

Comment Set CC6, cont.

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Nighttime impacts are not evaluated. The unloading and transport activities would occur at night, which is the most sensitive time for noise impacts. This was not considered in the noise impact analyses. Noises during sensitive evening and nighttime periods are generally addressed by adding 5 dBA to evening sound levels occurring from 1900 to 2200 and 10 dB to sound levels from midnight to 0700 and from 2200 to midnight.³⁹

CC6-77

Pure tones were not evaluated. Repetitive, pure-tone noises are generally the most irritating. The backup bells on mobile construction equipment, such as that which will be required to build the OSG storage facility, are highly irritating and are generally a major cause of noise complaints around construction sites. The DEIR does not address this issue, which generally results in significant noise impacts.

CC6-78

There are measures that can be used to reduce backup bell pure tones, including: (a) the use of an automatic backup alarm (the usual method that creates significant noise impacts at sensitive receptors); (b) an automatic braking device that triggers upon contact; (c) administrative controls, such as a spotter or flagger and prohibiting all foot traffic in the work area; and (d) use of an automatic strobe light at night. See, e.g., California OSHA regulations at 8 CCR 1592 and federal mining regulations at 30 CFR 56.14132. Further, a new backup alarm has recently been offered that drastically cuts down on the number and duration of beeps by only beeping when it senses something behind it. The DEIR should be revised to require meaningful mitigation for backup bells by specifying one or more of these alternative methods.

³⁹ Cyril M. Harris, Handbook of Acoustical Measurements and Noise Control, McGraw-Hill, Inc., New York, 3rd Ed., 1991, p. 11.13.

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7. The noise mitigation measures are not adequate.

The DEIR concludes that offloading the RSGs would result in a potentially significant short-term noise impact. (pp. ES-35, D.9-6.) The DEIR then concludes, with no analysis, that this impact would be reduced to less than significant by implementing two mitigation measures: (1) providing advance notice of offloading and transport and (2) providing a liaison for nuisance complaints. (p. D.9-7.)

These measures place the burden on the effected community to mitigate noise impacts. Residents must take action to mitigate the impacts, e.g., vacate their homes, close their windows on hot summer nights, purchase and use ear plugs, etc. The purpose of CEQA is to place the burden on the applicant to employ all feasible measures to mitigate significant impacts. The DEIR should be revised to evaluate and require noise mitigation measures such as sound walls, equipment mufflers, scheduling activities during non-sensitive periods, and facilitating and paying to relocate residents who choose to leave the area.

A liaison would be used to respond to noise complaints from offloading and activities. (pp. ES-57, D.9-7.) The DEIR does not indicate where the liaison would be located, e.g., at the Port, on the site, or in one of the affected communities. The successful resolution of noise complaints requires rapid response, which cannot be achieved from a distant location. Thus, this measure should be modified to specifically require the noise liaison to be located at the site of the noise generating activities throughout the offloading activities and to be available by cell phone throughout the period when noises are generated. A backup coordinator should also be designated, in the event that the principle liaison is otherwise occupied responding to noise complaints.

CC6-79

CC6-80

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An automatic answering feature, with date and time stamp recording, should be provided to answer calls when the phone is unattended.

CC6-80

The DEIR also does not specify what the liaison would do, beyond responding to complaints. To be effective, the liaison should be required to document, investigate, evaluate, and resolve all project-related noise complaints. The liaison should be specifically provided access to the active construction site to determine the cause of noise complaints, e.g., starting too early, faulty muffler, and empowered to implement measures to correct the problem. The liaison should be independent of the project owner and its contractors and should be retained by and report directly to the CPUC. Thus, this measure should be modified to specially outline the duties and powers of the liaison that include these minimum provisions.

The noise mitigation program should be revised to establish a maximum acceptable noise level at all sensitive receptors and a maximum increase above background of no more than 5 dBA. Equipment noise performance standards should be specified for all mobile and stationary equipment used at the site and these included in construction contracts. These performance levels should be verified by an acoustical expert prior to the use of the equipment.

CC6-81

V. THE DEIR FAILS TO CONSIDER A REASONABLE RANGE OF TRUE ALTERNATIVES

CC6-82

Under CEQA, the alternatives section is the "core of an EIR." *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 564 (1990). Similarly, in *Laurel Heights, supra*, 47 Cal.3d at 400, the court held that the alternatives analysis is one of the "major functions" of an EIR. For an EIR to be legally adequate, it must therefore analyze a reasonable range of feasible alternatives. With respect to the alternatives, the EIR must

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provide the decision-makers and the public with adequate information to "understand, evaluate, and respond" to conclusions regarding alternatives. *Laurel Heights, supra*, 47 Cal.3d at 403-404. "Conclusory comments in support of environmental conclusions" are not adequate. *Id.*

CC6-82

A. The "Action Alternatives" Reviewed in the DEIR do Not Meet CEQA Criteria.

CC6-83

The DEIR fails to consider the kinds of alternatives required by CEQA. It requires that the alternatives considered in an EIR must be "feasible" and in part capable of meeting the Project's objectives. *See* Public Resources Code §21100(d); 14 Cal. Code Regs §15126.6; *Citizens of Goleta Valley, supra*, 52 Cal.3d at 564-566. Specifically, CEQA requires that the "discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant environmental effects of the project, even if these alternatives would impede to some degree the attainment of the project objective, or would be more costly." 14 Cal. Code Regs § 15126.6(b).

The DEIR does not reflect a good faith effort by the CPUC to satisfy these criteria. Apparently, PG&E's alternatives were chosen as the only ones to review, with the exception of the offsite disposal of the OSG's. See B.1. Except for the OSG offsite disposal alternative, none of these alternatives "are capable of avoiding or substantially lessening any significant effects of the project," as required.⁴⁰ All of the other alternatives

⁴⁰ The feasibility criteria used in the DEIR's alternative screening analysis were artificially framed in a way that limited the alternatives to these minor variations in the project. Thus, these criteria limited the alternatives considered to those which would not "limit the feasibility of transporting or storing the steam generators" or would not "limit the feasibility or permitting of the replacement and subsequent storage of the steam generators." C-4. These criteria thus automatically limited the alternatives to minor variations in the basic project proposal to replace the steam generators and foreclosed any alternative that did not

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are indistinguishable in terms of their impacts. See E-2 through E-8. For example, the DEIR states that “[t]he Proposed Project and the OSG Storage Facility Alternatives would all cause similar impacts with equal classifications because of the close proximity of all the locations.” ES-52.⁴¹

CC6-83

In addition, some of the alternatives relating to OSG storage or transportation are not apparently within the CPUC’s authority. For example, to the extent the locational alternatives for OSG storage are beyond state authority, as implied by A-11, then their inclusion in the DEIR is even more futile.

CC6-84

Clearly, these alternatives do not satisfy CEQA’s requirements. In addition, because they were essentially identical, the DEIR was not able to identify an environmentally superior alternative (except for the Intake Cove for transport of RSG’s). The failure to identify an environmentally superior alternative (apart from this small segment) itself violates CEQA, and demonstrates that the alternatives were ill-chosen.

CC6-85

B. Other Alternatives Should Have Been Considered.

The DEIR claims that none of the scoping comments presented any alternatives except for variations on the No Project Alternative. See C-1. This is not an accurate characterization of the Joint Parties’ scoping comments or of a number of other scoping comments received in response to the NOP.

CC6-86

involve this replacement, such as the ones proposed by Joint Parties, as discussed below. Thus, even all of the alternatives evaluated as part of the screening process but eliminated from consideration consisted solely of RSG offloading alternatives. See C-5.

⁴¹ The DEIR states that “If an alternative was identified that does not provide potential overall environmental advantages compared to the Proposed Project, it was eliminated from further consideration.” C-5. This is not true. The alternatives picked don’t provide “environmental advantages.”

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In their scoping comments, the Joint Parties urged that the following alternatives be considered: (1) various combinations of energy efficiency, renewable power, distributed generation sources, and clean conventional power sources, whether these sources are supplied by PG&E, other parties, or a mixture of the two; (2) different project implementation schedules than those proposed by PG&E as long as these different implementation schedules are consistent with PG&E's long-term resource planning and acquisition process; and (3) consideration of the DCPD site for installation of non-nuclear generation resources. None of these are considered as alternatives to the Project in the EIR.

CC6-86

The DEIR should have considered other generation/transmission sources as real alternatives to the project in lieu of the hypothetical, abbreviated treatment given to them in the No Project alternative. This is not simply a case of "misplaced" analysis. A mix of different combinations of energy efficiency resources, distributed generation, clean fossil fuel generation, etc., should have been considered but was not. From an environmental standpoint, the question of whether the steam generators should be replaced cannot be answered without knowing which is better: (a) continued operation of DCPD through the expiration of the NRC license and/or beyond with its renewal, (b) other energy sources in 2013, or (c) other energy sources in 2021-25. The DEIR does not provide information or analysis to support an answer to this question.

CC6-87

The DEIR states "[r]eplacement of the DCPD capacity with alternative technologies would most likely require a combination of technologies at various locations, each with different impacts and available mitigation measures." ES-45. In lieu

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of this kind of hypothetical analysis, a significantly more concrete analysis should have been performed.

CC6-87

One particularly telling example of the deficiency of the DEIR's evaluation of alternatives concerns its treatment of distributed generation resources. C-35. The DEIR notes that "Over the next ten years, the CPUC aims to provide incentives for up to 3,000 MW of new distributed generation ["DG"] State-wide...DG units owned by PG&E or by industrial, commercial, institutional, or residential consumers would reduce the need for replacement generation..." *Id.* Then, after devoting a scant three sentences to further evaluation of this extremely promising and relevant alternative, the DEIR concludes its discussion of DG as follows: "While DG technologies are recognized as important resources to the region's ability to meet its long-term resource needs, DG does not provide a means for PG&E to offset a substantial portion of the energy supply by the shutdown of DCPP." *Id.*

CC6-88

This conclusion is not justified or explained and is strongly at odds with the DEIR's own previous discussion. The DEIR has described a CPUC goal of facilitating the installation of 3,000 megawatts ("MW") of new generation capacity throughout the State. PG&E accounts for approximately 46% of the electricity used by the utilities regulated by the CPUC.⁴² It is therefore reasonable to assume that approximately this percentage of 3,000 MW of new DG is expected to be sited in PG&E service area. This is over 1300 MW by itself, *in the next ten years*, which is approximately the time at which DCPP is expected not to be able to provide power without the SGR Project. By

⁴² California Energy Commission, *California 2001 Electric Utility Retail Deliveries*; http://www.energy.ca.gov/electricity/utility_sales.html.

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considering this resource in conjunction with other feasible energy sources, it is entirely possible that 2200 MW of long-term replacement energy resources could be found in time to compensate for DCP's demise. It is improper of the DEIR to dismiss this possibility out of hand.

CC6-88

The DEIR's assessment of the potential for demand-side management ("DSM") programs is also deficient. On one hand the DEIR states that the combination of DSM programs "...constitutes the most ambitious approach to reducing electricity demand administered by any state in the nation." *Id.* Three sentences later the DEIR concludes its consideration of DSM resource potential by saying that "...energy conservation would offset only a small fraction of the energy supply lost by shutdown of DCP." *Id.* This conclusion is deeply flawed. There is no attempt to quantify how much energy efficiency and other DSM resources could be deployed in a targeted manner to offset DCP's power output. Consulting the CPUC's own D.04-12-048 reveals that the Commission has set a target for PG&E of 450 MW in price-responsive demand reductions in 2005 alone, with additional DR resources to be acquired through 2007 such that 5% of PG&E's annual system peak demand would be met through DR measures and programs. *Id.*

CC6-89

With respect to energy efficiency resources in the PG&E service area the CPUC has targeted almost 10,000 GWh in savings through 2013, which corresponds to peak capacity savings of 2579 MW. D.04-09-060, Table 2. It is reasonable to expect that additional savings beyond 2013 would be substantial as well.

Combining the distributed generation demand response, and energy efficiency resources in the PG&E service area described above, suggests that the achievable potential over the next decade or less is on the order of 4300 MW, or approximately

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double the capacity of DCP. The DEIR's almost wholly unsupported conclusions that these alternatives do not provide a means to offset a substantial portion of the energy supply lost by the shutdown appears to be fundamentally in error. The DEIR should be revised to include a serious, sophisticated effort to quantify the potential of these three resource types, together with other generation and transmission alternatives, to take DCP's place in PG&E's energy resources portfolio.

CC6-89

By virtue of its active resource procurement proceeding (R.04-04-003), the CPUC has an excellent, timely opportunity to explore serious alternatives to the DCP SGR Project. The State's recently enacted Energy Action Plan, which the CPUC is largely responsible for creating, provides a suitable policy framework for this exploration. The State Energy Action Plan, among other things, establishes a "loading order" that is to guide the CPUC's and the utilities' consideration of adding resources to meet expected resource needs: first, energy efficiency; second, renewables and distributed generation; third, clean fossil fuel generation; and fourth, transmission and distribution system upgrades.⁴³

CC6-90

The DEIR makes no mention of the State's Energy Action Plan or of the CPUC's resource procurement proceeding. It is critically important that the EIR base its considerations of project alternatives, including the No Project Alternative, on a clear understanding of this underlying policy and planning context. There is no reason why the CPUC could not and should not consider the DCP SGR Project as but one of the

⁴³ With respect to its own pending steam generator replacement application for its San Onofre Nuclear Generating Station ("SONGS"), Southern California Edison ("SCE") has expressed this exact point: "the SONGS 2&3 SGRP application presents the Commission with a question of long term resource planning for the state, SCE, and SDG&E" (SCE Motion for Order to Show Cause, pg. 3 (April 23, 2004, A.04-02-026)).

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possible resource options within this broader context. Indeed, the assigned administrative law judge in R.04-04-003 ordered PG&E to develop PG&E's long term resource plan with and without the SGR Project, an approach which, if properly executed, should result in a systematic determination of the realistic alternatives to the Project. It should be noted, however, that even this analysis might not go far enough, since the Commission's long-term resource planning process is guided strictly by cost-effectiveness criteria whereas CEQA mandates that alternatives be considered even if they cost significantly more than the proposed project. 14 Cal. Code Regs § 15126.6(b).

CC6-90

C. The DEIR's Analysis of the Alternatives it Did Consider was Inadequate.

CC6-91

In a number of respects, the DEIR inadequately considers even the alternatives covered therein. For example, the DEIR provides only the most perfunctory review of offsite disposal versus onsite disposal. This is particularly surprising since an OSG off-site disposal is proposed for SONGS (C-12).

The DEIR's review of the impacts of this alternative consists of only a single sentence: "...this alternative may create other impacts, such as air and noise emissions and visual resource impacts, to areas outside the DCP facility, but the specifics of potential impacts would not be known until a final route and disposal facility was selected." C-12. Elsewhere, the DEIR states that "[d]etailed information on the potential impacts and their severity is not currently available due to the lack of specific details for

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the offsite disposal method.” E-6.⁴⁴ In other words, the DEIR does not treat this as a serious alternative for consideration by the CPUC.

Nor is the favored Intake Cove Alternative adequately considered. Among other things, its feasibility has not been fully considered, but rather has been deferred to later study. Thus, the DEIR states:

“Prior to the implementation of this [Intake Cove] alternative, PG&E would need to conduct detailed analysis of potential engineering or other technical conflicts, particularly with respect to the DCPD cooling water intake system, that could occur if RSGs were offloaded at the Intake Cove. This analysis would verify that there would not be adverse impacts (e.g., increased sedimentation in the Intake Cove caused by transport and offloading equipment) that may affect normal DCPD operations.” C-6.

See also B-39. Thus, the range of impacts and the feasibility of this alternative have been deferred to further study after the EIR process has been completed and a decision rendered. This violates CEQA.

D. The No Project Alternative is Inadequately Presented.

In *Planning and Conservation League v. Dept of Water Resources*, 83 Cal. App.4th 892, 917 (2000), the court emphasized the importance of the “No Project” alternative:

A no project alternative is nonevaluative. It provides the decision makers and the public with specific information about the environment if the project is not approved. It is a factually-based forecast of the environmental impacts of preserving the status quo. It thus provides the decision makers with a base line against which they can measure the

⁴⁴ The DEIR also asserts that “offsite disposal would involve similar or possibly more severe impacts at the disposal site” than the storage of the OSG’s onsite. E-6. This assertion is not only vague but unsupported, particularly in light of the fact that the disposal site would be a licensed low level waste disposal site, regulated by the NRC. C-12. The DEIR ignores the fact that off-site disposal would eliminate the need for the future de-commissioning of the OSG’s at an onsite storage location.

CC6-91

CC6-92

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environmental advantages and disadvantages of the project
and alternatives to the project.

CC6-92

As the court elsewhere stated, the No Project alternative must assist “the decision maker and the public in ascertaining the environmental consequences of doing nothing.” 83 Cal. App. 4th at 911.⁴⁵

The No Project Alternative in the DEIR fails to fulfill these important functions under CEQA. *First*, the DEIR virtually ignores the beneficial impacts of the cessation of DCPD operations if the project is not approved by the CPUC. While the DEIR does state that the impacts of cessation of operations of DCPD in 2013/2014 would be considered under the No Project Alternative, the discussion of this alternative throughout the DEIR is devoted almost exclusively to the impacts of generation and transmission replacements for the electricity that would no longer be generated by DCPD after those years. The discussion of the beneficial impacts of DCPD’s shutdown is isolated and sparse. This does not comply with CEQA.

Thus, the Executive Summary’s descriptions of the No Project Alternative mention only that the early shutdown of DCPD would result in the loss of the plant’s generation capacity and that this generation would have to be replaced by other sources. ES-18,19; ES-53,54. The same is true in the Section C, dealing with Alternatives. *See* C-26 through C-35. The next description of the No Project Alternative, in Section D.1.2.3, contains only a single sentence regarding the beneficial effects: “The surroundings would experience beneficial environmental effects by shutting down the routine operation of DCPD, most notably in the areas of marine biological resources and public safety.” D.1-3.

⁴⁵ Under Guideline § 15126.6 (e) (2), the No Project alternative is supposed to consider “existing conditions... as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved....”

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In the succeeding topical reviews of impacts, there is no mention of the beneficial effects of DCPD shutdown in the sections dealing with air quality, cultural resources, geology, hazardous materials, hydrology and water quality, land use and recreation, public services and utilities, socioeconomics, and visual resources. Indeed, these sections do not even acknowledge that the impacts of the construction and other impacts of the replacement of the steam generators would be foregone. Nor is there any reference to the beneficial impacts of the No Project Alternative in Section E's comparison of alternatives.

CC6-92

Second, as previously noted, the discussion of the impacts and mitigation measures for all generation and transmission alternatives is at an extreme level of generality and almost entirely hypothetical. See ES-2, D.1-3. The extreme level of generality is ostensibly justified by the statement that "It would be unduly remote and speculative to forecast precisely how any replacement power would be provided." D.1-3. The reference to "precise forecasts" implies that one must specify exactly what energy systems would be used as well as their respective locations. Such specificity is neither necessary or appropriate in order to afford the CPUC and the public with a meaningful comparative sense of the environmental risks and impacts associated with the PG&E's proposed project versus alternative energy systems. It would have been and still is possible to conduct useful environmental analyses of various energy technologies that separately or together could serve to replace the power produced by DCPD. There is extensive data and literature on the environmental attributes of the various energy technologies that could be part of a meaningful alternative to the proposed project. There is no evidence that any such data or literature was consulted.

CC6-93

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Finally, these deficiencies in the No Project Alternative again render comparison of alternatives meaningless. Thus, the DEIR asserts that the environmentally superior alternative (which is not defined except for the intake cove) would be preferable over the No Project alternative. See E-7, ES-54. However, there is no analysis to support this conclusion, as discussed below.

CC6-93

E. The DEIR Does Not Identify an "Environmentally Superior Alternative" in the Manner Required by CEQA.

CC6-94

CEQA Guideline § 15126.6(e)(2) requires that an EIR identify the "Environmentally Superior Alternative," and if the No Project Alternative is the environmentally superior, one shall be identified from "among the other alternatives." The courts have recognized the importance of this requirement. As the court stated in *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 737 (1990): "Environmentally superior alternatives must be examined whether or not they would impede to some degree the attainment of project objectives." The court also noted that the agency's ultimate decision "may determine an environmentally superior alternative is more desirable." 221 Cal. App. 3d at 737. Finally, "[a]n environmentally superior alternative cannot be deemed infeasible absent evidence the additional costs or lost profits are so severe the project would become impractical." *Id.* at 736.

Implicit in these requirements is that the Environmentally Superior Alternative be in fact an alternative to the project. In this case, however, the DEIR focused on only one minor aspect of project alternatives as the Environmentally Superior Alternative – the method of delivery of the RSG's. The DEIR states that "[e]xcept for a few minor beneficial differences, there would be no preferred alternative for the other phases of the Project." ES-52.

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Joint Parties recognize that this result was dictated by the fact that it was only in that limited respect that there was any substantial difference among the alternatives. No such difficulty would have been encountered if the DEIR had chosen to review true alternatives to the Project. However, the *reductio ad absurdum* of selecting only the delivery mechanism for a major project as the Environmentally Superior Alternative should have led the EIR drafters to reconsider the artificial construct of alternatives in the DEIR. As it stands, the DEIR violates CEQA's requirement to identify an Environmentally Superior Alternative.

CC6-94

F. The DEIR Does Not Adequately Compare the Different Alternatives.

The courts have struck down EIRs which failed to provide information necessary to evaluate the comparative risks or impacts of a Project and its alternatives. In *Cadiz Land Co., Inc. v. Rail Cycle, L.P.*, 83 Cal.App.4th 74, 95 (2000), the court held that the omission of data on the volume of groundwater underneath a site rendered an EIR inadequate because it therefore lacked sufficient information to judge the trade-offs between the use of a site for a needed landfill and the possible contamination of a water source that could result. Similarly, in *Kings County, supra*, 221 Cal.App.3d at 735, the court held an EIR invalid because it did not include data for one source of air pollutants, omitted any calculation of the amount of groundwater that would be used, and did not "quantify the reduction" in water use from one alternative versus another. The court emphasized that "[t]he absence of this comparative data renders the analysis of the ...alternative incomplete and precludes meaningful consideration." 221 Cal. App. 3d at 735.

CC6-95

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The lack of comparative data and analysis in the DEIR is most evident in its attempted "Comparison of the Environmentally Superior Alternative with [the] No Project Alternative." E-9. The DEIR defines the Environmentally Superior Alternative as consisting only of RSG "delivery and offloading," the use of temporary storage locations, and the removal of the OSGs to an onsite storage location. *Id.* The impacts identified are thus short term construction impacts associated with the replacement of this equipment. The future long-term operational impacts of DCPD enabled by the RSG Project are ignored.

CC6-95

On the other hand, the No Project Alternative is described as having "long term impacts for many environmental issue areas." *Id.* In this comparison, it is solely defined as the "[c]onstruction of new power plants" and is stated to have both "short-term (construction) and long-term (operation) impacts." The benefits of the cessation of DCPD operations – described elsewhere as part of the No Project Alternative – are not included in this comparison. Indeed, even the avoidance of the impacts of the SGR Project is not included in the comparison.

CC6-96

This is obviously a completely skewed presentation. More fundamentally, it is not the "comparison of alternatives" mandated by CEQA. There is in fact no comparative data or analysis presented here. Rather, the purported comparison simply recites a series of labels for the environmental values affected: "air quality, biological resources, water quality, noise, hazardous waste, public health, and visual resources." *Id.* No quantification or even qualified analysis is attached to any of these labels. There is no attempt whatsoever to *compare* the differences in the impacts of the Environmentally Superior Alternative and the No Project Alternative.

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The stated conclusion that the "Environmentally Superior Alternative is preferred over the No Project Alternative" is entirely subjective. There is, quite simply, no basis whatsoever presented for this conclusion.

CC6-96

VI. THE MITIGATION MEASURES ARE NOT ADEQUATELY CONSIDERED.

CC6-97

The DEIR states that "earthquake induced ground shaking could adversely affect the OSG Storage Facility" and that "[r]ecommended mitigation to update the Long Term Seismic Program...would reduce potential impacts to less than significant levels." ES-30. However, there's no demonstration in advance of this update that it will reduce impacts to a less than significant level. Without such a demonstration, the DEIR is impermissibly relying on mitigation yet to be developed.

The same kind of deferral of mitigation is proposed for the slope instability "which could eventually compromise" the proposed OSG Storage Facility. D.5-17. The DEIR relies on a future "geotechnical evaluation" as the mitigation for this problem. *Id.* Yet, the DEIR expresses uncertainty as to whether that study will show that the problem can be solved by slope stabilization, or whether a "bunker-type construction" must be substituted for the storage facility,⁴⁶ or a different location selected. These are substantially different outcomes. The first two may have impacts not considered in the DEIR, and all of the alternative locations in the third choice themselves have slope instability problems which are reviewed in only cursory fashion in the DEIR. *See* D.5-18. Nothing in the DEIR supports its claim that the outcome of the geotechnical investigation

⁴⁶ Joint Parties in fact urged in their scoping comments that a bunkered storage facility be considered as an alternative in the EIR. Yet, the DEIR inexplicably ignored this request, choosing to consider only the type of storage facility proposed by PG&E at the different locations proposed by it – all with only minor differences in impact.

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will in fact “minimize the impact of this geologic hazard to less than significant impacts.”

D.5-17.

CC6-97

The DEIR also concludes that there are potentially significant, short-term impacts from project construction that would be reduced to a less than significant level by implementing four mitigation measures. D.2-10. Three of these measures require the future development of a plan, i.e., trip reduction plan, diesel combustion emission control plan, NOx offsite mitigation program. These plans should have been presented in the DEIR in sufficient detail to allow meaningful public comment.

CC6-98

The fourth mitigation measure, A.1d, requires an acute health hazard screening analysis for acrolein, but does not disclose when this analysis will be performed or provide any information on it at all. Health screening analyses are normally presented in an EIR and subject to public review. This is particularly critical here because sensitive receptors are nearby, acrolein is one of the most acutely toxic substances known, and much of the existing acrolein emission data grossly underestimates acrolein due to a recently discovered acrolein analytical problem. This is precisely the type of issue that should be subject to public scrutiny, but is wholly hidden from public review. What acrolein emissions data will be used? Is it accurate and representative? What emission sources will be included in the analysis? What meteorology data will be used? What assumptions will be used in the dispersion modeling? Finally, the undefined health risk analysis is improperly restricted to only acrolein, ignoring diesel exhaust, a potent carcinogen.

CC6-99

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VII. THE CUMULATIVE IMPACTS ANALYSIS IS INADEQUATE

**A. The Cumulative Impact Analysis is Improperly Constrained to
Only Future Projects**

CEQA Guideline § 15130(b)(1)(A) requires that an EIR's cumulative impacts analysis include "the effects of past projects" and "the effects of other current projects." Despite this clear mandate, the DEIR's cumulative impacts analysis does "not include existing projects that are under construction now, completed, or in operation." F-2.

The DEIR's rejection of this cumulative impacts requirement has the effect of excluding those facilities which would have the greatest cumulative impacts on the environment – the remainder of the nuclear power plant of which the Project is part. The impacts of the future operations of DCPD have already been excluded from the impact analyses in Section D of the DEIR by its improper treatment of them as part of the baseline. But even this improper baseline cannot be ignored in the cumulative impacts analysis required by CEQA Guideline § 15130(b)(1)(A).

The DEIR asserts that "as part of the environmental setting for individual issues areas," existing projects "are analyzed with respect to each issue area in Section D." F-2. Whatever this assertion may mean, the existing projects which comprise DCPD are not evaluated for their future impact under any issue area in Section D and are not evaluated for their cumulative impacts in Section F.

Both existing and future cumulative impacts associated with the proposed project are significant when correctly analyzed. This is evidenced by the numerous actual and potential significant environmental impacts described in the environmental setting portion of each of the issue areas in Section D of the DEIR. Other cumulative impacts not adequately addressed in the DEIR are discussed below.

CC6-100

Comment Set CC6, cont.

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Cumulative Health Risks. The project would increase the emission of diesel exhaust, a potent carcinogen. The DEIR declined to analyze this impact because it is short term. D.2-9. However, the risk of cancer is cumulative and must consider lifetime exposures. The residents of Avila Beach are routinely exposed to diesel emissions from ships calling at Port San Luis. In addition, they were exposed to large amounts of diesel exhaust during the Avila Beach remediation and subsequent rebuilding of the town. The cancer health risk from diesel exhaust during the remediation just escaped significance by using a short exposure duration. The exposure from this past project, plus other past, present and future projects result in a cumulatively significant cancer risk from exposure to diesel exhaust.

CC6-101

B. The Cumulative Impacts Analysis Was Required to Include Future Operations of DCP.

As Joint Parties have previously noted, CEQA also requires that reasonable anticipated future projects be considered in the cumulative impacts analysis. Yet, here too, the DEIR has refused to consider the reasonably anticipated future operations of DCP as part of the cumulative impacts analysis, in violation of CEQA.

CC6-102

VIII. THE DEIR FAILS TO CONSIDER THE PROJECT'S CONSISTENCY WITH EXISTING PLANS.

CEQA clearly required that the DEIR review the consistency of the Project with other relevant adopted plans or management doctrines for the area. CEQA Guidelines § 15125(d) requires that an EIR "discuss any inconsistencies between the proposed project and applicable general plans and regional plans." The Guideline states that such "regional plans include, *but are not limited to*, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control

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plans, regional transportation plans, regional housing allocation plans, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the Coastal Zone....” (emphasis added). One treatise includes among the Plans “[a]ny specialized environmental plans for a particular area or resource,” “specialized regional plans for the protection of particular areas,” and any plan “adopted under flood plain planning laws.” Kostka & Zischke, *Practice Under the California Environmental Quality Act* § 12.33 (CEB 2003) (hereinafter “Kostka & Zischke”).

Other provisions in CEQA also require these “consistency determinations.” CEQA Guideline § 15063(5) requires that an Initial Study contain “[a]n analysis of project consistency with applicable land use controls.” More generally, there are a variety of references to the impacts on local or regional plans in the “Environmental Checklist” in Appendix G of the CEQA Guidelines, used for determining whether impacts are significant for EIR’s.⁴⁷

In *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal. App. 3d 151, 175 (1985), the court held that “a project would normally be considered to have a significant effect on the environment if it conflicts with the adopted environmental plans and goals of the community where it is located.”

⁴⁷ The Checklist includes a reference to any “[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.” Other items in the checklist include conflicts with or impacts on (a) “any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations,” (b) “local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance,” (c) “an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan,” (d) “an adopted emergency response plan or emergency evacuation plan,” and (e) “acceptable service ratios, response times or other performance objectives for any... public services.”

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The DEIR contains no systematic analysis of whether the Project is consistent with these kinds of plans or sets of standards. Typically, EIR's contain a separate section reviewing the specific language in these plans and standards and determining the Project's consistency with them. This DEIR contains no such section, and the only section of the impact analysis that explicitly makes a "consistency" determination is Section D.8, dealing with land use, recreation and agriculture.

CC6-103

The DEIR does purport to set forth the "applicable regulations, plans and standards" under each impact category in Section D. But, the recitation of these is often very general, and frequently, they are not considered again in the succeeding impact evaluation for that category. As just one example, the DEIR Section on biological resources contains a general overview of federal, state and local plans and standards (D. 3-20 et seq.), but then makes no reference to any of these plans or standards in the evaluation of the Project's impacts on biological resources (D. 3-29 et seq.). In other impact sections, the DEIR also fails to apply the plans and standards in the impact evaluations. *See e.g.*, D.4-10 through D.4-13 (cultural resources), D.6-15 through D.6-20 (hazardous materials), D.7-6 through D7-9 (hydrology and water quality), D.9-7 through D.9-10 (noise), D.10-5 through D.10-12 (public services and utilities), D12-19 through D12-29 (system and transportation), D13-15 through D13-18 (traffic and circulation), D.14-22 through D.14-27 (visual resources).

CC6-104

IX. THE DEIR FAILS TO PROVIDE THE KIND OF ANALYSES NECESSARY TO SUPPORT ITS USE BY RESPONSIBLE AGENCIES.

CC6-105

The foregoing discussion illustrates another deficiency in the DEIR. CEQA Guideline § 15096 contemplates that the EIR will also serve as the environmental review

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document for all "Responsible Agencies." Table A-2 of the DEIR contains a list of some of these agencies which will be applying their own plans and standards to review of the Project separate from the CPUC. A-14. However, the failure of the DEIR to make consistency determinations for those plans and standards renders the document less usable by these agencies. Nor does the DEIR tailor the impact evaluations to serve the needs of these agencies, as well as the CPUC. In this respect, the DEIR again departs from the role envisioned for it by CEQA.

CC6-105

For example, the DEIR states that the San Luis Obispo County Local Coastal Plan ("LCP") "addresses protection and enhancement of biological resources in the coastal zone" and that the Project will be "subject to the County's LCP." D. 3-27. But the DEIR does not review any of the LCP policies or standards in that regard, and does not reference the LCP at all in the following impact evaluation.

The DEIR also notes that the OSG storage facility will be governed by the County's Land Use Ordinances, and that PG&E has applied to the County for a Conditional Use Permit. A-14. However, there is no review in the DEIR of the Land Use Ordinances that are applicable, and whether the Project is consistent with them, and what modifications or mitigation measures may be necessary to satisfy the County's requirements.

CC6-106

The DEIR apparently does not even recognize that it is supposed to provide the environmental evaluation for other agencies' review of the Project as "Responsible Agencies." Thus, the DEIR states that PG&E's applications for approval of the Project by the County of San Luis Obispo "will be processed by the County in accordance with their requirements and both application review and approval processes are wholly independent

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of the CPUC's approval process for the Proposed Project (including the CEQA environmental review process and the EIR)." D.8-19.

CC6-107

X. CONCLUSION

Joint Parties submit that the DEIR does not comply with CEQA and does not provide a basis for action by the CPUC on the Project application. It is artificially narrow in scope, misleading in important respects and deprives other agencies and the public of a meaningful opportunity to comment on the impacts of the proposed action and a reasonable range of true alternatives. Accordingly, the DEIR must be redrafted to correct these deficiencies and recirculated for public review and comment.

CC6-108

Dated: May 5, 2005

Respectfully Submitted,

Morgan Rafferty
San Luis Obispo Mothers For Peace
P.O. Box 164
Pismo Beach, CA 93448
(805) 474-4220
mrafferty805@charter.net

For
SAN LUIS OBISPO MOTHERS FOR
PEACE, SIERRA CLUB, PUBLIC
CITIZEN, and ENVIRONMENT
CALIFORNIA