 Next speaker, Mr. or Ms. Horari, Committee on Jobs
6 -- I am sorry about that.
7 MR. HORARI: You said the name beautifully,
8 though.
9 CHAIR CALDWELL: Okay, good.
10 MR. HORARI: Thanks for having us, Madam Chair,
11 Commissioner. My name is Baha Horari. I am with the
12 Committee on Jobs, which is a San Francisco business
13 association. We represent the larger employers in the city,
14 employing thousands of San Franciscans and folks from the bay
15 area.
16 CHAIR CALDWELL: Can you pull that mike closer to
17 you, please.
18 MR. HORARI: I know that a lot of folks touched on
19 a variety of issues, and I don't want to take up too much of
20 your time, but if I could just touch on a few.
21 The first is, I guess the point I wanted to make
22 is that PG&E went through the process here at the local
23 level, at the county level. They received a letter from the
24 California PUC stating that there were no unmitigated impacts
25 with this project. Now, given that, we are talking about a

1 power plant that provides 10 percent of the state's power, 20
2 percent of PG&E's power, this is a significant project.
3 There is a significant stake here.
4 So, given that, given the *Coastal Act* exclusion,
5 which PG&E is under, their repair and maintenance, we, too,
6 believe that this is a repair and maintenance project.
7 Replacing a cog in a machine, so to speak, certainly is --
8 and I can't imagine a situation in which a corroded
9 generator, which is being replaced, would not be -- at the
10 exact same specifications, with the exact same output, could
11 not be considered maintenance. By definition, I see that as
12 maintenance and repair of the generator.
13 So, I guess my last point -- not to take too much
14 of your time -- is that the easement is the last issue, and
15 9,000 acres does seem to be quite a large area of land, given
16 the impacts that this will have. PG&E is putting all of
17 their buildings on their own parking lots. The easement will
18 not span that much. It does seem unreasonable, hopefully we
19 can come to resolution.
20 Thank you.
21 CHAIR CALDWELL: Thank you, sir.
22 Mr. Weinkoff, then Angela Haren, Jill Buck, then
23 Conner Everts.
24 MR. WEINSOFF: Good afternoon, David Weinsoff --
25 CHAIR CALDWELL: Oh, thank you.

1 MR. WEINSOFF: -- please, been happening since 2nd
2 grade.
3 I am the attorney for the Coastal Law Enforcement
4 Action Network, and the Wetlands Action Network, for Marcia
5 Hanscom, who could not be here today, and asked me to appear
6 on her behalf and read this into the record.
7 CLEAN and WAN strongly support the staff
8 recommendation to approve these permits with the conditions
9 that staff has detailed. While we would prefer to see this
10 plant closed, we recognize the limitations that the
11 Commission has in this matter, and we think that an
12 appropriate tradeoff today are the conservation easements,
13 and public access provisions that will, at a minimum,
14 compensate the public for some of the incredible and terrible
15 impacts this nuclear power plant has had on the natural
16 environment, and on our California coast.
17 According to Marcia Hanscom, who has served on the
18 Sierra Club's National Board of Directors, the Diablo Canyon
19 Nuclear Power Plant approval was the single biggest mistake
20 the Sierra Club ever made ahead of, perhaps, the more well
21 known compromise made with the damming of the beautiful and
22 irreplaceable Glen Canyon Dam.
23 Many people don't know that David Brower once,
24 already having made the mistake of not visiting Glen Canyon
25 before he signed it away, vowed to never again do such a

1 thing, and once he visited the gorgeous Diablo Canyon coast-
2 line reversed his thinking on this treasure. If he were here
3 today, Brower would be importuning us to close down Diablo
4 Canyon. Of course, that is not before the Commission, and
5 will not occur.
6 What we do want to see, however, is that the
7 public access provisions and the conservation easements that
8 are recommended by staff are implemented. We do not think
9 they are too extensive. We think, in fact, that they are
10 barely large enough, given the impacts of the proposed
11 activity in this permit.
12 We applaud the staff, thinking outside of the box
13 in seeking mitigation measures that serve to compensate the
14 public for its virtual loss of this stretch of coastline for
15 so long.
16 We strongly support the staff's recommendation
17 here today.
18 Thank you.
19 CHAIR CALDWELL: Thank you, sir.
20 Next speaker.
21 MS. HAREN: Good afternoon, Chair Caldwell and
22 Commissioners. I am Angela Haren, Programs Manager for the
23 California Coast Keeper Alliance. The alliance represents 12
24 water keeper programs spanning the entire coast from the
25 Oregon border to San Diego.

1 I am here today to express our strong support for
2 the staff recommendation to acquire a conservation easement
3 and to prohibit further withdrawals from the Diablo Creek.
4 These are critical steps towards reducing some of the
5 significant and ongoing harm that the Diablo Canyon plant
6 causes to our ocean and coastal watershed habitat.
7 Additionally, the alliance, and in particular the
8 San Luis Obispo Coast Keeper would like to note that while
9 the PUC evaluated several project alternatives during the
10 CEQA review for this project, no adequate analysis of
11 conversion to an alternative cooling technology was
12 performed.
13 Diablo Canyon uses once-through cooling, as you
14 know, an antiquated technology that needlessly devastates our
15 precious marine resources. Numerous federal and state
16 agencies have acknowledged these impacts, the EPA has banned
17 it use at new facilities, both the Ocean Protection Council
18 and the State Lands Commission, have unanimously agreed that
19 OTCs harmful impacts should be phased out across the state,
20 and the state water board is currently in the process of
21 determining a state policy at its existing facilities.
22 Although, it is often mistakenly referred to as
23 infeasible, it is absolutely possible to convert once-through
24 cooling nuclear facilities to alternative cooling
25 technologies. These alternatives should not be dismissed as

1 infeasible before carefully examining all of the options.
2 The technology to convert nuclear facilities is
3 not new. To put in perspective the Palisades nuclear plant
4 in Michigan, converted from once-through cooling to closed
5 cycle wet cooling in 1974. The EPA refers to this conversion
6 in detail in the *Clean Water Act 316(b) Phase 2* Technical
7 Development document, the site for which I can provide to
8 staff.
9 The Ocean Protection Council is currently
10 conducting a feasibility study on alternative cooling
11 technologies for coastal power plants. We encourage the
12 Commission to engage the staff, particularly with regards to
13 nuclear facilities in that.
14 So, in closing, we strongly recommend that you
15 support the staff's recommendation in its entirety, and we
16 encourage you to do the necessary reviews of alternative
17 cooling technologies.
18 Thank you.
19 CHAIR CALDWELL: Thank you.
20 Next.
21 MS. BUCK: Good afternoon, Madam Chair,
22 Commissioners, my name is Jill Buck, and I am the founder and
23 executive director of the largest environmental education
24 program in the country, the Go Green Initiative. We operate
25 in 29 states, and our motto is very simple. We want to

1 protect children's health through environmental stewardship.
2 And, that is why I appreciate PG&E so very much, because they
3 continuously strive to increase their portfolio of clean
4 energy solutions, and decrease our dependence on fossil fuel
5 fired plants.
6 You know, I was interested to see that part of
7 this appeal came from Mothers of Peace. I have three
8 children. I am a Mom, and I would love to see peace, and I
9 think that part of that is the decrease our dependence on
10 foreign oil. And, I also feel that emissions' free energy
11 gives a lot of peace of mind to Mothers who have children
12 with asthma, as I do.
13 I believe that the opposition to this permit is
14 disconnected from the permit, itself, and is rather an
15 editorial on the plant. There is no nexus. There has been
16 shown to be no significant environmental impact associated
17 with the permit, and I feel that the motication behind the
18 mitigation suggested is punitive and malicious, treating PG&E
19 as though it is the enemy, instead of being a tremendous
20 partner in securing a reliable, sustainable, and clean energy
21 solution for California's future. It seems to be nothing
22 more than milking a corporation that has been a tremendous
23 partner to the Governor and the Legislature with respect to
24 conservation issues.
25 It is my hope that you will approve the permits,

1 and that you will see PG&E's offer as very generous, as it
2 is, and accept it as they proposed.
3 I appreciate your time. Thank you, very much.
4 CHAIR CALDWELL: Thank you.
5 And, lastly, Mr. Everts.
6 MR. EVERTS: Thank you, very much. Connor Everts,
7 Executive Director of the Southern California Watershed
8 Alliance.
9 So much as been said already. I would like to
10 say, simply, you have a unique opportunity here to return a
11 tiny bit of what was the public trust, where we once thought
12 of industrializing the coast, and to open up public access.
13 In addition, even though I am in opposition to the
14 next item -- which I am waiting to get to on desal -- there
15 is an opportunity here to return a flow to Diablo Creek and
16 potentially restore steelhead trout, which is my life-long
17 ambition to the south. It cannot be done if the central
18 coast isn't protected as well.
19 So, I hope you take the staff's recommendations
20 for mitigation as a unique opportunity to just give us a
21 small bit back.
22 Thank you, very much.
23 CHAIR CALDWELL: Thank you, sir.
24 PG&E, it is now time for rebuttal if you feel the
25 need.

1 MS. JACOBS: Thank you, Madam Chair. Donna Jacobs
2 for PG&E. I want to address just a couple of points.
3 First, as mentioned in Commissioner Achadjian's ex
4 parte, he said that he had asked PG&E a question about a
5 conservation easement, and would this conservation easement,
6 or its size, reduce local property tax revenues. We have had
7 a chance to talk with our tax attorney on this, and I have a
8 response that I would just like to go ahead and state that
9 now.
10 In the response that we found was that anything
11 that encumbers or reduces the value of the land should be
12 reflected in the property tax value of the underlying fee
13 interest. And, in short, yes, there would be a reduction in
14 property tax revenues.
15 I would also like to talk just a moment about the
16 plant's security gate. It has gotten a lot of discussion,
17 and I know there is concern about widening the road, and I,
18 too, as an engineer had looked at that, and I know that there
19 could be an engineered solution for that; however, the
20 concern, and the reason it becomes infeasible is the
21 boundaries that are set on both sides of that road. So, if
22 you go immediately to the south, you have ESHA, which the
23 Commission had declared last month, so we are not able to
24 widen to that side. If you go to the north, you have
25 cultural habitat, and it would take extreme land reformation

in order to move towards that, but with the cultural habitat, it would be infeasible in that direction, either. So, that is the basis for making that infeasible.

And, I would just like to summarize by saying that even though we believe the project is exempt, and it creates no impacts, because of the importance of the project to the State of California, and to the 1.6 million homes and small businesses of the folks that we provide electricity to, I do ask that you accept our offer to permanently protect 1200 acres of beautiful coastline, as we saw.

And, I also ask that you approve the CDPs for this important project today, thank you.

CHAIR CALDWELL: Thank you, very much.

We are going to take a 12-minute break right now, before we come back to the staff response.

We are in the middle of a public hearing on this, therefore we would ask that no one approach any of the Commissioners on this item during the break.

We will resume at 4:00 o'clock sharp.

[Recess]

CHAIR CALDWELL: Staff, if you would like to begin your response.

EXECUTIVE DIRECTOR DOUGLAS: Yes, Madam Chair, and before I turn it back to Tom for a number of responses that we prepared, let me just repeat some observations I made

1 before.

2 For one thing, I want to make it clear that the
3 staff is not recommending denial of this permit. We
4 recognize the importance of this power generating station,
5 and even though I think the Commission has the authority to
6 deny this permit, we are not recommending that, and we are
7 not talking about shutting down the plant.

8 We have, and we intend to continue to work well
9 with PG&E. I think they have been very cooperative over the
10 last many years, and are working together, and I think that
11 we share a common vision for the future of this remarkable
12 reach of California coast, which is to continue power
13 generation to provide public access that is managed, and for
14 public recreation and educational opportunities, to continue
15 environmentally sustainable agriculture, and the conservation
16 of the natural resources on this land.

17 The argument that the baseline that you ought to
18 be looking at here, in terms of impacts is what was licensed.
19 That just, simply, doesn't apply to your application of the
20 *Coastal Act*. That may be for the purposes of the EIS that
21 the PUC looked at, but that is not for purposes of the
22 *Coastal Act* because if you do that, the applicant is asking
23 you, basically, to ignore what, in fact, is going to happen
24 on the ground and in the water, because but for this permit,
25 the intake and discharge of large volumes of water would stop

1 within 10 years, or so.
2 This permit will allow the facility to
3 significantly impact the biological productivity of our
4 coastal waters. That is the reality, on the ground, in terms
5 of what you are being asked to do. But, for this permit,
6 entrainment of marine organisms would cease. There is no
7 mitigation for the negative impacts to the environment that
8 will result from this permit, if the staff recommendation is
9 not adopted.
10 The conservation easement does provide some
11 compensation for these adverse impacts, and from our
12 perspective the nexus between the adverse impacts of
13 entrainment, which you heard a lot about yesterday, in terms
14 of the extent of it, and as we indicated, to compensate for
15 the loss marine life that is resulting from the intake and
16 entrainment of marine organisms here would require in the
17 neighborhood of 300 to 1000 acres of created, or restored,
18 marine habitat. That is for the annual loss of marine
19 resources.
20 The conservation easement here does provide
21 compensation, and is a direct nexus, directly tied to
22 environmental impacts.
23 It is not -- and I want to point out, a lot of
24 people said, "Gee, you are asking PG&E to give up this land."
25 We are not talking about a dedication of fee title

1 to the property. All we are talking about is a preservation
2 of this land in perpetuity to protect the terrestrial and
3 coastal water quality, water resources, by overlaying a
4 conservation easement on the land.
5 In the rebuttal to the last comments, the
6 reference to property taxes here, I am not a property tax
7 lawyer, but I think it is important to recognize that this
8 property was assessed pre-Proposition 13, so it is a 1978
9 property tax that is assessed, and it is already so low, I
10 can't imagine how any kind of easement is going to affect, or
11 result in a reduction of property tax assessment here, given
12 how low it already is, since it is pre-Prop. 13.
13 With that, let me turn it over to Tom, to make
14 some other points.
15 ENVIRONMENTAL SPECIALIST LUSTER: Thank you. Just
16 a few responses, specific responses to the comments you have
17 heard.
18 Regarding the repair and maintenance issue, just
19 to reiterate, the project's characteristics make it
20 ineligible for coverage under the repair and maintenance
21 exemption allowed in the *Coastal Act*, and in the Commission's
22 regulations. In addition, the project was not eligible for a
23 CEQA repair and maintenance exemption, nor was it considered
24 a repair and maintenance project during the county's coastal
25 development permit review. So, we believe PG&E's contentions

1 that the project should be covered that way has no bearing.
2 CHAIR CALDWELL: Mr. Luster, on that point, can
3 you please explain why.
4 ENVIRONMENTAL SPECIALIST LUSTER: For *Coastal Act*
5 purposes, while the Commission's regulations provide for
6 repair and maintenance exemption, that exemption doesn't
7 include projects that are within 20 feet of coastal waters,
8 that involve mechanized equipment within that area, that and
9 affect ESHA, and because this project would do that, it is
10 not eligible for coverage under the exemption.
11 EXECUTIVE DIRECTOR DOUGLAS: Right, and the other
12 part of that is that it has not been treated as repair and
13 maintenance for other purposes of law, but you are applying
14 the *Coastal Act*.
15 And, in fact, it is my understanding the action by
16 the PUC, PG&E, itself, didn't call it repair and maintenance,
17 but said it is a replacement project, and not repair and
18 maintenance.
19 So, for purposes of the *Coastal Act* it just
20 doesn't quality as repair and maintenance, and when you see
21 what the consequences of this project are, I don't see how we
22 could treat it as repair and maintenance under the *Coastal*
23 *Act*. So, that is why we don't think that argument holds
24 here.
25 ENVIRONMENTAL SPECIALIST LUSTER: One more point

1 on the PUC, PG&E's testimony during their rate setting
2 proceedings differentiated between this project being
3 replacement versus the alternative, which would be to
4 increase the repair and maintenance costs of the existing
5 generators, and that was the basis of some of their testimony
6 during that proceeding.
7 Regarding Special Condition 3, there were some
8 questions about that. Essentially, staff adopted the
9 county's conditions that they had developed with PG&E, and
10 the dollar amounts that PG&E and the county had agreed upon
11 during their review.
12 And, so, if the Commission directs, we could
13 change those dollar amounts, but staff had just accepted what
14 the county had worked out with PG&E with that condition.
15 Regarding the issue of removing the gate, the
16 condition does not require that the gate be moved. It allows
17 options that either the gate be moved, or the entrances to
18 the trail be moved. Even if the gate does need to move, it
19 appears that there are feasible options to allow that,
20 including moving the gate closer to the plant. The gate
21 right now is about 5 miles from the plant, and so somewhere
22 between the current location and the plant, there should be a
23 feasible location to allow the gate to be moved, if that step
24 is necessary. But, again, that isn't the only option
25 available to PG&E.

1 Regarding staff's recommended easement in PG&E's
2 offer, basically, staff has determined that the 9,000 acres
3 is insufficient mitigation for the proposed project impact,
4 so 1200 acres is even less sufficient. Also, PG&E's offer
5 would not conform to the *Coastal Act* requirement that
6 mitigation for coastal dependent facility, such as this, be
7 the maximum extent feasible.
8 Staff has established both the nexus and the
9 proportionality between the impacts of the proposed projects,
10 and the recommended easement, and PG&E has not shown that it
11 is infeasible to provide that easement.
12 Please note, as well, regarding this issue that
13 staff references in the addendum Dr. Raimondi's presentation
14 from yesterday, and we are incorporating that presentation
15 into the record.
16 Regarding Special Condition 5, about the
17 withdrawals from Diablo Creek, staff recognizes that the
18 desal facility would need to be modified, but it is clearly
19 feasible to do so. There are a lot of stand alone desal
20 facilities around the world in water short areas, and the
21 situation at this plant is really no different than those
22 locations, so PG&E has not shown that it is infeasible to
23 stop withdrawing water from Diablo Creek.
24 Finally, we have a specific change to Special
25 Condition 3.a.3 regarding the handicapped access, based on

1 public comment. We recommend that it be changed to read:
2 "A contribution of $150,000.00 to improve
3 handicapped access to the Point San Luis
4 Lighthouse."
5 This would take away the requirement that it be
6 used solely to purchase a vehicle for that access.
7 And, that is all of the comments I have.
8 CHAIR CALDWELL: Ms. Schmeltzer.
9 STAFF COUNSEL SCHMELTZER: I wanted to say a few
10 words about nexus and proportionality which has come up a few
11 times during the hearing, on both sides.
12 Nexus is the connection that has to be established
13 between the impacts from the projects before the Commission,
14 and the mitigation for those impacts. In this case, the
15 impacts from the project, as discussed by staff, are the
16 impacts that will occur as the plant continues to operate
17 beyond the 2014 date, beyond which it would not be able to
18 operate, but for this project.
19 The staff report discusses -- and I think the
20 staff presentation discussed -- the entrainment impacts, and
21 it is discussed in the staff report at approximately pages 65
22 to 68, and Mr. Luster could speak more specifically about the
23 impacts. But, as far as nexus, the project's impacts are
24 identified by staff.
25 The mitigation that is provided is directly

1 related because it relates to increasing the biological
2 production of the water, and that biological production is
3 lost because of the entrainment. So, the protection of the
4 watershed is tied to increasing the productivity of those
5 waters, and again, that is in your staff report.
6 The idea of proportionality, proportionality is
7 that mitigation must be, roughly, proportional to the
8 impacts. I heard some suggestion that proportionality should
9 be about the cost or the value of the land, versus the cost
10 or value of the impact. That is not what proportionality is
11 about. Proportionality is about the impact and mitigating
12 that impact. It is not just about putting a dollar value on
13 it, although at times that can be done.
14 But, the primary way of looking at mitigation is
15 first to identify what the impact is, and then see if it can
16 be avoided, and then mitigated. It is not just placing a
17 dollar value. And, when cost is relevant it tends to be more
18 relevant with regards to feasibility. Something can be so
19 prohibitively expensive that it is infeasible. There has not
20 been a suggestion here that a conservation easement is
21 infeasible.
22 There has been the suggestion that, somehow,
23 because of some dollar values that were put out there that it
24 wasn't proportional. As Mr. Luster just discussed, based on
25 previous staff's calculations and the presentation yesterday,

there was a calculation done of what the proportion of acreage should be relative to the impact that has been measured.

EXECUTIVE DIRECTOR DOUGLAS: That completes the staff comments, Madam Chair, and we are prepared to answer any questions you may have.

CHAIR CALDWELL: Oh, there probably won't be any.

Commissioner Achadjian.

COMMISSIONER POTTER: Madam Chair, if I might, I need to ex parte.

CHAIR CALDWELL: Oh, yes, Commissioner Potter.

COMMISSIONER POTTER: Thank you. I had a meeting with Dave Neish, Sr. and Pat Mullen on the 12th of December in Monterey, in which they gave a thorough description of the project, the project's necessity, any associated coastal impacts, proposal for what would be an appropriate amount of land dedication.

Last night, I believe in an attempt to make sure that I hadn't forgotten anything, we went over pretty much exactly the same thing.

CHAIR CALDWELL: Thank you.

Commissioner Achadjian.

COMMISSIONER ACHADJIAN: Thank you, Madam Chair.

On a positive note, I would like to publicly thank Ms. Devine and Mr. Wesley who are in the audience. If it

1 wasn't because of their leadership and commitment to the
2 lighthouse, we wouldn't have a life in there, so I want to
3 thank them publicly for their commitment.
4 I have a question for staff, if I may, and also,
5 maybe, for the harbor district may want to participate. When
6 I, in my ex parte mentioned that this morning, I had a
7 meeting with Ms. Moffatt, and we spoke of this 12-acre
8 property, and I am glad it has come to our staff's attention,
9 and included that as a addendum in the conditions, which I
10 support.
11 But, there was also a concern about the lot line
12 adjustment. With your permission, Madam Chair, if I may
13 either have Ms. Moffatt share that map with staff, so we can
14 have some input on that before I go further --
15 CHAIR CALDWELL: Absolutely.
16 COMMISSIONER ACHADJIAN: -- I would appreciate
17 that, because it is a concern to the harbor district.
18 CHAIR CALDWELL: Is Ms. Moffatt here?
19 COMMISSIONER ACHADJIAN: And, PG&E has shown no
20 opposition to what is being asked, but since it was part of
21 our meeting, and their request has come forward to staff, and
22 staff has checked with PG&E, and they are in agreement. Is
23 that part of the agreement?
24 If you give that to Mr. Douglas, or --
25 EXECUTIVE DIRECTOR DOUGLAS: We understand the

12-acre part, but what I didn't understand, and I would appreciate clarification on, is what is the request relative to the lot line adjustment?

CHAIR CALDWELL: Ms. Moffatt, if you would go to the microphone, and state your name for the record, and then engage in the dialogue we are seeking here.

MS. MOFFATT: I am Carolyn Moffatt, Port San Luis Harbor District.

On the back of the handout that I have given you there is the map of the harbor terrace, of the existing conditions. It shows the, approximately, 12 acres across the top, and Parcels 3, 4, and 5. And, then down towards where it says Port San Luis, that is the area of the Diablo Road, that goes to Diablo Canyon.

You will see that is a very irregular boundary along that edge, and the lot line adjustment would adjust that, primarily, I think as a cleanup issue. The lot line adjustment, we would grant to PG&E the property that they need to make that a clean easement.

COMMISSIONER ACHADJIAN: Madam Chair, if I may also ask about this, if the PG&E folks are aware of this request, and we can ask for their cooperation on this issue. It may be not a need to be a condition, but in understanding that they will work with the harbor district, and make this happen.

1 EXECUTIVE DIRECTOR DOUGLAS: Does this affect
2 public access in any way? I mean, is this an access?
3 MS. MOFFATT: No, it doesn't.
4 EXECUTIVE DIRECTOR DOUGLAS: That is too bad,
5 because then we could have --
6 MS. MOFFATT: I am not technically knowledgeable
7 about the metes and bounds of this lot line adjustment, so I
8 can't speak legally, or very specifically about it. I need
9 to qualify that.
10 COMMISSIONER ACHADJIAN: And, my apologies to the
11 Commissioners, because this did come to us at the last
12 minute, and neither staff nor myself had the opportunity to
13 work with the harbor district and PG&E to --
14 MS. MOFFATT: I am very sorry.
15 COMMISSIONER ACHADJIAN: -- be better prepared.
16 MS. MOFFATT: This was a letter that we sent to
17 the Coastal Commission staff on July 27, and it was not
18 directly related to -- I don't recall specifically, but I
19 don't think it was directly related to today's action.
20 And, as the project today came forward and
21 evolved, it slipped away from us, I am sorry.
22 EXECUTIVE DIRECTOR DOUGLAS: Well, my --
23 COMMISSIONER ACHADJIAN: Before you leave, since
24 we are dealing with this, unless staff has a direction for
25 us, do you want to?

EXECUTIVE DIRECTOR DOUGLAS: Well, my suggestion is, and I am looking at PG&E representatives who are nodding their heads, is that we address this in the context of the permit compliance issue, so that we can resolve it there, and then we don't have to spend time here today, because, frankly, I don't really understand it yet.

MS. MOFFATT: Thank you, and that would be perfectly acceptable to us.

EXECUTIVE DIRECTOR DOUGLAS: Okay.

COMMISSIONER ACHADJIAN: Before you leave, Ms. Moffatt, I don't mean to put you on the spot, maybe for a moment we would give PG&E a say about your understanding of what we are trying to do with the lot line adjustments, and if you want to be on record as to how you feel about it?

Let her say a word, and then I have one more question for you.

MS. MOFFATT: Sure.

MS. JACOBS: Donna Jacobs, PG&E, and yes we are willing to work closely with the harbor district, and resolve the lot line and the 12-acre issues, and we would be happy to do that. It is going to be difficult for us to do that right now, without all of the legal terms and tracks for those, but we would be happy to do that outside of this meeting.

COMMISSIONER ACHADJIAN: I think, I for one, am looking for a commitment that of a good neighbor policy,

1 folks who will work together.
2 MS. JACOBS: You have that commitment from PG&E.
3 COMMISSIONER ACHADJIAN: Thank you.
4 Ms. Moffatt, the entry way to Diablo, and there
5 were some conversations about the gateway, how much of that
6 road is owned, and/or does the harbor district have easement?
7 MS. MOFFATT: Some portion of the Diablo Road is
8 on harbor district, but I am sorry, I can't be specific as to
9 how much.
10 COMMISSIONER ACHADJIAN: Okay, and --
11 MS. MOFFATT: It appears that it goes back,
12 approximately, 400 feet from the Avila Road back, but, again,
13 I can't speak legally about what the distance there is.
14 COMMISSIONER ACHADJIAN: Do we have a staff member
15 that might have more knowledge about this.
16 MS. MOFFATT: That particular member is on leave
17 of absence.
18 COMMISSIONER ACHADJIAN: Sorry.
19 EXECUTIVE DIRECTOR DOUGLAS: It is my under-
20 standing that the gate, for example, is on harbor district
21 property,
22 MS. MOFFATT: I believe so, yes.
23 EXECUTIVE DIRECTOR DOUGLAS: And, it is being
24 leased to PG&E.
25 MS. MOFFATT: That is my understanding, and I

1 think I should, having been on the Commission as long as I
2 have, I should be able to give you a more definite answer,
3 but I can't.
4 COMMISSIONER ACHADJIAN: My apologies. I don't
5 mean to put you on the spot.
6 MS. MOFFATT: I'm sorry.
7 COMMISSIONER ACHADJIAN: It is just that it is
8 going to be part of my --
9 MR. MC GRATH: If I may, please.
10 CHAIR CALDWELL: Sir, if you could state your name
11 for the record, please.
12 MR. MC GRATH: Steve McGrath, facilities manager
13 for the Port San Luis Harbor District.
14 On the diagram that you have been given, the apex
15 of the point there, in between Parcels 1 and 3, extends
16 across Diablo Canyon Road, and that point is about 1000 feet
17 in from Avila Beach Drive.
18 COMMISSIONER ACHADJIAN: Is there room for any
19 widening there, or would you get into the ESHA territory
20 and/or native sacred land territory?
21 MR. MC GRATH: I don't know the answer to that,
22 sir.
23 COMMISSIONER ACHADJIAN: Okay, thank you.
24 CHAIR CALDWELL: Thank you, sir.
25 EXECUTIVE DIRECTOR DOUGLAS: Commissioner

1 Achadjian, there is no way that we are going to be asking
2 them to move the gate in a manner that affects the cultural
3 resources.
4 But, we do think that there are other options, and
5 we want to explore those with them, and we will in the
6 context of the permit compliance measure, relative to the dry
7 cast storage. We just hadn't gotten together on the ground
8 and looked at those alternatives, but we will.
9 COMMISSIONER ACHADJIAN: I make a note of that.
10 And, if I may ask staff, on page 10 of 70 of the
11 staff report, the bottom sentence reads:
12 "The offer to dedicate shall be irrevocable
13 for a period of 21 years, such period running
14 from the date of recording."
15 My preference would be that if we are putting
16 anything into conservation it is there forever, and I didn't
17 want to be stuck by a wording here that says after 21 years
18 it might go back to possible development, or anything
19 disastrous like that.
20 EXECUTIVE DIRECTOR DOUGLAS: That is interesting
21 that you bring that up. We have had internal discussions.
22 There is no requirement for a limitation, but the reason that
23 we put in 21 years is because it is our intent, and our hope
24 -- and if the Commission adopts this -- that the easement
25 will be accepted sooner rather than later by a third party.

1 So, having a 21-year period on it, that provides an incentive
2 to actually get that accepted. If there were no deadline on
3 it, if it were open ended, then it could be an easement
4 hanging out there forever.
5 So, that is the reason we put the 21 years on. We
6 do have two entities we have talked to already, that are --
7 certainly the Nature Conservancy has indicated they are
8 prepared to accept the conservation easement, if this
9 Commission sees fit do that. And, my conversation with the
10 Department of Parks and Recreation has also lead me to
11 believe that they would be willing to talk about the
12 potential acceptance of the easement.
13 But, the idea of the 21 years is to get it done
14 sooner rather than later.
15 COMMISSIONER ACHADJIAN: And, my preference is, at
16 this time, and I haven't asked this question of the harbor
17 district, since it is so well attached to their operation,
18 why wouldn't we give them that opportunity as a first right
19 of refusal?
20 EXECUTIVE DIRECTOR DOUGLAS: Well, they certainly
21 are an entity that could accept the conservation easement,
22 and depending on what the easement is that this Commission
23 ultimately sees fit to apply to this permit, that will, I
24 think, make a difference in terms of who might be interested
25 in accepting the easement. Certainly, the harbor district is

1 an eligible party to accept that easement.
2 COMMISSIONER ACHADJIAN: And, I'll make that part
3 of my motion later on to give the harbor district first right
4 of refusal.
5 But, I want to go back to what happened on county
6 level, and we need, as you assume, as you are looking through
7 this project, and we have conditions, 12 pages, but staff
8 made a comment on the contribution of the $300 to the access.
9 It reads:
10 "Contribute $300,000, or construct the
11 equivalent, to remove barriers to coastal
12 access from Avila Beach Drive to Port
13 San Luis Lighthouse."
14 He didn't have the rest of the language included in there.
15 But, the reason that I made an enquiry about the
16 property tax -- and that is a selfish reason for us, the
17 county folks -- because that property does have some lease
18 on the property that equates to a dollar figure, and if you
19 take the entire property into a conservation easement, it
20 takes away some of the underlying property development rights
21 -- which none of us want to see any development take here --
22 which then gives it the value that it has, the more increase
23 of the property tax, which does benefit San Luis coastal
24 school, which benefits 6 percent of the taxes.
25 And, if we were to put a conservation easement

1 now, I don't think that value will still apply, with the
2 exception of where the nuclear power plant is, and it can
3 make a difference.
4 I think Mr. Douglas wants to answer.
5 EXECUTIVE DIRECTOR DOUGLAS: Right, and I
6 understand that, and you are probably talking about the
7 Sullivan lease Leucadia property, and that area is not
8 included in the conservation easement that we have
9 identified. We understand that that is subject to a 99-year
10 lease back to Mr. Sullivan. The issue of what happens to
11 that property is left for sometime in the future. We are not
12 addressing that here, and have excluded it from the
13 conservation easement lands. So, it is not included.
14 COMMISSIONER ACHADJIAN: Thank you, and I didn't
15 think you leave anything out, but you left there for a
16 reason.
17 Another reason that gives us some satisfaction is
18 why we didn't include any length of the conservation, and
19 most of our mitigations were related to dollar figure to
20 benefit the community who is immediately impacted by this
21 operation, which is the Avila Beach community, plus doing the
22 repair and maintenance will give us what we deserve -- us,
23 the most, who live nearby which is the peace of mind, and the
24 security that we need.
25 But, another reason that we didn't look too much

1 into conservation easement, because not too long ago -- and
2 this was approved by my colleagues unanimously, including
3 myself -- we had a Measure AOO which was known as the
4 initiative, the dream initiative. Some of the folks here
5 from San Luis might be aware of that, others might not.
6 What this initiative did was that it resurfaced
7 and recognized that the land at Diablo Canyon was
8 exceptionally precious coastal resource, and we adopted
9 policies that promote habitat preservation, sustainable
10 agricultural activities, public use and enjoyment consistent
11 with public safety and property rights, and it went on and
12 on, to say that when Diablo comes to an end, we will preserve
13 that property.
14 So, that is the security that we have, as
15 community, and this Measure did go on ballot. And, I would
16 like also to publicly thank the present Mr. and Mrs. --
17 Assemblyman Sam Blakesly, who was the assemblyman then,
18 and received a very high input, and was passed by quite a few
19 votes. So, that is the satisfaction we, as county folks have
20 by not -- why we didn't ask for the conservation easement on
21 the land, also understanding that the most of the impact was
22 on marine environment, rather than the land, itself.
23 Having said all of that, Ma'am, I know we have
24 plenty ahead of us, Madam Chair, I am prepared to make a
25 motion, if I receive a "second" I would like to offer an

1 amendment to the motion.

2 CHAIR CALDWELL: Commissioner, it is the practice

3 of this Commission not to have a motion prefaced in the

4 manner that you have just done, so I think we will air a few

5 of the questions from the other Commissioners, first, and

6 then I will come back to you for the motion.

7 COMMISSIONER ACHADJIAN: Thank you, Madam Chair.

8 CHAIR CALDWELL: Commissioner Reilly.

9 COMMISSIONER REILLY: Just a question of Peter, in

10 terms of how we define this repair and maintenance exemption.

11 We routinely allow repair and maintenance

12 exemptions to be used to repair seawalls, even though we are

13 aware that that extends the useful life of those structures,

14 and their impacts. They are subject to direct wave action,

15 and it is not unusual to have an ESHA, or something, close to

16 them, how is this different?

17 EXECUTIVE DIRECTOR DOUGLAS: It is not, you

18 require a permit for those repairs, so then you decide what

19 to do with it, and that is all that we are saying here, is

20 that it required a permit. It is not exempt, and that is why

21 it is before you.

22 COMMISSIONER REILLY: But, you have also applied

23 repair and maintenance exemptions to seawall repairs, as

24 well.

25 EXECUTIVE DIRECTOR DOUGLAS: Not that I can

1 recall, because if it requires mechanized equipment on the
2 beach, which it normally does, then it does require a permit.
3 So, it is the method of repair and maintenance, as
4 well as, in this case, that repair and maintenance, if they
5 really want to do repair and maintenance, they can do it to
6 the existing steam generators. But, they have decided that
7 it is better, more economical, to replace them, and so that
8 is what they are doing, and so we are saying that is not
9 repair and maintenance, in the sense of an exemption that it
10 doesn't require a permit from you.
11 COMMISSIONER REILLY: What did we do at Dana
12 Point?
13 COMMISSIONER WAN: We required a permit.
14 EXECUTIVE DIRECTOR DOUGLAS: You mean Dana Point,
15 what, the project?
16 COMMISSIONER REILLY: Yes, with the seawall.
17 EXECUTIVE DIRECTOR DOUGLAS: You approved it.
18 COMMISSIONER REILLY: Based as a repair and
19 maintenance.
20 EXECUTIVE DIRECTOR DOUGLAS: Well, yes, but it was
21 a permit, and you imposed a number of conditions --
22 COMMISSIONER REILLY: I understand, right --
23 EXECUTIVE DIRECTOR DOUGLAS: -- but it wasn't
24 exempt from your review.
25 COMMISSIONER REILLY: But, we did define it as a

1 repair and maintenance.
2 EXECUTIVE DIRECTOR DOUGLAS: You did, as I recall.
3 COMMISSIONER REILLY: That was, basically, a new
4 wall to replace an old wall that was set farther back.
5 EXECUTIVE DIRECTOR DOUGLAS: Well, it is a matter
6 of judgment, but in order to get to where, I think, we were
7 looking to go at that point, we said yes, you require a
8 permit for this.
9 But, in terms of the impacts, you required
10 mitigation.
11 COMMISSIONER REILLY: All right, thanks.
12 CHAIR CALDWELL: Other Commissioners?
13 Commissioner Secord.
14 COMMISSIONER SECORD: Staff, question for staff,
15 the nuclear power plant was pre-coastal, and that is why the
16 staff has the view that because it has got some environmental
17 burdens that now is the time to correct those, is that a fair
18 statement?
19 EXECUTIVE DIRECTOR DOUGLAS: No, it is not.
20 This project was exempt from Coastal Commission
21 review, and your predecessor Commission did address that
22 issue, and that was for the construction of the facility,
23 because it was approved and constructed commenced prior to
24 passage of the coastal initiative in 1972.
25 So, they had a vested right to continue the

1 construction and complete the construction. So, the
2 Commission, in terms of operation, you had no jurisdiction
3 over that, and it never came before you. Unlike San Onofre,
4 which came after Proposition 20, you did have permit
5 jurisdiction, and the Commission exercised that jurisdiction
6 and you are still dealing with the consequences of that
7 exercise.
8 What we are saying here is that you are being
9 asked to approve a project that will have significant
10 impacts, adverse impacts on the marine environment, because
11 if you don't approve it -- and you have the ability to say,
12 no -- the intake and the entrainment of marine organisms
13 would stop in about 10 years. But, in approving this, those
14 impacts will occur, and as a result of that, you have got to
15 apply the *Coastal ActCoastal* to protect the biological
16 productivity of coastal waters.
17 COMMISSIONER SECORD: I understood that. I really
18 appreciate that explanation.
19 The problem is that if it is the staff's view that
20 by not approving, or somehow delaying this steam generator
21 repair, that that is going to hasten the closure of the
22 plant, and reduce its environmental depredation, then we
23 should look forward, beyond that time, to see where this
24 electricity is going to come from that this plant provides.
25 Would that be a rational course of action?

1 EXECUTIVE DIRECTOR DOUGLAS: Not in our view.
2 There are people who have argued that, but we have
3 not taken that view. And, in fact, what you are looking at
4 here is steam generators, steam engines that are going to --
5 their life is supposed to be around 40 years, so they are
6 going to be capable of operating well beyond the current
7 license period for this facility.
8 And, I don't think anybody can kid themselves, but
9 PG&E is going to go in for a relicensing. That is not before
10 you. But, what is before you is new equipment, new steam
11 generators, so this plant can continue to operate at a high
12 level of efficiency.
13 And, we are not saying that you should say "No" to
14 that. We are just saying that if you are going to approve
15 that, you need to, in our view, provide some compensation for
16 the adverse environmental impacts. We have long ago decided
17 that we don't see that it is in the best interests of the
18 people of California, or this Commission's future, to try to
19 shut down this plant. So, we have never gone there, and that
20 has nothing to do with our recommendation today.
21 COMMISSIONER SECORD: Okay, it just struck me that
22 there was no real nexus between the conservation easement
23 over 9,000 acres and what amounted to a replacement project,
24 with respect to the steam generators, but you tell us that if
25 we don't change the steam generators then the plant will

1 cease in some period of time, and you regard that as a
2 meritorious event, and so --
3 EXECUTIVE DIRECTOR DOUGLAS: No, we don't.
4 COMMISSIONER SECORD: Oh, you --
5 EXECUTIVE DIRECTOR DOUGLAS: No, no, you are
6 misstating what I just said.
7 What I am saying is that if the steam generators
8 are not replaced, they would have to shut down. And, we are
9 saying that you should approve the replacement of the steam
10 generators.
11 The nexus that is here is the protection, the
12 conservation, of these watershed lands will protect coastal
13 waters. And, in fact, that was one of the proposals with the
14 Regional Water Board, who is looking at water quality
15 impacts. They are talking about an easement. The difference
16 with their easement is that there is an escape clause to it
17 that we have opposed from the beginning. But, that hasn't
18 been acted on, so there is no compensation, or mitigation at
19 this point.
20 We think there clearly is a nexus because you are
21 allowing -- if you approve this -- new generators to come in,
22 and this plant will have impacts that it wouldn't otherwise
23 have, and the conservation easement, we think, is directly
24 related to offsetting those impacts.
25 COMMISSIONER SECORD: Okay, thank you.

1 CHAIR CALDWELL: On that point, I believe the same
2 nexus was established for the purposes of the Regional Water
3 Quality Control Board overseeing Moss Landing. They saw the
4 nexus between the continued entrainment at Moss Landing and
5 the protection of the watershed lands for Elkhorn Slough.
6 EXECUTIVE DIRECTOR DOUGLAS: They did, and there
7 are a variety of ways to try to address the environmental
8 impacts from these kinds of facilities, the entrainment.
9 We have had discussions with the regional board,
10 and they are looking at a number of alternatives, including
11 artificial reefs, and other marine environment habitat
12 improvements. And, we have even suggested that they can help
13 fund the implementation of marine protected areas.
14 So, from our perspective, we were not looking at
15 the marine environment here, in terms of the kinds of things
16 that they are talking about, but rather the terrestrial
17 environment, the watershed, the drainages, down into the
18 coastal waters. We did suggest, in the context of Moss
19 Landing, to the regional board, that they ought to be looking
20 at inkind mitigation there, as they are primarily looking at
21 it here, and that is to have some restoration of wetlands, or
22 the creation of wetlands as we have done with San Onofre.
23 They chose not to do that.
24 But, in any event, I think that there is no legal
25 problem here, in terms of nexus. It is just the matter of

1 whether or not you agree to the size of the conservation
2 easement, from your perspective, it makes sense. Obviously,
3 1200 acres now, rather than 600 acres is acceptable to PG&E.
4 And, my conversations with PG&E have been very
5 constructive, and we are talking about -- I mean, we have a
6 future relationship here, too, and you are going to be seeing
7 them back in a number of other contexts. There are
8 additional developments that are going to take place here, so
9 this is not the last time that we are going to be dealing
10 with PG&E, but it is the only time that you have the ability
11 to address the issue of entrainment, and that is why we are
12 suggesting the conservation easement at this point.
13 CHAIR CALDWELL: Commissioner Wan, and then
14 Commissioner Clark, then Commissioner Burke.
15 COMMISSIONER WAN: Yes, I would like to follow up
16 on this discussion, so this is perfect.
17 Yes, I think that what is clear here is that the
18 nexus is that this will go forward, but the result of it
19 going forward, is it is going to be 10 years of additional
20 use, without any mitigation for the entrainment. It is
21 incumbent upon us to figure out how to deal with that impact.
22 You can't allow that to happen under the *Coastal Act*. You
23 have to have some kind of mitigation for very serious
24 impacts.
25 So, then the question is not whether you should

1 have it, but what is the nature of the mitigation, and the
2 extent of it.
3 Protecting coastal resources and land, that is
4 basically the watershed here, okay, is it is not -- you can't
5 replace inkind the lost habitat in the ocean, but you do have
6 a nexus with the type of environmental protections. So,
7 there is a nexus to this kind of a mitigation.
8 As far as the size and the extent of the
9 mitigation, yesterday I listened very carefully to -- I
10 forgot -- this is terrible, I forgot his name already.
11 CHAIR CALDWELL: Raimondi.
12 COMMISSIONER WAN: Okay, and in the discussion, I
13 asked him some questions about his calculations about what
14 kind of damage entrainment does at Diablo Canyon.
15 And, he gave us what he considered through his
16 models the most conservative estimate, which by the way is
17 greater than what the estimate is in the staff report, I
18 might add. He said that at the low end it was 7.5 percent,
19 which translate to, I think he said, somewhere between 300 to
20 1000 acres of habitat out in the offshore.
21 Then I asked him what his best guess was for the
22 upper end, and the upper end was 40 percent. And, you know,
23 there are uncertainties here. It is not a question of error,
24 but there are uncertainties in the models, so he is basically
25 saying that between 7.5 percent to 40 percent is what the

1 impact is. At 7.5 percent, it is 300 to 1000 acres; and at
2 40 percent at the upper end, that is between 12,000 to 40,000
3 acres of ocean habitat.
4 So, to say that 9,000 acres of land, which is
5 clearly not as productive as offshore central coast
6 California is, relative to marine wildlife and marine
7 creatures is, clearly, not out of line, in fact, it is
8 probably very minimal. It certainly can be justified, and it
9 should be.
10 I don't think you can fully mitigate, no matter
11 what we do, we can't fully mitigate. The impacts of that
12 entrainment are horrific out in the ocean. Setting aside
13 some land that can be productive in other ways, environment-
14 ally, and including you have a stream there which contributes
15 to the ocean habitat, is very important, and I don't think it
16 is over reaching, and I don't think it is out of line.
17 If we are looking at anything between about 1,000
18 to 40,000 acres of impact in the ocean, 9,000 acres of
19 conservation easement on the land is certainly not out of
20 line.
21 CHAIR CALDWELL: Commissioner Clark.
22 COMMISSIONER CLARK: Thank you, Madam Chair. I
23 have a few questions for staff, and also for the applicant.
24 Let me start with the staff.
25 One of the speakers, and I believe it was Andrew

1 Christy from the Sierra Club, talked about a recommendation
2 to this body of waiting until the California 2nd Appeals
3 Court renders a decision. What is the reaction from staff
4 with respect to that input, and do you see that as having a
5 bearing on our deliberation.
6 EXECUTIVE DIRECTOR DOUGLAS: I'll ask counsel to
7 respond to that, but I think that court case deals with
8 different issues than what would be raised here, in terms of
9 the replacement of these steam generators. I think those are
10 dealing with retooling modernizing power plants, and the
11 question of whether or not they can mitigate once-through
12 cooling.
13 Counsel, if I am off base here, please correct me.
14 STAFF COUNSEL SCHMELTZER: That lawsuit regards
15 what mitigation would be appropriate under a specific section
16 of the *Clean Water Act*, so it is a different standard. It is
17 not the same standard as the *Coastal Act*. So, it is not that
18 there isn't mitigation being considered there, it is under a
19 completely different legal statute.
20 EXECUTIVE DIRECTOR DOUGLAS: And, it is my
21 understanding that that law suit involves a power plant that
22 is being modernized, or somehow rebuilt, as opposed to just
23 replacing steam generators.
24 STAFF COUNSEL SCHMELTZER: It, actually, is a
25 challenge to EPA's regulations for power plants, so it is not

1 about, necessarily, a particular one.
2 COMMISSIONER CLARK: Thank you.
3 And, another question for staff, and this is for
4 you, Peter. I just want to make sure I understand this
5 correctly. The proposed, by staff, conservation easement is
6 a very precise acreage 9,130 acres, and the derivation of
7 that -- see if I am correct in the way I understand this --
8 if you take the total amount of land and shoreline owned or
9 controlled by PG&E, and its subsidiaries, of 12,791 acres,
10 and you deduct the 772 acres of land consisting for high
11 security zone around the DPCC, then you deduct the 2,269
12 acres of land associated with the 99-year lease that is known
13 as the Sullivan lease, and then you deduct the 620 acres
14 originally voluntarily proposed by PG&E, that is how you
15 derive the 9,130, is that correct?
16 EXECUTIVE DIRECTOR DOUGLAS: That is correct.
17 COMMISSIONER CLARK: So, in essence, staff's
18 position -- and I think you explained this during comments
19 earlier -- that in terms of the scope and analysis of the
20 proposed compensation of a conservation easement should be to
21 the maximum extent feasible? is that correct?
22 EXECUTIVE DIRECTOR DOUGLAS: That's correct.
23 COMMISSIONER CLARK: Then, based on that, and the
24 fact that proportionality -- as also explained by our counsel
25 -- isn't associated with dollar value impact, but, in fact,

1 is looked at in terms of what is also feasible.
2 I would like to hear from PG&E representatives
3 regarding the voluntary now conservation easement consider-
4 ation, or compensation of 1200 acres, why not the 9,130 acres
5 as proposed by staff, versus the 1200? So, could the
6 applicant come back up.
7 EXECUTIVE DIRECTOR DOUGLAS: While they are coming
8 forward, Commissioner Clark, as Tom Luster indicated, we do
9 not think that this is really the equivalent compensation,
10 but we decided not to go and ask for easements over land they
11 didn't own. So, we confined our condition to land actually
12 owned by PG&E.
13 COMMISSIONER CLARK: Understand, and I appreciate
14 that.
15 Could PG&E answer my question. You have upped
16 your voluntary conservation easement proposal from 620 acres
17 to 1200 acres. Given the testimony and the input today in
18 this hearing, why not 9000 acres as proposed by staff? And,
19 I am looking for a specific answer, not some sort of
20 ambiguous sort of general answer.
21 CHAIR CALDWELL: Ms. Jacobs.
22 MS. JACOBS: Donna Jacobs, PG&E, and I am
23 wondering if there is a specific answer here that you expect
24 to hear?
25 But, what I want to do is to respect your desire

1 to be more specific, and with that, I am going to ask one of
2 our members of our to help provide that.
3 COMMISSIONER CLARK: Sure, thank you.
4 CHAIR CALDWELL: Mr. Zbur.
5 MR. ZBUR: Rick Zbur, with Latham and Watkins,
6 representing PG&E.
7 The 1200 acres offered by PG&E is not offered as a
8 mitigation. It is offered as a voluntary proposal, and part
9 of that is because it is our view that the baseline is an
10 existing operating plant under the existing case law, and
11 that the repair and maintenance exemption applies. So, given
12 that, the change to the steam generator doesn't create any
13 impacts.
14 We, also, don't believe that it has a nexus
15 because any kind of conservation proposal has a nexus because
16 what was identified in the staff report were impacts related
17 to entrainment, impingement, and thermal impacts of the
18 existing operations of the plant. First, we don't agree with
19 that, but even if you could look at that, protecting
20 terrestrial habitat doesn't have any impact, doesn't protect,
21 for example, the loss of fish larvae -- it is due to the
22 entrainment. It is a different kind of -- it doesn't protect
23 impacts.
24 So, the staff has identified that there are
25 impacts between 2014 and 2025. Those would be loss to marine

1 organisms due to entrainment and impingement. Putting a
2 conservation easement on any part of the land doesn't change
3 any effect of the impingement or entrainment. It doesn't
4 reduce the number of fish that are effected. It doesn't
5 impact it at all.
6 CHAIR CALDWELL: Mr. Zbur, I think you have made
7 your point.
8 MR. ZBUR: Okay, thank you, very much.
9 COMMISSIONER CLARK: But, I do have a follow up,
10 excuse me. I do have a follow up.
11 Even if we went down that sort of path, in sense,
12 as you point out, and we know, you are making a voluntary
13 offer of 1200 acres, why stop at 1200 acres?
14 MR. ZBUR; It is a voluntary offer that was made
15 by PG&E management, I think, consistent with their commitment
16 to work with the community, and to work with others. And,
17 so, since we don't believe that any mitigation is required,
18 you know, we think that this is something very generous.
19 COMMISSIONER CLARK: But, do you think it would be
20 viewed as even more generous, if it was a 9,000 acre --
21 MR. ZBUR: I think you will come to your own
22 conclusions on that.
23 Thank you.
24 CHAIR CALDWELL: This is when you stop while you
25 are ahead.

1 COMMISSIONER CLARK: Okay, I do have a couple --
2 Madam Chair -- more questions.
3 CHAIR CALDWELL: Sure.
4 COMMISSIONER CLARK: One question I have is
5 regarding the transport, the means and manner of transport of
6 barges.
7 I am wondering -- and this is probably for PG&E,
8 and maybe for staff -- but, why sea transport versus -- and
9 I'll throw out an idea -- why not transport these by cargo,
10 air cargo, to Vandenberg Air Force Base, and then transport
11 them to the plant?
12 And, the reason I bring that up, the staff report
13 is very clear on what it calls "the take" of marine species
14 that will occur as a consequence of the barge transport.
15 And, It talks about, not only sea lions, but one of my
16 favorite species, sea otters, and that bothers me
17 tremendously.
18 No matter what is said about potentially trying to
19 minimize it, there is going to be -- as I understand this
20 report -- a take. So, my question to PG&E, and perhaps
21 staff, is have we considered alternative transport mechanisms
22 in order to avoid that?
23 CHAIR CALDWELL: If you would respond with your
24 name for the record, very quickly, please.
25 MR. EXNER: My name is Bob Exner, from PG&E.

1 Madam Chair, Commissioners, the reason the steam
2 generators are being transported by barge is that they are
3 being manufactured in Spain, and they must be shipped by sea
4 to the United States. The most logical way to do that is to
5 bring them into a local west coast port, put them on barges
6 and bring them up to the plant. That is the way the original
7 steam generators were brought in, basically, for the same
8 reason.
9 The other thing we looked at was bringing them
10 into a California port, Stockton in particular, and then
11 trying to ship them by rail car to the plant. That is a very
12 difficult thing, because of the size of the steam generators.
13 There would be a number of what they call "pinch points"
14 where we would have actually have to -- we couldn't go under
15 a trestle, or things like that.
16 The steam generators are about 70-feet long, 16
17 feet in diameter, and they each weigh about 360 tons.
18 COMMISSIONER CLARK: Is it infeasible -- and part
19 of the reason for my question is that I am with the U.S. Air
20 Force, and we moved by air transport the entire replacement
21 of the Indian Ocean's satellite tracking station, using C-5As
22 and Condors. Have you considered the assistance, in terms
23 of that kind of transport for air transport to, say,
24 Vandenberg Air Force Base?
25 MR. EXNER: We have never looked at air transport

1 for such a massive heavy transport, and no other plant has
2 ever transported these by air. They have always been done by
3 sea.
4 CHAIR CALDWELL: Thank you, sir, that was a "no"
5 right?
6 MR. EXNER: The other point, if I could, the
7 actual delivery by barge will be done by Voss Maritime, a
8 local west coast company using two tugs in a very careful
9 manner, and we believe that we can do that without any really
10 adverse impacts on the sea mammals.
11 COMMISSIONER CLARK: Although, staff would
12 disagree, according to their staff report.
13 Thank you.
14 CHAIR CALDWELL: Commissioner Clark, are you done
15 with your line of questioning?
16 COMMISSIONER CLARK: For the moment.
17 COMMISSIONER ACHADJIAN: Madam Chair, may --
18 CHAIR CALDWELL: Commissioner Achadjian, wait, we
19 have other Commissioners in line, who have been waiting, also
20 to get their questions on the table, if you don't mind.
21 COMMISSIONER ACHADJIAN: I was going to pull
22 through, but also wanted to answer Commissioner Clark's
23 question, with a sense of humor.
24 CHAIR CALDWELL: Oh, well, then go right ahead.
25 We need that.

1 COMMISSIONER ACHADJIAN: And, by no means I take
2 credit for this, Mr. Clark, but when I first saw this 620, my
3 question was, what an odd shape? Why don't you include the
4 kidney, the entire body, and maybe that is where the idea
5 came from, but as I said, I don't take credit for it, and
6 that is why, maybe, it got expanded, to be the generous
7 people that they are.
8 CHAIR CALDWELL: Okay, Commissioner Burke.
9 COMMISSIONER BURKE: Madam Chairman, I would like
10 to move that the Commission approve Coastal Development
11 Permit --
12 COMMISSIONER ACHADJIAN: Wait, wait, wait.
13 CHAIR CALDWELL: Commissioner Achadjian has
14 requested the ability to make the motion.
15 COMMISSIONER BURKE: Okay, then, can we do that so
16 that we can talk about the specifics here.
17 COMMISSIONER ACHADJIAN: I tried to, but I am
18 expecting Madam Chair to give me the green light.
19 COMMISSIONER BURKE: Okay, I'll cede my motion to
20 Commissioner Achadjian.
21 CHAIR CALDWELL: Very good.
22 Commissioner Padilla, did you want to get your
23 issue on the table first.
24 COMMISSIONER PADILLA: It is certainly at your
25 pleasure, Madam Chair.

1 CHAIR CALDWELL: Go right ahead.
2 COMMISSIONER PADILLA: Thank you, Madam Chair.
3 Why is it -- and I want to make sure that we have
4 a good four corners understanding of the definition that is
5 being applied by the staff, in terms of the proper scope of
6 review in reaching a determination on, if in fact there can
7 be -- substantiated by the record -- a finding that
8 mitigation is appropriately applied here -- what the
9 appropriate methodology is for purposes of *Nollan* and others.
10 We assert in the record pretty strongly in
11 defining and asserting our permit jurisdiction, that the
12 activity of concern here is the action, or activity, of
13 replacing the generators. In fact, in addressing the
14 inappropriateness of asserting an argument about continuity
15 of operation -- which has been made verbally, and in the
16 staff report -- that it does not go to the overall operation
17 of the plant.
18 Why are we asserting that the proper scope of
19 asserting and defining our permit jurisdiction goes to the
20 activity of replacement, but for purposes of evaluating and
21 determining mitigation, particularly a nexus and
22 proportionality -- which *Nollan* addresses -- why do we extend
23 that evaluation to the overall impacts of the overall
24 operations of the plant, as a whole. What is the
25 distinction?

1 EXECUTIVE DIRECTOR DOUGLAS: I'll ask Ms.
2 Schmeltzer to supplement my answer.
3 But, what we are looking at is not the operation
4 of the plant, as it is today. We have no jurisdiction over
5 that. What we are looking at is what happens after the
6 period that the plant would be shut down as a result of these
7 steam generators not being replaced.
8 Now, they could repair them in place, the existing
9 ones, but that is not feasible from their perspective. They
10 have decided not to do that. But, the point is, if there
11 were not replaced, then the entrainment impacts would stop.
12 COMMISSIONER PADILLA: But, isn't the entrainment
13 impacts caused by the operation of the plant as a whole, and
14 not by the replacement activity of the turbines?
15 EXECUTIVE DIRECTOR DOUGLAS: They will be caused
16 by the turbines that are put into operation, which --
17 COMMISSIONER PADILLA: I understand it, and I am
18 not trying to anal about this, and forgive me, but there is a
19 framework for decision-making around which we have to vet
20 facts and apply the law, and it can't be driven by whether or
21 not we like entrainment, or not, or whether we like nuclear
22 power, or not. It has to be driven by the standard, and if
23 we want to change the standard, respectfully, we probably
24 ought to go to the legislature and change it.
25 My concern here is that, as I understand it, I

1 understand you can establish a line of causation from one end
2 of the room to the other. Dominoes will always have that
3 effect.
4 I understand that it is important for this
5 applicant to replace this like for like -- by the way --
6 infrastructure, in order to be able to continue the existing
7 operations of the plant.
8 It is my understanding that it is that existing
9 operation of the plant that is causing the impact that is
10 cited for the mitigation, and the request for a conservation
11 easement. All of those things, in principle, I embrace and
12 like. My concern is that for purposes of our framework for
13 decision making, if we are limited in terms of asserting
14 permit jurisdiction over the activity that is the replacement
15 of the like-for-like infrastructure, can we then apply the
16 broader impacts of the entire operation of the plant, as a
17 whole, for purposes of evaluating environmental impact, and
18 then assessing some mitigation, because it seems to be
19 broadening that. For one purpose, we are narrowly looking at
20 it, for another we are broadening it quite substantially.
21 I want to make sure that I understand what the
22 status of the law is with regard to that.
23 CHAIR CALDWELL: Ms. Schmeltzer.
24 STAFF COUNSEL SCHMELTZER: I would like to talk
25 about those issues you have brought up.

1 What we are looking at here is the impacts of this
2 project. This project will result in -- and if you will look
3 on page 20 of your staff report, it talks about the
4 additional years of operation that result from this, and the
5 additional daily intake that will occur.
6 If we had a no project alternative here, which is
7 something you would typically look at under CEQA, this impact
8 would not occur. So, when we talk about baseline, we can
9 talk about, you know, PG&E has their argument of what would
10 happen, but, typically, when you look at the no project
11 alternative, you have to look at what happens, and what
12 happens here, under the no project alternative, is that the
13 entrainment stops.
14 So, we are not saying that this is a particular
15 viewpoint about entrainment. This is about the impact that
16 happens because of the entrainment that will continue because
17 of this project.
18 COMMISSIONER PADILLA: I guess I still am not
19 getting it, because we define the project for purposes of
20 asserting our permit jurisdiction to being limited to the
21 activity of replacing the turbines.
22 For purposes of looking at the "but for" argument,
23 which you just reasserted, in terms of the 20 additional
24 years that you just stated, that goes to the impacts
25 generated by the operation of the plant as a whole, as I

1 understand it.

2 And, in fact, at my read of the staff report, at

3 page 17, when it expressly says, staff says what is not part

4 of this permit is potential extension of the power plant

5 operating license, and I guess I need clarification on that.

6 STAFF COUNSEL SCHMELTZER: Well, the license

7 actually extends to the year 2025 -- is that correct.

8 EXECUTIVE DIRECTOR DOUGLAS: Yes.

9 STAFF COUNSEL SCHMELTZER: So, we are not looking

10 at that.

11 We are looking at the project, as defined, and the

12 impacts that occur from that project, and that is what our

13 CEQA equivalent process requires us to do under both the

14 *Coastal Act* and under our other statutory obligations.

15 So, we have defined the project, and then we are

16 obligated to look at the environmental impacts that result

17 from the project.

18 EXECUTIVE DIRECTOR DOUGLAS: Yes, and let me

19 clarify that the project that is before you is not just the

20 off loading, the bringing in and off loading the steam

21 generators. It is, also, the intake and discharge of marine

22 waters. That is a very significant part of this project,

23 because that is what is going to occur, which but for this

24 project wouldn't occur if they weren't able to replace them.

25 So, it is not just the barging and off loading,

1 and the construction they have to make, the buildings and all
2 of that. It is the actual discharge into marine waters,
3 which is, in the definition of development, a development,
4 and that, but for this project, wouldn't occur, and so that
5 is what you are being asked to approve.
6 COMMISSIONER PADILLA: So, we are doing two
7 things: we are defining the project as we just said, "But for
8 this project." We are defining the project as the activity
9 of replacing the generators.
10 EXECUTIVE DIRECTOR DOUGLAS: Right.
11 COMMISSIONER PADILLA: And, we are also defining
12 the project as the activity that is the cooling activity that
13 is generated by the plant, as a whole.
14 EXECUTIVE DIRECTOR DOUGLAS: The intake and
15 discharge of marine waters that wouldn't occur if this
16 project didn't go forward.
17 STAFF COUNSEL SCHMELTZER: And, I am sorry, but
18 what we are doing then is looking at the impacts of the
19 project, the environmental impacts.
20 So, the project is, as defined, the environmental
21 impacts that do result are also resulting because of the
22 continued operation of the project. So, it is because of the
23 project that those future operations during that time period
24 occurs. That is not redefining the project. The project is
25 still as defined, and those are the environmental impacts.

COMMISSIONER PADILLA: I am not sure I agree, but I think I have the answer to my question.

Thank you, Madam Chair.

CHAIR CALDWELL: Commissioner Shallenberger.

COMMISSIONER SHALLENBERGER: I just wanted to point out, I think this is exactly what we did, I don't know how long ago, when a power plant was before us to go from wet storage to dry storage -- was it that direction, wet to dry? -- and the result was going to be the power plant was going to be up and running for an addition "X" number of years, and as a result there wouldn't be public access along the coast during the additional years that the power was running, and therefore, part of a mitigation for the change in storage was the trail that we got.

Am I right staff, that that was exactly the same logic which brought us the coastal trail?

ENVIRONMENTAL SPECIALIST LUSTER: That is correct.

But, for that project --

COMMISSIONER SHALLENBERGER: Right.

ENVIRONMENTAL SPECIALIST LUSTER: -- public access could return to that section of coast at some point in the future --

COMMISSIONER SHALLENBERGER: Yes.

ENVIRONMENTAL SPECIALIST LUSTER: -- with the project with which the Commission found would exist in

1 perpetuity that future access would no longer be available,
2 and so the Commission conditioned the permit to require
3 additional access to the power plant.
4 COMMISSIONER SHALLENBERGER: Right, and I just
5 wanted to say to Commissioner Padilla that we have done, I
6 think, exactly this, under exactly the same understanding of
7 the impact, the impact of a power plant which is going to run
8 longer because of the project before us, and we have a
9 precedent for doing exactly that.
10 CHAIR CALDWELL: Commissioner Kruer.
11 VICE CHAIR KRUER: Yes, I just want to ask -- this
12 one is rather a struggle for me, because as I sit and listen
13 to everyone, and I just want to make sure -- and I understand
14 what staff is trying to do here -- because I am concerned.
15 Are we sure that,The way I see it now -- and I
16 have heard everything -- is you are making the assumption,
17 for sure, that in the year 2014, if they don't have the right
18 to replace these that the plant will cease to exist? are we
19 sure about that? I have heard and read that in here, and I
20 just want to make sure, because what we are doing here is --
21 the issue to me that is really difficult to deal with -- and
22 I have read the staff report several times -- is the issue of
23 proportionality more than nexus, and how you convinced the
24 person under common sense that you have on one side a utility
25 coming in to make their case to make more efficient, safer,

1 steam generators they need, which is a small part of this
2 huge plant, and they are not asking to extend the license, or
3 anything else, but what they are doing is they are saying we
4 have to make this safer, and more efficient. And, I
5 understand what you are trying to do, and I have no problem
6 getting the mitigation.
7 But, what mitigation we are asking them for, we
8 are saying, "Look, you put a gun to your head, you guys are a
9 public company, we want all of your land in a land conserv-
10 ation thing. We want all of it that isn't encumbered by a
11 lease or anything else."
12 And, I have no problem asking them to give land,
13 et cetera, but my problem, I guess -- and I don't know how I
14 am going to go on this -- but my problem is the case has not
15 been made sufficiently for me that you can take, under the
16 proportionality part. If I were a judge -- and I am not even
17 a lawyer -- I would have a real problem when I read the
18 record and hear people say, "Well, we want it all, we want it
19 all."
20 And, I don't think the case has been made, and if
21 we are going to do that, let's make the case, and make it
22 stronger, because I don't think -- that is a problem, the
23 proportionality, the upland watershed, and everything, it is
24 a different type of mitigation.
25 And, I don't know how a public utility company can

1 turn around and convince their shareholders, and everything
2 else. We have to look out for the Coastal Commission and
3 what we need to do.
4 But, we are, basically, telling them -- and we
5 give them no options, when we basically tell them, "We want
6 to take all of you unencumbered land."
7 And, that proportionality thing, to me, is
8 something -- if other Commissioners or anything else -- I am
9 still thinking about this, and working through it. But, I
10 think it is a difficult thing to get over that hurdle, and it
11 raises all kinds of issues. And, the biggest issue to me is
12 the proportionality of that easement.
13 EXECUTIVE DIRECTOR DOUGLAS: If I may,
14 Commissioner Kruer, I would point you back to Dr. Raimondi's
15 presentation yesterday, in terms of the massive impacts of
16 entrainment to the marine environment.
17 And, we look at that, in terms of what this
18 project is going to result in, and our conclusion is -- as
19 the staff report points out -- that the conservation easement
20 that we are suggesting for 9,000 acres is not -- I mean it is
21 much less, in terms of compensation, than the impacts.
22 So, from our perspective the proportionality of
23 the impacts, which are going to be much larger than what we
24 are asking for, in terms of a conservation easement that
25 means just to protect these watershed acres. These 9,000

1 acres, we think that there is no question that the
2 proportionality is established because the impacts of
3 entrainment cover an area up to 50 miles.
4 And, if you really want to compensate, you are
5 talking about 1,000 of acres of marine habitat that would
6 have to be restored, or created, and that is much more
7 expensive than doing a conservation easement, which just
8 says, you continue to own the land. You just agree to
9 protect it against any future development that might effect
10 marine water quality through runoff.
11 So, we think the proportionality is really
12 establishing -- it is going the other way.
13 VICE CHAIR KRUER: I hope you are right.
14 EXECUTIVE DIRECTOR DOUGLAS: Okay.
15 VICE CHAIR KRUER: I hope you are right.
16 EXECUTIVE DIRECTOR DOUGLAS: We feel very
17 confident we are.
18 VICE CHAIR KRUER: But, if someone -- I am
19 troubled by it, and I raise that issue.
20 But, also, we are making the assumption that this
21 plant, for sure, will be without the replacement of these
22 generators, will not have to go beyond 2014. And, I don't
23 know if that -- maybe you feel comfortable about it, but I
24 hope you are right on that assumption, if they don't --
25 Tom, do know something about that?

1 ENVIRONMENTAL SPECIALIST LUSTER: Certainly, I
2 want to add a few comments.
3 Staff was, actually, conservative in presenting
4 the impacts as occurring over about a 10-year period. The
5 current project schedule has the generators being replaced
6 over the next 2 or 3 years.
7 So, 2014 is the outside limit, when the expected
8 rate of corrosion would cause the generators to have to be
9 shut down due to NRC regulations.
10 PG&E's plan is to replace the generators just by
11 2009 or 2010, something in there, so it is actually another 4
12 or 5 years' worth of impacts we are talking about. Staff was
13 conservative in the staff report. We didn't describe the
14 full extent of the impacts.
15 Also, with your questions about proportionality
16 and just a few comments on mitigation sequencing. If we
17 could, we would want to avoid this impact in the first place,
18 and the only way to do that here would be to stop the cooling
19 water system, and use a different cooling method. That is
20 not feasible here.
21 As you move down the mitigation choices, you try
22 to replace the lost habitat, or the lost organisms, in kind,
23 or on site. As you move further away from being in kind or
24 on site, towards out-of-kind mitigation, or mitigation that
25 occurs further into the future, you have to increase the

1 ratio of required mitigation to fully reflect that you are
2 going to get the mitigation that is necessary to replace the
3 impacted habitat.
4 In this case, staff looked at a number of accepted
5 ratios, 10:1, 30:1, some others, that are all part of the
6 standard mitigation sequencing, and we actually didn't go to
7 the upper limit of what we thought was necessary for fully
8 mitigating this impact. We were limited by feasibility.
9 PG&E only has so much land available. That land was not
10 enough to fully mitigate for these entrainment impacts over
11 10 to roughly 15 years.
12 But, because they only had the 9,000 and some
13 acres available, that was as far as we could go. The actual
14 upland conservation easement, and near shore easement that it
15 would take to mitigate for this impact is likely several
16 times higher than that.
17 CHAIR CALDWELL: Commissioner Kruer, are you done?
18 VICE CHAIR KRUER: I'll let you go back to the
19 other Commissioners.
20 CHAIR CALDWELL: Okay.
21 Commissioner Achadjian.
22 COMMISSIONER ACHADJIAN: Thank you, Madam Chair,
23 just before I get to the motion.
24 For clarification, Mr. Douglas, the addendum you
25 read --

1 COMMISSIONER WAN: Do the motion first.
2 COMMISSIONER SHALLENBERGER: Motions first, and
3 then addendums.
4 COMMISSIONER POTTER: If Mr. Douglas answers, he
5 is okay.
6 CHAIR CALDWELL: Commissioner Achadjian, if you
7 want to put the motion on the table, we would all be pleased.
8 [**MOTION**]
9 COMMISSIONER ACHADJIAN: Madam Chair, I move that
10 the Commission approve Coastal Development Permit No.
11 A-3-SLO-06-017 subject to conditions set forth in the staff
12 recommendation by the following amendments.
13 COMMISSIONER POTTER: I'll second the motion.
14 Now, you can amend the motion.
15 CHAIR CALDWELL: If you make the motion as stated
16 in the staff report, and then we will entertain any amending
17 motions after that, but make a clean motion first.
18 So, it has been moved by Commissioner Achadjian to
19 approve the CDP for this project, subject to the conditions
20 set forth in the staff recommendation.
21 Is there a "second"?
22 COMMISSIONER POTTER: Second, Madam Chair.
23 CHAIR CALDWELL: Seconded by Commissioner Potter.
24 They are seeking a "Yes" vote.
25 Do you wish to speak to your motion?

1 COMMISSIONER POTTER: Now offer your amending
2 motion.
3 COMMISSIONER ACHADJIAN: Now, I would offer my
4 amending motion, thank you.
5 With the following modification, to delete
6 Special Condition 5, delete Special Condition 7, modify
7 Special Condition 3.a.ii. to the delete the second sentence
8 relating to moving the DCPP gate or Pecho Coast Trail access
9 road, and instead replace that sentence with the following:
10 "PG&E shall also make additional contribution
11 of $500,000.00 to the Port San Luis Harbor
12 District to fund feasibility studies, and/or
13 the implementation of physical improvements,
14 or programs to enhance managed access to
15 or on Lighthouse Road, and accept PG&E's
16 proposed increase in its conservation offer
17 from 620 acres to 1,200 acres, and that
18 acres need to be offered to the harbor
19 district, give them the opportunity as the
20 first right of refusal to accept those acres."
21 COMMISSIONER POTTER: Second.
22 CHAIR CALDWELL: All right, I have a suggestion
23 for you, which may help us move through these, and that would
24 be to separate each of those issues, because they are
25 different issues.

1 COMMISSIONER POTTER: She wants you to move them
2 one at a time.
3 COMMISSIONER ACHADJIAN: Okay.
4 COMMISSIONER POTTER: That's all right.
5 CHAIR CALDWELL: If you want to start with your
6 Special Condition No. 5, for example, as a separate motion.
7 Do you agree to withdraw --
8 COMMISSIONER POTTER: I'll withdraw my "second."
9 CHAIR CALDWELL: -- and take each of them one by
10 one.
11 [**MOTION**]
12 COMMISSIONER ACHADJIAN: Okay, with the following
13 modification, No. 1, delete Special Condition 5.
14 COMMISSIONER SECORD: Second.
15 CHAIR CALDWELL: I has been moved by Commissioner
16 Achadjian, seconded by Commissioner Secord, to delete Special
17 Condition No. 5 which is the Diablo Creek habitat protection
18 and enhancement condition, which requests that PG&E cease
19 withdrawing water from Diablo Creek no later than the start
20 of the commercial operation of the replacement steam
21 generators.
22 Would you like to speak to that motion?
23 COMMISSIONER ACHADJIAN: I believe I have already
24 covered it through our discussions.
25 CHAIR CALDWELL: Commissioner Secord, do you want

1 to speak to that motion?
2 COMMISSIONER SECORD: No, thank you, Madam Chair.
3 CHAIR CALDWELL: Commissioner Burke?
4 COMMISSIONER BURKE: No, I am fine, thank you.
5 CHAIR CALDWELL: Okay. I, actually, that is the
6 one remaining question that I have, was on that very point.
7 I wanted to have a better understanding of this
8 issue, because it is one that has not been given a lot of
9 attention, so far. I know that when staff gave their initial
10 report, they discussed the fact that those water rights that
11 were obtained by PG&E to the withdrawal of water from Diablo
12 Creek, were obtained for the purposes of dust suppression
13 during construction, and I need to have a better
14 understanding of the legal significance of that, as it
15 pertains to their continued withdrawal of the Diablo Creek
16 water for, just ongoing operation of the plant, as opposed to
17 for the purposes of dust suppression during the construction
18 period.
19 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair, we have
20 not evaluated the legal implications of the initial water
21 right allocation for dust control, versus what they are using
22 it for now.
23 What we have identified is that there are adverse
24 impacts from the extraction of water from this creek,
25 irrespective of what they are using the water for, and that

1 it may not be in compliance with their initial water right
2 allocation. And, that is why we are suggesting that this be
3 ended.
4 If the Commission decides that they should be able
5 to continue to extract water from the creek with the impacts
6 of that, then I would suggest that that is all the more
7 reason to have a conservation easement, because you are
8 allowing continued adverse environmental impacts to the
9 riparian habitat, and the creek. But, we have not evaluated
10 the water rights status to the extraction of the water from
11 the creek.
12 COMMISSIONER REILLY: Madam Chair.
13 CHAIR CALDWELL: Then, I have a follow-up question
14 on that, and that is that the applicant, in their letter
15 addressed to the Commission, and it is their letter dated
16 December 8, 2006, argues that the area where they are
17 withdrawing the water from the creek is outside of the
18 coastal zone. Is that relevant? or irrelevant?
19 EXECUTIVE DIRECTOR DOUGLAS: We don't think it is
20 relevant. It flows into the coastal zone. It clearly has
21 impacts inside of the coastal zone.
22 ENVIRONMENTAL SPECIALIST LUSTER: May I add a
23 quick point, the Commission doesn't evaluate development that
24 occurs outside of the coastal zone, but may impose mitigation
25 outside of the coastal zone, as long as it has got that nexus

1 to the coastal zone, and the coastal resources --
2 EXECUTIVE DIRECTOR DOUGLAS: And, the impacts
3 being inside of the coastal zone.
4 CHAIR CALDWELL: Right, and so the creek, in its
5 state of reduced water due to the withdrawal is within the
6 coastal zone, and those impacts are experienced by the
7 riparian species that otherwise would exist there, are
8 currently being impacted in some fashion, that is your logic.
9 EXECUTIVE DIRECTOR DOUGLAS: That is our logic,
10 yes.
11 CHAIR CALDWELL: Okay, all right.
12 ENVIRONMENTAL SPECIALIST LUSTER: And, one more
13 quick point.
14 Staff researched the water rights to some degree.
15 We weren't able to find an approved change of use to the
16 water right in the state records.
17 CHAIR CALDWELL: So I need to a little bit more
18 information about that, then, so our legal counsel, can you
19 chime in here?
20 STAFF COUNSEL SCHMELTZER: Yes, and I hope I am
21 not repeating anything anyone said.
22 CHAIR CALDWELL: I'll cut you off, if you do.
23 STAFF COUNSEL SCHMELTZER: Okay.
24 The use of this water is inside of the coastal
25 zone, and we believe that gives us a jurisdiction over this

1 because of the use of the water.
2 CHAIR CALDWELL: So, Mr. Luster just pointed out
3 that to our knowledge they haven't obtained a change of use,
4 for the withdrawal of that water to accommodate how they are
5 currently using it. Is that important, or not?
6 STAFF COUNSEL SCHMELTZER: No, that is not
7 relevant to what we are doing here.
8 CHAIR CALDWELL: Okay, thank you.
9 Commissioner Clark, and then Commissioner Reilly.
10 COMMISSIONER CLARK: Thank you, Madam Chair. To
11 the motion on the floor, I have some questions with respect
12 to it.
13 If I understood the testimony from staff put in
14 the record at the hearing today, staff indicated that
15 stopping the withdrawal from Diablo Creek would affect,
16 approximately, 11 million gallons of water per year, and that
17 in order to do that, from their opinion, it would only
18 require an increase of, approximately, five percent in the
19 desal capability of the current plant.
20 What we heard from the applicant is that they
21 don't have the capability or capacity within the desal
22 facility at the plant to accommodate that. The response from
23 staff to that particular perspective was they haven't shown
24 it to be infeasible.
25 My question -- which I think will bear on whether

1 I can support or not support this motion -- is, is this a
2 technical impossibility or it is a war of perspective here.
3 EXECUTIVE DIRECTOR DOUGLAS: It is my understand-
4 ing that they don't have the capacity to make up this water
5 that would be lost from no more extractions from the creek.
6 But, they have the ability to expand their
7 desalination operation. It is just a matter of cost, and
8 they would have to do that. That is my understanding, and
9 they don't wish to do that.
10 So, if I am wrong, they can correct me, but that
11 is what we have been told.
12 COMMISSIONER CLARK: That would suggest that it
13 isn't a matter of infeasible, it is a matter of taking it
14 down the path of increasing the desal capability.
15 EXECUTIVE DIRECTOR DOUGLAS: That is right, and
16 the additional costs that that modification to their desal
17 operation would require.
18 CHAIR CALDWELL: Mr. Zbur.
19 MR. ZBUR: Part of the reason is that it would
20 require --
21 CHAIR CALDWELL: Your name, for the record.
22 MR. ZBUR: Rick Zbur, with Latham and Watkins.
23 There would be a requirement for an expansion to
24 the desal facility, which of course would be costly, but in
25 addition to that we don't have the Coastal Development Permit

1 to do that, we don't have, perhaps, other permits to do that.
2 So, part of that is that we just don't have the --
3 you know, we can't just stop withdrawing water from the
4 creek, without going through an effort of expanding the desal
5 facility.
6 CHAIR CALDWELL: Thank you.
7 COMMISSIONER PADILLA: Madam Chair, wouldn't such
8 expansion have very adverse environmental impacts, as well,
9 potentially.
10 EXECUTIVE DIRECTOR DOUGLAS: Pardon me, what is
11 the question?
12 CHAIR CALDWELL: Commissioner Padilla has just
13 asked whether or not expanding the capacity of the
14 desalination facility at the site, whether or not that would,
15 in itself, produce additional adverse environmental impacts?
16 EXECUTIVE DIRECTOR DOUGLAS: We have looked at the
17 volumes that we are talking about here, and it is our
18 conclusion that that would be minimal, if any that are
19 noticeable.
20 ENVIRONMENTAL SPECIALIST LUSTER: The desalination
21 facility would use water that is already being pulled in for
22 cooling, so it wouldn't really reflect an additional amount.
23 CHAIR CALDWELL: Okay.
24 EXECUTIVE DIRECTOR DOUGLAS: And it is a
25 relatively small amount, given the amount of water that is

1 pulled in there.
2 CHAIR CALDWELL: Commissioner Reilly.
3 COMMISSIONER REILLY: Thank you, Madam Chair.
4 I am inclined to support the staff recommendation
5 here, but I am bothered by the time frame you have. It seems
6 to me we had testimony that there is at least some level or
7 urgency to get these generators replaced, and as Mr. Zbur
8 pointed out, there is not only the issue of engineering and
9 costs to increase the plant, but there is also a permitting
10 process involved, as we are all aware, and I am wondering if
11 requiring it be done prior to the operation of the steam
12 generators is really a reasonable time frame, or if it is
13 going to unduly delay their ability to get the generators in.
14 And, is staff willing to be a little more flexible with the
15 time frame?
16 ENVIRONMENTAL SPECIALIST LUSTER: Well, they
17 probably have about 2 years before the first generator would
18 be installed and start commercial operation.
19 Desalination facilities are generally modular.
20 You just add new components as need be to increase the
21 capacity. So, the actual design and construction of adding
22 capacity probably wouldn't take a long time, and I believe
23 the permitting process could occur within 2 years.
24 EXECUTIVE DIRECTOR DOUGLAS: But, I think, if the
25 Commission maintains this condition, and some sort of

1 modification to, say an extension of the time could be
2 authorized, if they are in the process of getting them --
3 COMMISSIONER REILLY: If staff would incorporate
4 that, that would help me.
5 EXECUTIVE DIRECTOR DOUGLAS: Yes, all right, that
6 is fine.
7 CHAIR CALDWELL: All right, it is agreed to
8 incorporate it.
9 Commissioner Potter.
10 COMMISSIONER POTTER: Madam Chair, based on
11 yesterday's impingement and entrainment presentation, and
12 then the recommendation on the item to follow this, which is
13 the pilot plant at Moss Landing, in which certain
14 environmental impacts are cited by the installation of that
15 very small facility, I think Mr. Zbur presents a fairly
16 compelling case for a rather tough hill to climb, in order to
17 get an additional modular added onto this facility.
18 So, I would side with Commissioner Reilly and
19 support the applicant in this case.
20 CHAIR CALDWELL: Well, actually, Commissioner
21 Reilly is supporting staff on this one.
22 The response --
23 COMMISSIONER POTTER: Well, in that case, it's
24 foolish.
25 CHAIR CALDWELL: Don't you hate it when that

1 happens.

2 The response that staff actually made was that

3 this would not involve additional entrainment and impingement

4 because the desal facility here would be using the already

5 entrained water, not taking in new water.

6 Commissioner Wan.

7 COMMISSIONER WAN: And, in this case, you are not

8 talking about phasing this out to a situation where,

9 eventually, you are not using that water that is for cooling.

10 This is going to be an ongoing operation that will continue

11 to use water for cooling. So, therefore, you don't have the

12 same situation, as you have in the next application.

13 CHAIR CALDWELL: Ms. Miller, I am sensing that we

14 are close to needing a vote on this particular amendment,

15 unless there is further discussion by the Commissioners.

16 COMMISSIONER PADILLA: I just have a quick

17 question.

18 CHAIR CALDWELL: Commissioner Padilla.

19 COMMISSIONER PADILLA: I just want -- there is a

20 piece of facts cited, with respect to the impact,

21 particularly entrainment of that additional --

22 CHAIR CALDWELL: Would you pull that microphone

23 closer.

24 COMMISSIONER PADILLA: I apologize.

25 The requirement we are looking at, with respect to

1 this condition, and if we support the staff, would require
2 certain action by the applicant, and I want to be sure that
3 the fact that has been stated that the environmental impacts
4 would be minimal because it would be using the already
5 entrained effluent is, in fact, factually correct. And, if
6 it is, then I am inclined to support the staff on this one,
7 But, I just need somebody to tell me, you know, I
8 hear the staff, but it would be helpful for me to know from
9 the applicant what the fact is.
10 CHAIR CALDWELL: And, this is a "Yes" or "No"
11 answer.
12 MR. ZBUR: I think part of --
13 CHAIR CALDWELL: Your name for the record.
14 MR. ZBUR: I am sorry, Meg, Rick Zbur, Latham and
15 Watkins.
16 Part of the problem is that we wouldn't have a CDP
17 to do this. If we had enough time to provide designs to the
18 staff for evaluation, and the withdrawal in threeish [sic.]
19 years, and the withdrawal from the creek did not take place
20 -- the prohibition wouldn't take place until after it is
21 constructed, I think we would be fine.
22 CHAIR CALDWELL: Sir, with all due respect, you
23 are not actually answering the question. The question is
24 where is the water coming from that you would be using in the
25 desalination facility?

1 MR. ZBUR: I think it is coming from, yes, the
2 existing intake.
3 CHAIR CALDWELL: Okay.
4 Commissioner Padilla, does that answer your
5 question?
6 COMMISSIONER PADILLA: It does, thank you, Madam
7 Chair.
8 CHAIR CALDWELL: Okay.
9 COMMISSIONER REILLY: And, Madam Chair, to clarify
10 what Mr. Zbur is saying, is that my understanding is staff
11 has accepted language saying if the permitting process is
12 prolonged for any reason, that there could be an extension of
13 time limits.
14 MR. ZBUR: Couldn't we just have this included --
15 if you are inclined to do it that way -- in this permit?
16 COMMISSIONER REILLY: Staff has already accepted
17 that language.
18 EXECUTIVE DIRECTOR DOUGLAS: Well, no, what Mr.
19 Zbur is saying is couldn't you modify the approval to include
20 the additional desalination, and we are saying, "No" because
21 we do have to analyze it, and you do have to understand what
22 the impacts are.
23 But, if there is a delay, that would be good cause
24 to extend the deadline for them to end their withdrawals from
25

1 the creek.

2 So we just aren't prepared to tell you that we

3 would recommend the desal expansion at this point, because we

4 just don't know what that entails.

5 CHAIR CALDWELL: So, and the point, the rejoinder

6 to that is, should the Commission not approve the

7 desalination expansion, then their alternative would be

8 continued withdrawal from Diablo Creek.

9 COMMISSIONER WAN: Exactly.

10 EXECUTIVE DIRECTOR DOUGLAS: That's right.

11 CHAIR CALDWELL: We all understand it, thank you.

12 I think we are ready for a roll call vote on this

13 motion. The mover and seconder are seeking to delete Special

14 Condition No. 5, which is that condition that would require

15 that PG&E cease withdrawing water from Diablo Creek, with the

16 additional modification that staff has provided, in terms of

17 providing an extension of the time period, within which they

18 would have to cease that withdrawal, if it is required to get

19 the appropriate permits.

20 Is that a good restatement of your modification?

21 EXECUTIVE DIRECTOR DOUGLAS: Yes.

22 CHAIR CALDWELL: Okay.

23 EXECUTIVE DIRECTOR DOUGLAS: That the time frame

24 that is set forth here would apply, however, if they can't

25 get it done, because they are in the permitting process, then

1 we could extend the time period.
2 VICE CHAIR KRUER: Is the maker of the motion --
3 COMMISSIONER ACHADJIAN: That is not my
4 understanding.
5 CHAIR CALDWELL: I am simply stating what the
6 Special Condition 5 has right now, as modified by staff.
7 EXECUTIVE DIRECTOR DOUGLAS: That's right.
8 CHAIR CALDWELL: And, you are seeking deletion of
9 that Special Condition.
10 COMMISSIONER ACHADJIAN: Right.
11 CHAIR CALDWELL: So, if you want Special Condition
12 5 deleted, you would make a "Yes" vote on this motion, okay.
13 So, Ms. Miller, would you call the roll.
14 SECRETARY MILLER: Commissioner Achadjian?
15 COMMISSIONER ACHADJIAN: Aye, yes.
16 SECRETARY MILLER: Commissioner Burke?
17 COMMISSIONER BURKE: Yes.
18 SECRETARY MILLER: Commissioner Clark?
19 COMMISSIONER CLARK: No.
20 SECRETARY MILLER: Commissioner Secord?
21 COMMISSIONER SECORD: Yes.
22 SECRETARY MILLER: Commissioner Kruer?
23 VICE CHAIR KRUER: No.
24 SECRETARY MILLER: Commissioner Neely?
25 COMMISSIONER NEELY: No.

SECRETARY MILLER: Commissioner Padilla?

COMMISSIONER PADILLA: No.

SECRETARY MILLER: Commissioner Potter?

COMMISSIONER POTTER: Aye.

SECRETARY MILLER: Commissioner Reilly?

COMMISSIONER REILLY: No.

SECRETARY MILLER: Commissioner Shallenberger?

COMMISSIONER SHALLENBERGER: No.

SECRETARY MILLER: Commissioner Wan?

COMMISSIONER WAN: No.

SECRETARY MILLER: Chair Caldwell?

CHAIR CALDWELL: No.

SECRETARY MILLER: Four, eight.

CHAIR CALDWELL: The motion fails.

So, your next motion, Commissioner Achadjian.

[**MOTION**]

COMMISSIONER ACHADJIAN: My next motion is to delete Special Condition No. 7.

COMMISSIONER SECORD: Second.

CHAIR CALDWELL: Okay, it has been moved by Commissioner Achadjian, seconded by Commissioner Secord, to delete Special Condition No. 7. That condition involves the conservation easement as mitigation for marine biology and water quality impacts, and involves the offer to dedicate for a conservation easement, approximately, 9,130 acres.

1 Would you like to speak to your motion?
2 COMMISSIONER ACHADJIAN: I believe we have pretty
3 much covered it, Madam Chair, and my reasoning is that we
4 have the -- we passed a measure on the ballot, AOO, better
5 know as the dream initiative, that gives us the insurance we
6 need that at the end of its operation it will preserve that
7 land entirely.
8 CHAIR CALDWELL: Commissioner Achadjian, I am not
9 familiar with that measure, can you explain?
10 COMMISSIONER ACHADJIAN: This measure took place
11 years ago, under the leadership of Mr. and Mrs. Blakesley. I
12 don't believe they were married then. Mrs. Blakesley, at
13 that time, was heavily involved with the American Land
14 Conservancy, who put this measure on the ballot to -- as
15 said, in its passage it gives us insurance that upon
16 retirement of the plant, we will be able to preserve this
17 land. In other words, when PG&E comes out of the utility
18 operation, it won't go into real estate operations, so put an
19 end to it.
20 CHAIR CALDWELL: Okay, our Executive Director
21 wants to speak to this.
22 EXECUTIVE DIRECTOR DOUGLAS: Yes, the dream
23 initiative was appropriately named. It is a dream, and it is
24 wish. It is not self enforcing. It was an expression of
25 desire by the voters, that they would like to see this

1 acreage conserved when the plant closes down. It is not
2 self-implementing. It is not enforceable. It would be left
3 to some entity in the future, when there is termination of
4 the operations here, to impose the requirement of a conserv-
5 ation easement.
6 So, that I think, legally, is what the status is.
7 COMMISSIONER REILLY: Question.
8 CHAIR CALDWELL: Commissioner Secord, you were the
9 seconder.
10 COMMISSIONER SECORD: Madam Chair, the PG&E had
11 offered a --
12 CHAIR CALDWELL: It is 1200 acres.
13 COMMISSIONER SECORD: -- 1200 acres, and that was
14 satisfactory to me.
15 COMMISSIONER REILLY: And, just to tag onto that,
16 Madam Chair, does the offer of 1200 acres now, as opposed to
17 620 change the staff acreage recommendation?
18 EXECUTIVE DIRECTOR DOUGLAS: Yes, it would reduce
19 it, you are right, Commissioner Reilly.
20 COMMISSIONER REILLY: Just checking.
21 EXECUTIVE DIRECTOR DOUGLAS: No, you are right.
22 It would reduce it by another 600 acres --
23 COMMISSIONER REILLY: Actually, probably 500 --
24 more like 580.
25 EXECUTIVE DIRECTOR DOUGLAS: It would be 580, you

1 are right, sorry.
2 CHAIR CALDWELL: Commissioner Wan.
3 COMMISSIONER WAN: So, actually, you are amending,
4 since you have -- I am assuming that the offer to dedicate
5 the 1200 acres is part of their project description, and
6 doesn't require any kind of anything.
7 EXECUTIVE DIRECTOR DOUGLAS: That is correct.
8 COMMISSIONER WAN: In which case --
9 No, he is saying "No".
10 EXECUTIVE DIRECTOR DOUGLAS: What?
11 COMMISSIONER WAN: That is what we need to know.
12 We need a clarification.
13 CHAIR CALDWELL: Mr. Zbur, your name for the
14 record, and if you can clarify, does the offer to dedicate
15 the 1200 acres in the conservation easement, is it part of
16 your application, or not?
17 MR. ZBUR: It is, as said in our various letters,
18 it is conditioned upon approval today, with conditions that
19 are satisfactory to PG&E. If that doesn't happen, then the
20 offer -- it was contingent on that.
21 COMMISSIONER WAN: Okay, because I was going to
22 suggest, on that, if it was, then you could reduce the 9,000
23 acres, as Commissioner Reilly said, but if this is contingent
24 upon them approving everything, we just passed, or turned
25 down --

1 EXECUTIVE DIRECTOR DOUGLAS: No.
2 COMMISSIONER WAN: -- an amendment that basically
3 they could come back and say --
4 EXECUTIVE DIRECTOR DOUGLAS: Yes, given that.
5 COMMISSIONER WAN: -- we withdraw 1200 acres.
6 EXECUTIVE DIRECTOR DOUGLAS: Yes, given that
7 clarification, we would not reduce our numbers.
8 COMMISSIONER WAN: They could withdraw that.
9 COMMISSIONER REILLY: Question of PG&E.
10 CHAIR CALDWELL: Yes, Commissioner Reilly.
11 COMMISSIONER REILLY: Mr. Zbur, would you come
12 back up for just a moment, with whatever help you need.
13 Are you saying that the 1200-acre offer is
14 contingent on PG&Es satisfaction with all conditions today?
15 or simply to the condition related to the conservation
16 easement?
17 MS. JACOBS: It does not apply to all conditions.
18 It applies, specifically, to Condition No. 7.
19 COMMISSIONER REILLY: Okay, thank you.
20 MS. JACOBS: You are welcome.
21 CHAIR CALDWELL: So, I am understanding that if
22 Condition No. 7 goes away, then their offer is considered
23 part of their application.
24 COMMISSIONER REILLY: Well, and then also, the
25 Executive Director may want to increase his request by 1200

1 acres.

2 EXECUTIVE DIRECTOR DOUGLAS: We will just stick

3 with what we have got.

4 CHAIR CALDWELL: Any further discussion of

5 Condition No. 7 and its deletion?

6 COMMISSIONER ACHADJIAN: Madam Chair.

7 CHAIR CALDWELL: Commissioner.

8 COMMISSIONER ACHADJIAN: I just wanted to remind

9 ourselves that part of the conditions that were approved by

10 the staff, if not part of the amendment, also 12 acres was

11 given to the harbor district.

12 COMMISSIONER WAN: Don't mix it up.

13 COMMISSIONER ACHADJIAN: We are not mixing it, but

14 it is just another piece of land that went --

15 CHAIR CALDWELL: We'll note that remark.

16 COMMISSIONER ACHADJIAN: -- from the ownership of

17 --

18 CHAIR CALDWELL: Thank you.

19 Commissioner Shallenberger, did you want to

20 address this motion?

21 COMMISSIONER SHALLENBERGER: Well, I just wanted

22 to remind the Commission that the staff proposal before us --

23 we were talking a lot about proportionality, and that even

24 with what staff is proposing, we are not getting proportional

25 mitigation for the impacts that will occur, and so by

1 deleting Condition No. 7, we are getting even less.
2 So, that it just concerns me, particularly, after
3 what we heard yesterday, on this plant, that entrainment is
4 having a negative impact on anything from 300 to 40,000 acres
5 of marine habitat, that we are prepared to settle for less
6 than what the staff recommendation is.
7 COMMISSIONER PADILLA: Madam Chair.
8 CHAIR CALDWELL: Commissioner Padilla.
9 COMMISSIONER PADILLA: Just briefly, just to
10 reiterate where I was going earlier --
11 CHAIR CALDWELL: Would you pull the microphone
12 closer.
13 COMMISSIONER PADILLA: -- with my questioning.
14 Just to reiterate where I was going earlier, I am
15 having a real hard time seeing the proportionality test is
16 met here, with the facts in the record.
17 As much as I may love to see the entire plant go
18 away, and all of the acreage become public, I just am a
19 believer in being consistent, and applying consistently our
20 framework for decision making. In this case, I think the
21 voluntary offer is more than sufficient with the case in
22 front of us today.
23 CHAIR CALDWELL: Thank you.
24 Ms. Miller, would you call the roll. The maker
25 and seconder are seeking a "Yes" vote for the deletion of

1 Condition No. 7 which would automatically implement the
2 voluntary offer by the applicant for the 1200 acres. And, I
3 am assuming with the same basic language here of the offer to
4 dedicate with a conservation easement, so all other respects
5 of Condition No. 7, with the exception of the acreage amount,
6 remain the same.
7 Is that correct?
8 EXECUTIVE DIRECTOR DOUGLAS: That would have to be
9 confirmed by the maker of the motion, because my understand-
10 ing is it is to delete the entirety of --
11 COMMISSIONER WAN: The whole thing.
12 EXECUTIVE DIRECTOR DOUGLAS: -- Condition 7.
13 COMMISSIONER WAN: Ask for a qualification of
14 that.
15 CHAIR CALDWELL: Let's do that, okay.
16 COMMISSIONER ACHADJIAN: Madam Chair, my motion is
17 to delete No. 7, and I will come back to the 1200 acres in my
18 addendum.
19 CHAIR CALDWELL: I'll hold you to that, all right.
20 Ms. Miller, would you call the roll, please.
21 SECRETARY MILLER: Commissioner Burke?
22 COMMISSIONER BURKE: Yes.
23 SECRETARY MILLER: Commissioner Clark?
24 COMMISSIONER CLARK: Pass.
25 SECRETARY MILLER: Commissioner Secord?

1 COMMISSIONER SECORD: Yes.
2 SECRETARY MILLER: Commissioner Kruer?
3 VICE CHAIR KRUER: Yes.
4 SECRETARY MILLER: Commissioner Neely?
5 COMMISSIONER NEELY: Yes.
6 SECRETARY MILLER: Commissioner Padilla?
7 COMMISSIONER PADILLA: Yes.
8 SECRETARY MILLER: Commissioner Potter?
9 COMMISSIONER POTTER: Aye.
10 SECRETARY MILLER: Commissioner Reilly?
11 COMMISSIONER REILLY: Yes.
12 SECRETARY MILLER: Commissioner Shallenberger?
13 COMMISSIONER SHALLENBERGER: No.
14 SECRETARY MILLER: Commissioner Wan?
15 COMMISSIONER WAN: No.
16 SECRETARY MILLER: Commissioner Achadjian?
17 COMMISSIONER ACHADJIAN: Yes.
18 SECRETARY MILLER: Chair Caldwell?
19 CHAIR CALDWELL: Yes.
20 SECRETARY MILLER: Commissioner Clark.
21 COMMISSIONER CLARK: Yes.
22 CHAIR CALDWELL: Okay, the motion carries, and
23 that means that Special Condition No. 7 would be deleted.
24 Commissioner Achadjian, I am holding you to your
25 promise --

1 COMMISSIONER ACHADJIAN: Yes, Ma'am.
2 CHAIR CALDWELL: -- for a follow up motion.
3 COMMISSIONER ACHADJIAN: Modify Special Condition
4 3.a.ii to delete the second sentence related to moving the
5 DCPP gate, or Pecho Coast Trail access road, and instead
6 replace the sentence with the following:
7 "PG&E shall also make an additional contribution
8 of $500,000.00 to the Port San Luis Harbor
9 District to fund feasibility studies, and/or
10 the implementation of physical improvements
11 or programs to enhance managed access to
12 or on Lighthouse Road, and accept PG&Es
13 proposed increase in its conservation offer
14 from 620 acres to 1200 acres, and give
15 the harbor district the first right of
16 refusal to accept the conservation easement."
17 COMMISSIONER SECORD: Second.
18 CHAIR CALDWELL: All right, it has been moved by
19 Commissioner Achadjian, and seconded by Commissioner Secord,
20 to modify Special Condition 3.a.ii to alter the monetary
21 amount indicated there from $300,000.00 to $500,000.00 -- is
22 that correct?
23 COMMISSIONER ACHADJIAN: that is an additional
24 $500,000.00 on top of the $300,000.00.
25 CHAIR CALDWELL: And, to include the additional --

1 sorry, would you clarify that, then?
2 COMMISSIONER ACHADJIAN: We already have
3 $300,000.00 offered as a condition. We are accepting it, and
4 on top of it, I am requesting an additional $500,000.00.
5 CHAIR CALDWELL: So, a total of $800,000.00?
6 COMMISSIONER ACHADJIAN: Correct.
7 CHAIR CALDWELL: Okay, very good.
8 Plus the offer to dedicate the 1200 acres in a
9 conservation easement.
10 COMMISSIONER ACHADJIAN: Would you rather have me
11 split those two?
12 COMMISSIONER POTTER: Yes.
13 COMMISSIONER WAN: Definitely, split them.
14 COMMISSIONER ACHADJIAN: Okay.
15 COMMISSIONER POTTER: Split them.^
16 [**MOTION**]
17 COMMISSIONER ACHADJIAN: It is the consensus of my
18 colleagues here that split it.
19 Let me go back to modify Special Condition 3.a.ii
20 to delete the second sentence relating to moving the DCPP
21 gate or Pecho Coast Trail access road, and instead replace
22 that sentence with the following:
23 "PG&E shall also make additional $500,000.00
24 contribution, which total would be $800,000.00 --
25 $500,000.00 to the Port San Luis Harbor District

1 to fund feasibility studies, and/or the
2 implementation of physical improvements or
3 programs to enhance managed access to or on
4 Lighthouse Road."
5 CHAIR CALDWELL: Okay.
6 COMMISSIONER SECORD: I'll second that.
7 CHAIR CALDWELL: That has been accepted by your
8 "seconder" as a modification to the original amending motion.
9 Would you like to speak to that motion?
10 EXECUTIVE DIRECTOR DOUGLAS: And, I would like
11 clarification.
12 CHAIR CALDWELL: Good.
13 EXECUTIVE DIRECTOR DOUGLAS: You are now talking
14 about amending 3.a.ii and you are talking about deleting the
15 second sentence, and increasing the first amount from
16 $300,000.00 to $500,000.00?
17 CHAIR CALDWELL: To $800,000.00
18 EXECUTIVE DIRECTOR DOUGLAS: To $800,000.00 and
19 adding the language that this would be a contribution to the
20 Port San Luis Harbor District --
21 COMMISSIONER ACHADJIAN: For the purpose of.
22 EXECUTIVE DIRECTOR DOUGLAS: -- removing barriers
23 to coastal access?
24 COMMISSIONER ACHADJIAN: Right.
25 CHAIR CALDWELL: Actually, it was for a

1 feasibility study.
2 COMMISSIONER POTTER: Feasibility study to --
3 CHAIR CALDWELL: Would you restate your motion so
4 that we are very clear about it.
5 COMMISSIONER ACHADJIAN: Okay, the addition of the
6 $500,000.00 which is now $800,000.00 to the Port San Luis
7 Harbor District to fund feasibility studies and/or the
8 implementation of feasible improvements or programs to
9 enhance managed access to, or on Lighthouse Road.
10 CHAIR CALDWELL: Okay.
11 So, that is the motion, increasing the dollar
12 amount to $800,000.00 removing the second sentence as stated
13 in the staff report, and indicating that that money would be
14 used for the feasibility study by the Port Harbor District.
15 COMMISSIONER SECORD: Question, please.
16 CHAIR CALDWELL: Commissioner Secord.
17 COMMISSIONER SECORD: I wanted to ask the maker of
18 the motion if it would be possible to get that access for
19 that money, rather than simply study it.
20 It strikes me that $800,000.00 to study this, and
21 doesn't get any access.
22 COMMISSIONER ACHADJIAN: It has to be viewed --
23 COMMISSIONER SECORD: You know there are no --
24 COMMISSIONER ACHADJIAN: It saves it for feasible
25 improvements. It is spelled out.

1 But, you need to understand that the ownership --
2 part of the ownership of the road belongs to the Harbor
3 District, and by putting the money in their pocket for that
4 purpose, will get the job done, because further to the left
5 there is some ESHA questions, and/or native sacred land
6 questions, and I don't -- they will have to do some studying.
7 I don't want to cut off that funding, because they don't have
8 the funds to do all of the above.
9 CHAIR CALDWELL: Commissioner Kruer.
10 VICE CHAIR KRUER: How is it feasible to create a
11 feasibility study that costs $800,000.00. I know it is
12 Christmas, but I just don't understand this part.
13 COMMISSIONER ACHADJIAN: I will be happy to remove
14 the word "feasibility studies" if that will --
15 VICE CHAIR KRUER: Well, I'll tell you, I am not
16 going to support anything that creates a boondoggle for an
17 $800,000.00 feasibility study, for the port or anyone else.
18 COMMISSIONER ACHADJIAN: I'll scratch that. The
19 motion maker scratch the feasibility stidy from my motion, if
20 the second concurs.
21 COMMISSIONER SECORD: I concur.
22 CHAIR CALDWELL: Okay, Commissioner Secord
23 concurs.
24 Commissioner Wan.
25 COMMISSIONER WAN: Yes, I have some questions

1 here. You know, it was something I was going to ask for more
2 explanation earlier, but that is I am trying to understand
3 why -- and I don't want to start using the word feasible,
4 because we are getting involved in that -- but, why it is
5 that along that 5-mile stretch of road, there is absolutely
6 no place to move this road to -- this gate to, that doesn't
7 require massive widening, grading, or something like that?
8 Are there any maps, or photos, or anything that
9 can show me what this terrain is like here? and why along
10 that entire stretch of road there is no other location for
11 this gate than that?
12 And, I see the woman from -- while staff is maybe
13 trying to answer the question, I also see that we have the
14 representative from the lighthouse group, I think Devine,
15 okay? if you could come forward and let us know what you
16 think about this, is there a place that it can just be move
17 the gates without having to do a lot of construction work.
18 MS. DEVINE: Susan Devine, Lighthouse Keepers.
19 As I told you before, I am not an engineer. The
20 gate is situated at the very beginning of the intersection of
21 the road to Diablo Canyon, and the road that goes along the
22 shore. It is 5-mile distance from the shore road, where the
23 gate is, to the power plant.
24 I am not allowed to go past the gate, except the
25 300 feet to the Lighthouse Road, so I can't really address

1 that question, but 5 miles seems certainly a fair distance to
2 move the gate.
3 COMMISSIONER WAN: Okay, that is fine.
4 MS. DEVINE: And, we --
5 COMMISSIONER WAN: You have answered my question.
6 You can't really answer the question, but --
7 CHAIR CALDWELL: Thank you.
8 Mr. Douglas.
9 COMMISSIONER WAN: -- maybe staff can answer
10 whether or not there is a place that it can moved without
11 having to do grading, or widening, or any of those kinds of
12 things?
13 EXECUTIVE DIRECTOR DOUGLAS: Well, this is one of
14 the issues that we said we wanted to -- and we will explore
15 with them, in the context of the other permit condition
16 compliance, because we do think it is possible to either move
17 the gate, or widen the road here to allow a separate
18 accessway to the Lighthouse Road.
19 So, from our perspective, we think it is possible
20 to do it. I can't tell you what the exact configuration
21 would be at this point, but I think it is really premature to
22 preclude our study of that opportunity, and delete it from
23 any possible improvement of access to the lighthouse.
24 COMMISSIONER WAN: Okay, I will allow PG&E to
25 speak to this, but I also think the question, the issue that

1 Mr. Douglas raises is the right one. If we allow this, we
2 are precluding that from being in it, and I don't want to
3 preclude it. It may be that you can't do it, but I can't see
4 why we would want to preclude that from happening.
5 CHAIR CALDWELL: Mr. Mullen, your name for the
6 record.
7 MR. MULLEN: Pat Mullen, with PG&E. Thank you,
8 Commissioners, and staff. I would like to maybe just explain
9 a little about this issue. PG&E --
10 COMMISSIONER WAN: You can do it, but do it very
11 briefly, to the point, please.
12 MR. MULLEN: I'll do it briefly.
13 PG&E has tried, and continues to be committed to
14 work very closely with the Port San Luis Harbor District, the
15 Lighthouse Keepers, and everyone else that goes out there and
16 uses the lighthouse, or the Lighthouse Road, as well as the
17 Pecho Coast Trail.
18 We also have to balance, frankly, the reality of
19 what we live in, in today's world, from a security
20 standpoint, so as was mentioned earlier on the north ranch,
21 there are -- Mr. Luster talked about the trail there -- there
22 are serious security issues we have to deal with.
23 So, the front gate for us is a vital security
24 point. We use the 5-miles as a buffer, security buffer
25 between the main gate and the plant. Where that plant is

1 located, and trying to move it, the difficulties that we run
2 into, at last month's meeting, the Commission, you actually
3 approved, as part of the LCP for San Luis County, an ESHA
4 designation for that creek that is just on the right, or kind
5 of east side of our access road, so that is now ESHA.
6 On the left side that is ESHA -- that is ESHA, all
7 ESHA now. On the left side we have a significant slope
8 there, with some very specific cultural resources,
9 cemeteries, Native American artifacts. We have had an
10 engineer come out and look at that road. To move our gate
11 you would have to widen the road at some point. We can't
12 widen the road right now --
13 CHAIR CALDWELL: Well, this is very kind of --
14 MR. MULLEN: -- on either side.
15 CHAIR CALDWELL: -- an analysis that I think Mr.
16 Douglas is suggesting should be done.
17 MR. MULLEN: And, we have been willing, and still
18 are to look at feasible alternatives to try to work to find
19 ways to help facilitate access, but we are struggling with
20 being forced to do something that we don't know, or believe
21 at this point, is feasible.
22 CHAIR CALDWELL: Our reading of 3.a.ii is
23 precisely the kind of undertaking that you are suggesting.
24 MR. MULLEN: It requires two options. We either
25 have to put a road around it, or move the gate, and we are

1 not sure either of those are feasible for the cultural and
2 environmental impact reasons I just mentioned.
3 CHAIR CALDWELL: We understand your point, sir.
4 COMMISSIONER SHALLENBERGER: Call for the
5 question.
6 MR. MULLEN: So, we would like some flexibility in
7 that.
8 CHAIR CALDWELL: Thank you, sir.
9 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.
10 COMMISSIONER REILLY: Madam Chair, before the PG&E
11 representative goes away, can we get their reaction to the
12 proposed amendment.
13 MR. MULLEN: Yes, actually, the proposed amendment
14 sounds like it would require PG&E to fund an additional
15 $500,000.00. If the study part is in there to study and/or
16 -- I thought -- implement --
17 COMMISSIONER ACHADJIAN: We took the "study" word
18 out, and --
19 MR. MULLEN: -- feasible alternatives --
20 COMMISSIONER ACHADJIAN: -- implement, make it
21 happen.
22 MR. MULLEN: So, $500,000.00 to implement feasible
23 alternatives to increase access to the lighthouse, we think
24 that is a good solution. It gives us flexibility to continue
25 to work with the port, with the Lighthouse Keepers, and

1 others, and look at any number of ways we can facilitate
2 access out there. And, we are committed to continue to work
3 to streamline access through out gate.
4 CHAIR CALDWELL: Thank you, sir.
5 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.
6 CHAIR CALDWELL: Mr. Douglas.
7 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair, I just
8 want to make sure that you understand that another part of
9 this motion is to give that money to the Port San Luis Harbor
10 District, as opposed to the way it reads now, which is that
11 it could be expended by PG&E, itself. It is to remove the
12 barriers.
13 And, from my perspective, I think it is much more
14 efficient to allow them that option, because they may, as a
15 non-governmental agency, they may be able to better and more
16 efficiently expend that money to make this happen, remove
17 these barriers, than the harbor district, so I suggest you
18 think about that before you vote on this.
19 CHAIR CALDWELL: Commissioner Kruer.
20 VICE CHAIR KRUER: I agree with Director Douglas
21 on this.
22 I honestly believe that if you are going to that,
23 honestly, I have a problem with -- this project is so
24 complex, and there are so many different issues we are
25 dealing with, like I would like to still see an amendment

1 come forward where we took off 7, where you make it a
2 condition on the 1200 acres. I would like to see a condition
3 in there --
4 CHAIR CALDWELL: Let's deal with this vote, first.
5 Ms. Miller, we have a mover and a seconder,
6 seeking a "Yes" vote for alteration of Special Condition
7 3.a.ii. They are seeking a "Yes" vote on Special Condition
8 3.a.ii.
9 EXECUTIVE DIRECTOR DOUGLAS: It would be a
10 contribution of $800,000.00 to the Port San Luis Harbor
11 District to remove barriers to coastal access for the
12 equivalent amount in construction work, and then delete the
13 next sentence. That is the amending motion.
14 CHAIR CALDWELL: Ms. Miller, would you call the
15 roll.
16 SECRETARY MILLER: Commissioner Clark?
17 COMMISSIONER CLARK: No.
18 SECRETARY MILLER: Commissioner Secord?
19 COMMISSIONER SECORD: No.
20 SECRETARY MILLER: Commissioner Kruer?
21 VICE CHAIR KRUER: No.
22 SECRETARY MILLER: Commissioner Neely?
23 COMMISSIONER NEELY: Yes.
24 SECRETARY MILLER: Commissioner Padilla.
25 COMMISSIONER PADILLA: No.

SECRETARY MILLER: Commissioner Potter?

COMMISSIONER POTTER: Aye.

SECRETARY MILLER: Commissioner Reilly?

COMMISSIONER REILLY: Yes.

SECRETARY MILLER: Commissioner Shallenberger?

COMMISSIONER SHALLENBERGER: No.

SECRETARY MILLER: Commissioner Wan?

COMMISSIONER WAN: No.

SECRETARY MILLER: Commissioner Achadjian?

COMMISSIONER ACHADJIAN: Yes.

SECRETARY MILLER: Commissioner Burke?

COMMISSIONER BURKE: Yes.

SECRETARY MILLER: Chair Caldwell?

CHAIR CALDWELL: No.

SECRETARY MILLER: Five, six.

CHAIR CALDWELL: Okay, the motion fails.

SECRETARY MILLER: Five, seven, I am sorry.

CHAIR CALDWELL: And, Commissioner Kruer, were you interested in making -- I think Commissioner Achadjian is done with his motions.

COMMISSIONER ACHADJIAN: Yes, Ma'am I have one more, if I may.

CHAIR CALDWELL: Oh, you do, okay.

COMMISSIONER ACHADJIAN: Accept PG&E's proposal, increase it conservation offer from 620 acres to 1200 acres,

1 and offer it first to the harbor district.
2 COMMISSIONER SECORD: Second.
3 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.
4 CHAIR CALDWELL: Director Douglas.
5 EXECUTIVE DIRECTOR DOUGLAS: If I may, you do have
6 a motion and a second on that, but from our perspective,
7 since they are offering this, I would suggest that that just
8 be incorporated as part of the project, and not as a special
9 condition, because of our need, then, to make some findings
10 in here, and I think that that is going to be very difficult
11 to do, from a legal perspective.
12 So, if they incorporate this as part of their
13 project, then that gets us around that concern. That was
14 expressed to me by legal counsel, too.
15 The other part that I would suggest, Commissioner
16 Achadjian, you take into account, in terms of the easement,
17 when you say right of first refusal, how much time? you ought
18 to just make it, if they offer a conservation easement to the
19 harbor district or any other non-profit, or public agency, so
20 that we are not hung up with what the period of right of
21 first refusal is.
22 COMMISSIONER SECORD: I would like to withdraw my
23 "second" if I may.
24 CHAIR CALDWELL: Yes.
25 Commissioner Kruer.

1 VICE CHAIR KRUER: Yes, I think right of first
2 refusal -- I would like to support my colleague here -- they
3 are very problematic. I never deal with them, because you
4 never know. It empowers the other person negotiating, when
5 you are trying to negotiate a contract, to bring in other
6 people.
7 You get the word out, which this is a public
8 hearing, that you have an easement with a right of first
9 refusal on it, if I was anyone else out there, that you were
10 trying to work with, to take on this issue, why would I spend
11 the dollars and money when I know that the port already has
12 the right of first refusal? I am just kidding myself. They
13 are very problematic. They create tremendous legal problems
14 for you, and you never know, when you even give one, a right
15 of first refusal, pull the option down and use it, then the
16 other parties sayS, "You weren't fair," or if you don't go
17 back to the right of first refusal. It creates a lot of
18 legal issues, and a lot of problematic problems, and I think
19 it will really create a problem for you.
20 COMMISSIONER ACHADJIAN: I can simplify the
21 motion, in that case, if I may, Madam Chair.
22 CHAIR CALDWELL: Well, yes, your seconder
23 withdrew, so would you like to offer a new motion.
24 COMMISSIONER REILLY: Point of clarification.
25 Is the director saying that a motion isn't

1 necessary in order to us to incorporate the 1200 acres.
2 COMMISSIONER BURKE: That is what he is saying.
3 CHAIR CALDWELL: That is what he is saying, yes.
4 EXECUTIVE DIRECTOR DOUGLAS: That's right, and you
5 would probably need confirmation from the applicant, to make
6 sure that this is part of their project description.
7 COMMISSIONER WAN: Can I say something?
8 CHAIR CALDWELL: Yes.
9 COMMISSIONER WAN: Even PG&E should think about
10 tis, and so should Commissioner Achadjian, if you have, as
11 part of their offer, this right to go to the port first, for
12 they are the first --
13 EXECUTIVE DIRECTOR DOUGLAS: That is gone.
14 COMMISSIONER WAN: Is that part gone?
15 EXECUTIVE DIRECTOR DOUGLAS: Yes, it is gone.
16 COMMISSIONER WAN: Is that part gone with PG&E, as
17 well, because that creates a real problem if the port --
18 CHAIR CALDWELL: Commissioner Wan, we are done
19 with that.
20 Ms. Jacobs, or Mr. Mullen, does you application
21 the offer to dedicate 1200 acres in conservation easement, or
22 not? "Yes" or "No."
23 MS. JACOBS: So, I need to understand, because I
24 didn't understand what Mr. Potter was talking about.
25 So, are we still addressing that we would bring

1 forth this voluntary conservation of 1200 acres? is that the
2 current --
3 CHAIR CALDWELL: We want to know whether or not it
4 is part of your application now?
5 MS. JACOBS: No, it is not part of the --
6 CHAIR CALDWELL: We have deleted Special Condition
7 No. 7.
8 MS. JACOBS: That is correct.
9 COMMISSIONER CLARK: Therefore?
10 CHAIR CALDWELL: Therefore.
11 MS. JACOBS: Therefore -- okay help me out --
12 CHAIR CALDWELL: Your application now includes an
13 offer to dedicate 1200 acres in conservation easements?
14 MR. ZBUR: The voluntary offer is changed to 1200,
15 as we stated in our --
16 CHAIR CALDWELL: And, that is part of your
17 application?
18 MR. ZBUR: That is, the voluntary offer is part of
19 the application.
20 CHAIR CALDWELL: Thank you, perfect.
21 All right, so I think we can now go to the main
22 motion?
23 COMMISSIONER BURKE: No, let's talk about it some
24 more.
25 CHAIR CALDWELL: Commissioner Chrisman, did you

1 want to address the main motion.
2 COMMISSIONER CHRISMAN: No, Madam Chair.
3 CHAIR CALDWELL: All right, very well.
4 With all due respect to Commissioner Achadjian, I
5 think we are ready for the main motion, which you have
6 already made, which is approval of this CDP, as amended by
7 your modifying amendments.
8 COMMISSIONER ACHADJIAN: And, request a "Yes"
9 vote.
10 COMMISSIONER SECORD: Did he have a "second"?
11 CHAIR CALDWELL: Yes, he had a "second" on the
12 main motion.
13 Ms. Miller, would you call the roll, please.
14 SECRETARY MILLER: Commissioner Secord?
15 COMMISSIONER SECORD: Yes.
16 SECRETARY MILLER: Commissioner Kruer?
17 VICE CHAIR KRUER: Yes.
18 SECRETARY MILLER: Commissioner Neely?
19 COMMISSIONER NEELY: Yes.
20 SECRETARY MILLER: Commissioner Padilla?
21 COMMISSIONER PADILLA: Yes.
22 SECRETARY MILLER: Commissioner Potter?
23 COMMISSIONER POTTER: Aye.
24 SECRETARY MILLER: Commissioner Reilly?
25 COMMISSIONER REILLY: Yes.

1 SECRETARY MILLER: Commissioner Shallenberger?
2 COMMISSIONER SHALLENBERGER: Yes.
3 SECRETARY MILLER: Commissioner Wan?
4 COMMISSIONER WAN: Yes.
5 SECRETARY MILLER: Commissioner Achadjian?
6 COMMISSIONER ACHADJIAN: Yes.
7 SECRETARY MILLER: Commissioner Burke?
8 COMMISSIONER BURKE: Yes.
9 SECRETARY MILLER: Commissioner Clark?
10 COMMISSIONER CLARK: Yes.
11 SECRETARY MILLER: Chair Caldwell.
12 CHAIR CALDWELL: Yes.
13 SECRETARY MILLER: Unanimous.
14 CHAIR CALDWELL: The motion carries unanimously.
15 Now, before we --
16 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair, you have
17 a second motion.
18 COMMISSIONER ACHADJIAN: There is another motion,
19 Madam Chair.
20 CHAIR CALDWELL: Okay, you second motion.
21 [**MOTION**]
22 COMMISSIONER ACHADJIAN: I move that the
23 Commission approve Coastal Development Permit No. E-06-011
24 pursuant to the staff recommendation, and recommend a "Yes"
25 vote.

1 COMMISSIONER POTTER: Second.
2 CHAIR CALDWELL: It has been moved by Commissioner
3 Achadjian, seconded by Commissioner Potter, that the
4 Commission approve the CDP E-06-011, pursuant to the staff
5 recommendation, and they are seeking a "Yes" vote.
6 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.
7 COMMISSIONER ACHADJIAN: And, can I offer the
8 amendments.
9 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.
10 CHAIR CALDWELL: Director Douglas, our
11 recommendation is modified to reflect what you did in the
12 previous action --
13 COMMISSIONER ACHADJIAN: Okay.
14 EXECUTIVE DIRECTOR DOUGLAS: -- so that would be
15 what would be before you now.
16 CHAIR CALDWELL: Is there any objection to a
17 unanimous roll call on this motion, as modified.
18 COMMISSIONER WAN: No.
19 CHAIR CALDWELL: Seeing none, the motion carries
20 unanimously.
21 *
22 *
23 [Whereupon the hearing concluded at 6:00 p.m.]
24
25