

# CHAPTER 5.0

## COMMENTS AND RESPONSES

### 5.1 INTRODUCTION

A total of 15 comment letters were received from various agencies and organizations concerning the Draft Mitigated Negative Declaration (MND) for Pacific Gas and Electric Company's (PG&E) Application Numbers 00-05-035 and 00-12-008. Application 00-05-035 involves PG&E's sale of the Richmond-to-Pittsburg pipeline and Hercules Pump Station, while Application 00-12-008 involves San Pablo Bay Pipeline Company's application to own and operate these assets..

PG&E filed Application 00-05-035 with the CPUC to sell its heated Richmond-to-Pittsburg Fuel Oil Pipeline to a new owner, the San Pablo Bay Pipeline Company (SPBPC), a subsidiary of Tosco Corporation. In a separate application (No. 00-12-008) SPBPC is seeking authority to own and operate the Richmond-to-Pittsburg Fuel Oil Pipeline as a common carrier pipeline corporation. The proposed sale includes the pipeline from its point of origin in Castro Street (adjacent to General Chemical's facility) in the City of Richmond, to the Pittsburg Power Plant, formerly owned by PG&E, located in the City of Pittsburg and includes the Hercules Pump Station, located in the City of Hercules.

### 5.2 LIST OF COMMENT LETTERS RECEIVED

The comment letters received on the Draft MND have been grouped in order of their arrival. Each comment letter has been assigned a corresponding alphabet letter designation. The commenting agencies or organizations who sent letters are listed below in **Table 5-1**.

**TABLE 5-1  
LIST OF COMMENTORS**

<b>Letter</b>	<b>Individual or Signatory</b>	<b>Affiliation</b>	<b>Date</b>
A	Andrea Gaut	BCDC	November 2, 2001
B	James D. Squeri	Goodin, MacBride, Squeri, Rigchie & Day, LLP	November 5, 2001
C	Chris Bekiaris	City of Pittsburg	November 6, 2001
D	Chris Bekiaris	City of Pittsburg	November 7, 2001
E	Barbara J. Cook	DTSC	November 19, 2001

Letter	Individual or Signatory	Affiliation	Date
F	Jim Townsend	EBRPD	November 20, 2001
G	Dennis Tagashira	City of Hercules	November 26, 2001
H	Vince Kilmartin	West Contra Costa Unified School District	November 28, 2001
I	Robert W. Floerke	Department of Fish and Game	November 29, 2001
J	Peter W. Hanschen	Morrison & Foerster, LLP	November 29, 2001
K	James D. Squeri	Goodin, MacBride, Squeri, Rigchie & Day, LLP	November 29, 2001
L	Randell H. Iwasaki	CalTrans	December 4, 2001
M	Dennis Tagashira	City of Hercules	December 6, 2001
N	Brad Olson	EBRPD	December 6, 2001
O	Stephen L. Jenkins	California State Lands Commission	December 10, 2001

### 5.3 MASTER RESPONSES

Several substantial issues were raised repeatedly in the comment letters. Rather than address them in each of the letter, the following master responses were prepared and are referred to in the relevant response.

#### MASTER RESPONSE 1

A number of comments received on the Draft Mitigated Negative Declaration (DMND) concerned the kinds of products for which the Richmond-to-Pittsburg Fuel Oil Pipeline and related assets can be used. The following response is provided:

The Pipeline was originally authorized pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the CPUC on May 20, 1975 for a 42-mile long pipeline extending from the Chevron Richmond Refinery to the former PG&E Pittsburg and Contra Costa Power Plants (Decision 84448). The CPCN authorized PG&E to construct the Pipeline and related assets and use them to transport oil, petroleum, and other similar products. The original purpose of the Pipeline was to provide PG&E's former Pittsburg and Contra Costa Power plants with heated, low-sulfur, residual fuel oil from the Chevron refinery. The Pipeline was used in this fashion from 1976 to 1982, when PG&E reduced its use of low-sulfur fuel oil because of its increasing expense. The Pipeline has been maintained to provide stand-by capability in case of natural gas supply interruptions or similar circumstances. The last major movement of oil

through the Pipeline was in 1991, with several subsequent oil movements made to maintain the integrity of the Pipeline.

The analysis considered in the DMND found that three entitlements apply to the current approved use of the Pipeline today:

1. The original terms of the 1976 CPCN state that the current CPUC-approved use of the Pipeline is the transport of “oil, petroleum, and products thereof.” These terms define a broad class of petroleum products which would be liquid, i.e., non-gaseous and be derived from oil. -
2. In August 1976, in association with the Pipeline construction and use, the City of Hercules issued a limited use permit for the Hercules Pump Station. The permit states that “[s]torage of liquids other than residual fuel oil and displacement oil as described in the project Environmental Impact Report must be approved by the City Council of the City of Hercules” (City Council Resolution, August 9, 1976).
3. In June of 1993, the City of Hercules adopted Ordinance No. 319, which states:

“Granted to the Pacific Gas and Electric Company, its successors and assigns, the franchise to construct, maintain, use, operate, repair, replace, renew and remove or abandon in place pipelines, pipes and appurtenances which may be used or useful in transmitting, distributing and supplying to the grantee and/or to the public, oil or products thereof including petroleum, gasoline, fuel oil, distillate petroleum products and other petroleum by products, which can be transported through a pipeline in, under, along, across or upon the public roads, streets, highways, ways, alleys and other places as the same now or may hereafter exist within the City of Hercules.”

The existing CPCN will not need to be transferred to SPBPC if the sale is approved since SPBPC has applied to the CPUC for authority to own and operate the Richmond to Pittsburg Fuel Oil Pipeline and Hercules Pump Station as a regulated common carrier, as specified in PUC Sections 216 and 228. These sections state:

“216. (a) "Public utility" includes every common carrier...where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

(b) Whenever any common carrier...performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that common carrier...is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part...”

“228. "Pipeline corporation" includes every corporation or person owning, controlling, operating, or managing any pipeline for compensation within this state.

"Pipeline corporation" shall not include a corporation or person employing landfill gas technology and owning, controlling, operating, or managing any pipeline solely for the transmission or distribution of landfill gas or other form of energy generated or produced therefrom."

Under PUC Section 1001, companies whose operations are solely related to the transport of oil (i.e., oil pipeline companies) are not required to obtain a CPCN, but must obtain common carrier status from the CPUC prior to commencing operations. Furthermore Tosco's application (A.00-12-008) states:

"San Pablo proposes to utilize the Pipeline Assets to provide public utility pipeline transportation services to Tosco, as well as other potential shippers. The Pipeline Assets will no longer be confined to use by PG&E's electric generating plants, but will be operated by San Pablo as a common carrier, open to all potential shippers."

Of the two remaining permit conditions (i.e., excluding the CPCN, which will not be transferred), the most limiting to the content of the potential product to be transported by the Pipeline is contained in the City of Hercules limited use permit. This states that residual fuel oil and displacement oil are the only liquids that can be stored at the Hercules Pump Station unless the City of Hercules approves other liquids. These liquids (residual fuel oil and displacement oil) are the same low-sulfur oil and cutter stock referred to in the DMND. It is the CPUC's understanding (based on discussions with PG&E) that the design of the Pipeline and Pump Station are such that the Pump Station tanks, for which the City of Hercules limited use permit applies, would be routinely used with movement of product through the Pipeline<sup>1</sup>. Therefore, although SPBPC's common carrier status and Ordinance 319 would more broadly define what may be transported via the Pipeline, the City of Hercules limited use permit provides a more restrictive definition what the Pipeline may store in the tanks and thus what may be transported through the Pipeline.

For the purposes of the environmental review conducted for the proposed project described in the DMND, it was assumed that the City of Hercules limited use permit conditions, as discussed above, define what may be transported in the Pipeline and stored in the Pump Station's tanks. Furthermore, for the foreseeable future, the City of Hercules limited use permit is expected to continue in effect. Note that SPBPC has indicated that once the sale of the Pipeline has been completed, it may consider a change in service to include other petroleum products (which may include crude oil, gas oil, intermediates and refined products). Should SPBPC desire to seek changes to the permitted product, SPBPC would be required to seek modifications to the limited use permit as described above. Any such future proposed change would be subject to environmental review under CEQA, as well as to the discretionary decision-making process at the City of Hercules.

Based on the above information, the text of Section 1.6.11 is revised as follows for clarity:

<sup>1</sup> In response to a question as to whether the pipeline could be used without the storage tanks, PG&E has indicated that only for short periods of time could the pipeline pumps bypass the storage tanks at the Hercules Pump Station. Thus, the tanks are integral to normal pipeline operations.

“If its application is approved, SPBPC will be a common carrier pipeline corporation regulated by the CPUC. The Richmond to Pittsburg Fuel Oil Pipeline and Hercules Pump Station were constructed specifically to transport fuel oil and would require ~~significant~~ modification and local jurisdictional approval to be used for other purposes. Any change in use of the pipeline and Hercules Pump Station initiated by SPBPC would require ~~CPUC~~ City of Hercules approval. Any change in use would also require negotiation of amendments to easements and rights-of-way with numerous landowners along the entire right of way and modification to the conditional use permit from the City of Hercules for the change in product carried in the pipeline or the modification to existing improvements to the Hercules Pump Station. Tosco has one refinery in the area that could be fueled by petroleum. SPBPC has indicated that once the sale of the pipeline has been completed, it may consider a change in service to include other petroleum products (which may include crude oil, gas oil, intermediates and refined products). However the existing permits limit the type of products that can be transported in the pipeline ~~Purchase and Sale Agreement prohibits SPBPC from seeking any change in the permitted use of the pipeline before the sale closes.~~ With this restriction, it is reasonably foreseeable that for the immediate future following the sale, the use of the pipeline would remain as transport of petroleum products, quite possibly between any of the several ~~To see~~ other refineries (including Tosco’s Rodeo refinery) and transport facilities along the route of the pipeline.”

Finally, Section 1.7 of the Project Description in the Draft MND discusses long term operation and use of the pipeline and pump station, setting forth the assumptions upon which the analyses were based.

## MASTER RESPONSE 2

The proposed project, which is the subject of this environmental document, is the approval of PG&E’s Section 851 application, in which PG&E seeks to sell its heated Richmond-to-Pittsburg Fuel Oil Pipeline to San Pablo Bay Pipeline Company (SPBPC). The project includes establishing the market value of the Pipeline and pump station assets under Section 367(b) using the sale price of the assets as the market value. In addition, SPBPC is seeking approval under Sections 216 and 228 of the Public Utilities Code to own and operate the Richmond-to-Pittsburg Fuel Oil Pipeline and Hercules Pump Station as a common carrier pipeline corporation. Thus, it is the sale and transfer of the Pipeline for which approval is now being sought.

As was described in Sections 1.1 and 1.6.2 of the DMND, a 4,000-foot section of the Pipeline within the City of Martinez was blocked and filled in 1998 to make way for an unrelated transportation project within Martinez. At the present time, construction of the 4,000-foot replacement section is yet to be applied for, and any such replacement is not at all well defined. What is known about this potential and reasonably foreseeable 4,000-foot replacement section is provided in this Final Mitigated Negative Declaration as new figures (Figures 1-3 through 1-6), which shows the easements obtained by PG&E for the replacement section and what is known about the connection points to the existing pipeline.

Environmental review of the construction of the 4,000-foot replacement section was included in the DMND because such construction is a reasonably foreseeable outcome of the proposed sale. Essentially, this CEQA review considers the replacement project at a CEQA programmatic level. Given the data available and considered in the DMND, as well as subsequent information received during this response to comments stage, the mitigation measures as written do set up performance standards that will ensure that generally known impacts arising from such construction will be less than significant. To have provided more project level analysis or mitigation measures would be speculative at this point. These programmatic mitigation measures also provide an added level of security, since future environmental review will likely be conducted of the replacement pipeline before it may be constructed. Thus, the Mitigated Negative Declaration does not defer mitigation measures to later action. The DMND properly identifies program level mitigation measures consistent with the program level information that is available concerning the pipeline replacement, which has not yet been designed or formally proposed. It is expected that project level mitigation measures will also be developed and required at the appropriate project level CEQA juncture.

The analysis in this document cannot fully examine all potential replacement pipeline construction impacts, nor fully specify all necessary mitigation measures for the replacement because the replacement is not the subject of this document, and substantial details of replacement would be required for proper review of pipeline replacement. The pipeline replacement would be subject to additional permitting review, including local agency permits, a BCDC permit, EBRPD encroachment permits and / or an Army Corps of Engineers 404 permit (which would evoke NEPA and Endangered Species Act consultation with both National Marine Fisheries Service and U.S. Fish and Wildlife Service), and a California Department of Fish and Game Streambed Alteration Agreement. Because the actions of these agencies would trigger NEPA and / or CEQA review, specific project-related impacts would be fully assessed and mitigation measures determined as appropriate at such time as the details of the pipeline replacement are known or proposed.

## 5.4 RESPONSES TO COMMENTS

This section contains responses to all of the substantive comments received on the Draft MND during the extended 30-day review period. Each comment letter was assigned a letter according to the system identified previously (i.e. A, B, etc.). Each comment addressed within each letter was assigned a number (i.e. A1, A2, etc). Responses are provided to each written comment number within the letter. Where a response to a similar comment has been provided in another response, the reader is referred to the previous response.

All changes to the MND are described in the response and referred by the page number on which the original text appears in the MND. Added text is underlined; deleted text is ~~stricken~~.

**Morgan, Tim**

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**From:** Andrea Gaut [andreag@bcdcc.ca.gov]  
**Sent:** Friday, November 02, 2001 3:53 PM  
**To:** tmorgan@esassoc.com  
**Subject:** Richmond to Pittsburgh Pipeline and Hercules Pump Station

Dear T. Morgan,

I have quickly skimmed through the Draft Mitigated Negative Declaration for the above project. It appears that portions of the project may be within the San Francisco Bay Conservation and Development Commission's jurisdiction. A permit would be required for this work. If you have any questions, please feel free to e-mail me or call me at (415) 352-3618.

AI

Thanks,

Andrea M. Gaut

**LETTER A –ANDREA GAUT – BCDC**

***Response A1***

Please refer to page 2-2 of the Draft Mitigated Negative Declaration (DMND) item number 10, which lists additional agencies from which permits or approval would be required. Included in this list is the San Francisco Bay Conservation and Development Commission (BCDC). Also see page IX-9, which indicates a number of places along the pipeline route that fall under the jurisdiction of the BCDC.



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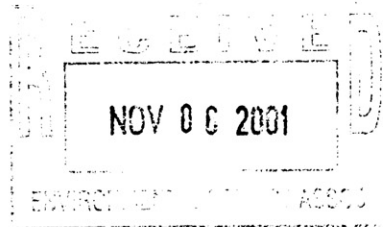
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November 5, 2001

James D. Squeri

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1946-1979



HAND-DELIVERED

Ms. Billie C. Blanchard  
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San Francisco, CA 94102

**Re: PG&E Application Nos. 00-05-035 and 00-12-008; Mitigated  
Negative Declaration**

Dear Ms. Blanchard:

I am writing on behalf of SCS Development Co. ("SCS") to express concern about obvious and significant deficiencies which appear in the Mitigated Negative Declaration ("MND") prepared in conjunction with the above-referenced applications and recently published by the Commission staff for comment. SCS, a real estate developer with secured approved plans to construct a residential subdivision in the City of Hercules, has filed its protest to Application No. 00-12-008 and has a direct and immediate interest in the accuracy of the environmental documentation that is under review in conjunction with A. 00-12-008.

While recognizing that comments on the draft MND are not due until the end of the month, SCS feels compelled to provide notice to you as early as possible of serious deficiencies and omissions in the draft that has been circulated for comment. These errors and omissions include the following:

(1) While the "Project Description" indicates that the "CPUC has concluded that all potential impacts can be mitigated to less than significant levels," the project description fails to describe the ultimate use(s) to which the subject facilities will or may be put. Without delineating and considering the various potential "actual" uses that are at issue, it is impossible for the CPUC to determine what might be the potential impacts of such uses, much less define the necessary level of mitigation required with respect to each such use.

(2) At p. XII-2, the draft states as follows: "While use of the pipeline would likely transport fuel oil, the end use of the fuel oil has not been determined." It is obvious that fuel oil storage

B1

B2

Billie C. Blanchard  
November 5, 2001  
Page 2.

and transportation is not the only anticipated use for which approval is sought under the pending application. Without identifying and analyzing the other potential uses, it is impossible to adequately review the impacts upon SCS's housing development.

(3) At p. IX-1, the document, in describing the Project "Setting," reads as follows: "The Hercules Pump Station is located on 44.2 acres of land...and undeveloped lands to the north." The referenced lands to the north are not "undeveloped." They are entitled with Vesting Tentative Map 8455 granted by the City of Hercules.

B3

Further the draft document states: "The city proposes to amend the general plan so that the land can be used for residential and commercial users, as well as construction of a new school. The city has completed an EIR on the proposed specific plan but has not yet adopted it into the general plan." This statement is erroneous. SCS has a vesting tentative Map as does Catellus - information which was conveyed to the applicant in A. 00-12-008 as well as the Commission's environmental consultant when SCS protested the proposed project in January, 2001 as a map owner. The General Plan, specific plan and other entitlements are all recorded on the land and substantial grading has begun. The plan is for more than 800 homes, a school, and a commercial site - all of which are entitled.

B4

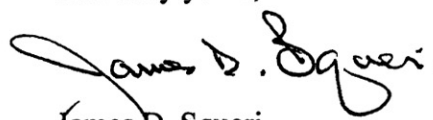
(4) At Section 1.0 "Description of the Proposed Project," 1.1 INTRODUCTION, the document reads: "Two parties, West Contra Costa Unified School District and SCS development company, filed protests to SPBPC's application on January 16<sup>th</sup>, 2001, raising various issues. SPBPC filed a reply to those protests on January 26<sup>th</sup>, 2001." There is, however, no explanation of the nature of the protests that have been lodged set forth in the MND.

B5

While SCS has every intention of participating in any scheduled public meetings held to address the MND and of filing timely comments on the draft document, SCS nevertheless has thought it prudent to bring to your attention as quickly as possible any obvious deficiencies in the referenced document. In that regard, SCS looks forward to working through the process to ensure the adequacy of the subject environmental documentation.

Should you have any questions regarding the concerns set forth herein, please contact me.

Sincerely yours,

  
James D. Squeri

Billie C. Blanchard  
November 5, 2001  
Page 3.

cc: ~~Tim~~ Morgan - ESA

2937/001/X29039-1

**LETTER B – JAMES D. SQUERI – GOODIN, MACBRIDE, SQUERI, RIGCHIE & DAY, LLP*****Response B1***

Please see Master Response 1.

***Response B2***

As the commentor notes, the end use of the fuel oil has not been determined although as discussed in Master Response 1 the approval being sought limits the products that can be transported. The DMND addressed the issue of end use of transported product to the extent possible in Section 1.6.12:

“Identification of points of origin and points of delivery for the petroleum product along the Richmond to Pittsburg Fuel Oil Pipeline would be speculative at this point. It seems likely that tie-ins to the pipeline would need to be installed before the system would be fully operational.

The initial design of the pipeline anticipated future tie-ins by installing connection amenities for access to ship transportation at some of the refineries located along the shoreline between Richmond and Antioch. Also, the Hercules Pump Station was designed to allow movement of oil from a marine loading wharf that was once located at the former Gulf Refinery in Hercules, although no provisions were made to connect the wharf to the pipeline. There are also eight 10-inch tees on the Hercules to Pittsburg section of the pipeline, including one adjacent to Tosco’s Rodeo refinery. There is also one 10-inch tap and a metering station at the Shore Terminal Tank Farm facility in Martinez.

Installation of tie-ins may require permitting and agency approval and land rights acquisition. These activities would be the responsibility of SPBPC, or the company desiring such a tie-in, once a plan for such facilities is developed.”

There is no new information available about SPBPC’s intended use for the Pipeline beyond that described above.

***Response B3***

Although the project sponsor may have a Vesting Tentative Map, as of November, 2001, a visual survey of the inland portion of the New Pacific Properties site, to which the Initial Study refers, indicated that the inland portion of the site was still undeveloped. The Vesting Tentative Map permits a project sponsor to develop a site subject to the General Plan and Zoning Ordinance in place at the time the Vesting Tentative Map is granted. The Vesting Tentative Map does not change the fact that the site had not yet been developed.

It is understood that SCS intends to develop this land. The Draft Mitigated Negative Declaration (DMND) recognized the potential for the very uses raised by the commentor, and examined the

potential for land use conflicts between the New Pacific Properties development and the pipeline operations. The Draft MND in fact quoted from the EIR for that project in Section IX, *Land Use and Planning*, which states:

The EIR for the proposed development project notes (p. 5.5-17):

“The City shall condition approval of development proposals on the New Pacific Properties site on the provision of adequate buffers between proposed sensitive receptors on the site and existing or approved industrial uses on adjacent sites. Adequate buffers shall also be provided between such uses within the site. ‘Sensitive receptors’ include but are not limited to residential, education and recreational uses. ‘Approved’ refers to specific projects that have been approved, specific uses that have been approved as part of a n overall development plan (such as a specific plan), or uses that may be developed ‘by right’ on a parcel without additional discretionary approvals. The width of the buffers shall be determined on the basis of information regarding the types of uses; the hazardous materials handled and wastes generated, environmental conditions (wind pattern, surface and ground water flows, soil characteristics, any reported contamination and status of remediation). The width of the buffers shall be intended to avoid significant environmental impacts.”

The DMND therefore concluded that there would be no significant impact with operation of the pipeline and construction of the then-proposed development. The mere fact that the proposed development has now been approved and is being constructed in no manner affects the analysis of impacts, or the conclusions. What is happening on the ground now is precisely what was assumed to occur and considered in the Initial Study and Mitigated Negative Declaration.

#### ***Response B4***

The commentor is correct, the text of the Draft MND incorrectly states that the City of Hercules is considering amendments to the General Plan and Zoning Ordinance. The Hercules General Plan was amended on April 11, 2000; the Zoning Ordinance was amended on May 9, 2000; and Vesting Tentative Subdivision Map No. 8455, discussed above in Response to Comment B3, was approved on October 24, 2000. The analysis in the DMND assumes the development described in the General Plan and Zoning Ordinance amendments. While the analysis does not specifically discuss the Vesting Tentative Subdivision Map, the Map permits the development permitted by the General Plan and Zoning Ordinance amendments. The conclusions of the DMND would therefore not change.

On pp. IX-6 and IX-6, the following paragraphs concerning the City of Hercules are revised as follows:

The City of Hercules General Plan governs land use designations in the City of Hercules. A segment of the project’s pipeline runs through the City of Hercules and the project’s pump station is also located within the City of Hercules along the east side of San Pablo Avenue. The pump station is located on land designated by the General Plan

for industrial use. Industrial uses are “intended to accommodate heavy industrial uses, refineries, and storage facilities along with light manufacturing use and other light industrial uses related to evolving technologies, research & development, communications, and information processing.” The General Plan also states: “The designation is to provide an opportunity for industrial uses to concentrate for the efficiency of larger industries and to allow for buffers from sensitive residential and public uses in a manner that does not expose residents to significant environmental risk” (p. 11-32).

The pipeline enters the City of Hercules from the City of Richmond in the Union Pacific right-of-way until it leaves the right-of-way, and runs underground in a southeast direction through developed and undeveloped lands, crossing Linus Pauling Drive and Alfred Nobel Drive to the pump station. The pipeline passes alongside lands designated *Public-Park* (San Pablo Bay Regional Park), *Waterfront Commercial*, *General Commercial*, ~~and~~ *Planned Office – Research and Development*, and *Specific Plan*.

The pump station is also located in the City of Hercules, in an area designated by the City of Hercules General Plan as *Industrial*, and is adjacent to an area designated *Planned Commercial Industrial-Specific Plan*. From the pump station, the pipeline is located underground within the San Pablo Avenue right-of-way, passing areas on the west side of San Pablo Avenue that are designated *General Commercial*, *Planned Office – Research and Development*, ~~and *Industrial*~~, and *Specific Plan*. ~~Industrial uses are “intended to accommodate heavy industrial uses, refineries, and storage facilities along with light manufacturing use and other light industrial uses related to evolving technologies, research & development, communications, and information processing.” The General Plan also states: “The designation is to provide an opportunity for industrial uses to concentrate for the efficiency of larger industries and to allow for buffers from sensitive residential and public uses in a manner that does not expose residents to significant environmental risk” (p. 11-32).~~

The General Plan contains the following policy relevant to the pipeline and pump station:

Policy 13A: Create a transition between residential neighborhoods and commercial/industrial areas, except where such mixed uses are desirable (e.g. live/work space and other designated areas). Land uses must minimize adverse impacts, and those that would not negatively impact adjoining properties should be encouraged.

The City of Hercules has initiated a process to adopt a *Specific Plan* that would encompass a discrete area north of and adjacent to the pump station, and that would expand across San Pablo Avenue to San Pablo Bay. Currently designated for *Planned Commercial Industrial* uses, the City proposes to amend the General Plan so that the land is designated *Specific Plan*, with residential and institutional uses. The project site is zoned *Industrial*.

City also proposes to amend the Zoning Regulations so that the areas immediately adjacent to the pump station would be are within *SP-R-MH Residential Medium High Density* and *SP-R/RF Retail/Residential Flex zoning districts*. Further north, portions of the site would be adjacent lands are zoned *SP-S School* and *SP-R-Z Residential Z-Lot*.

The General Plan and Zoning Ordinance were amended specifically for the New Pacific Properties project, which anticipates construction of an estimated 763 single-family homes, 117 multi-family units, 65,000 sq. ft of residential/retail flex, an elementary school, parks, trails and roadways. The New Pacific Properties project flanks San Pablo Avenue, and consists of two subareas: the coastal subarea, located west of San Pablo Avenue, and the inland subarea located east of San Pablo Avenue. The inland subarea is located adjacent to the pumping station, and would include mixed uses, the elementary school, and the more dense single-family development areas.

### ***Response B5***

The commentor suggests that the document should include a discussion of the protests filed on A.00-12-008. The CPUC considers two interrelated processes on discretionary actions such as this. The first is the general proceeding side, which the application was filed on, and the second is the CEQA process. Both processes are considered by the CPUC for project approval. The CPUC assigned Administrative Law Judge (ALJ) will make a ruling on these protest/response filings, however, as of yet, no ruling has been made by the ALJ. While the information contained in the protests (and responses) was considered during preparation of the CEQA document, it is not necessary to provide summaries of these filings in a CEQA document. Furthermore, these filings are matters of public record.

**Morgan, Tim**

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**From:** Chris Bekiaris [CBekiaris@ci.pittsburg.ca.us]  
**Sent:** Tuesday, November 06, 2001 9:59 AM  
**To:** 'tmorgan@esassoc.com'  
**Subject:** Richmond-To-Pittsburg Pipeline

Just an initial comment on the Draft Mitigated Negative Declaration: On page 1-4 it states at the end of the second paragraph that the pipe line goes "into the City of Pittsburg". Actually the pipe line and the former P.G. & E. plant are located in the County. The land in which the pipe is located and the former P.G. & E power plant are on the northside of Willow Pass Road. This whole area is in the County. The city limit line is Willow Pass Road. The map on page 1-3 shows this.

C1

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**LETTER C – CHRIS BEKIARIS – CITY OF PITTSBURG**

***Response C1***

The last sentence of the second paragraph on page 1-4 is changed as follows:

The pipeline then continues east along the UPRR corridor through the City of Martinez, under Interstate 680 at the Benicia Bridge, across Pacheco Creek, and ~~into~~ extends to just north of the limits for the City of Pittsburg into Contra Costa County, ~~where it terminates terminating~~ just west of the Pittsburg Power Plant.

**Morgan, Tim**

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**From:** Chris Bekiaris [CBekiaris@ci.pittsburg.ca.us]  
**Sent:** Wednesday, November 07, 2001 10:42 AM  
**To:** 'tmorgan@esassoc.com'  
**Cc:** Garrett Evans; Randy Jerome  
**Subject:** SPBPC Pipe Line

After looking though the draft mitigated ND I don't see anything about the pipe being used for the Mirant Plant in Pittsburg. Is that in fact the case? Our understanding is that Mirant will use only natural gas. Can you clarify? Thanks

D1

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Associate Planner  
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**LETTER D – CITY OF PITTSBURG*****Response D1***

As is mentioned on page 1-6 of the Draft MND and elsewhere, the original purpose of the pipeline was to transport fuel oil from Richmond to PG&E's Pittsburg and Contra Costa Power Plants. When these two power plants were sold to Southern Energy (now known as Mirant), the section of the pipeline between the Pittsburg and Contra Costa Plants was sold with the two plants. The pipeline that is now proposed to be sold terminates at the Mirant Power Plant pumping station, which was used in the past to direct fuel oil to tanks for the Mirant Pittsburg Power Plant or to the Mirant Contra Costa Power Plant. Although the Mirant plants have used oil in the past and could again in the future, present day economics and air quality concerns make it not reasonably foreseeable that this would be a potential use of the pipeline by SPBPC. Furthermore, neither PG&E nor SPBPC propose in their project to have any relationship with the Mirant Power Plants.



## Department of Toxic Substances Control



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Agency Secretary  
California Environmental  
Protection Agency

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Gray Davis  
Governor

November 19, 2001

Ms. Billie C. Blanchard  
California Public Utilities Commission Energy Division  
c/o Environmental Science Assoc.  
505 Van Ness Avenue, 4th Floor  
San Francisco, California 94102-3298

Dear Ms. Blanchard:

Thank you for the opportunity to comment on Pacific Gas and Electric Company's Application to Sell the Richmond-To-Pittsburg Pipeline and Hercules Pump Station and San Pablo Bay Pipeline Company's Application to Own and Operate These Assets Draft Mitigated Negative Declaration [SCH #2001102139 and CPUC Application Numbers 00-05-035 and 00-12-008]. As you may be aware, the California Department of Toxic Substances Control (DTSC) oversees the cleanup of sites where hazardous substances have been released pursuant to the California Health and Safety Code, Division 20, Chapter 6.8. As a Resource Agency, DTSC is submitting comments to ensure that the environmental documentation prepared for this project to address the California Environmental Quality Act (CEQA) adequately addresses any required remediation activities which may be required to address any hazardous substances release.

The proposed project is the sale of a heated fuel oil pipeline and pump station from one utility company to another. The pipeline would be sold as is, with all existing faults; however, it is anticipated that a 4,000-foot replacement section of pipeline will be constructed in the City of Martinez by the purchaser. The Draft Negative Declaration identifies several mitigation measures for the pipeline replacement under the Hazards and Human Health section. The measures indicate that future mitigation measures will be based on a Phase I and potentially Phase II Environmental Site Assessments that have yet to be conducted. We strongly recommend that the assessments be conducted now in order to determine whether hazardous substance have been released, and then specific issues can be identified which will need to be addressed in the Negative Declaration.

For example, if the remediation activities include the need for soil excavation, the CEQA document should include: (1) an assessment of air impacts and health impacts

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at [www.dtsc.ca.gov](http://www.dtsc.ca.gov).*

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November 19, 2001  
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associated with the excavation activities; (2) identification of any applicable local standards which may be exceeded by the excavation activities, including dust levels and noise; (3) transportation impacts from the removal or remedial activities; and (4) risk of upset should be there an accident at the Site

E1 cont.

Another mitigation measure states that impacted soil generated by the remediation and construction activities will be contained on-site and may be potentially re-used at the project site. The mitigation measure does not identify the criteria that will be used to determine if the soil is appropriate for on-site reuse and what regulatory agency will be providing approvals and oversight.

E2

We would also like to clarify that DTSC has not delegated authority to Contra Costa County to implement California Health and Safety Code, Chapter 6.8. Unless Contra Costa County enters into an enforceable agreement with a responsible party and has notified both DTSC and the Regional Water Quality Control Board of its intent to do so, cleanup actions overseen by the county may be subject to additional state action.

E3

Finally, page VII-8 states that the site at 401 Ferry Street, Martinez was reviewed and no remediation was deemed necessary. Please specify who reviewed and made this determination.

E4

DTSC can assist your agency in overseeing characterization and cleanup activities through our Voluntary Cleanup Program. A fact sheet describing this program is enclosed. We are aware that projects such as this one are typically on a compressed schedule, and in an effort to use the available review time efficiently, we request that DTSC be included in any meetings where issues relevant to our statutory authority are discussed.

E5

Please contact Lynn Nakashima of my staff at (510) 540-3839 if you have any questions or would like to schedule a meeting. Thank you in advance for your cooperation in this matter.

Sincerely,



Barbara J. Cook, P.E., Chief  
Northern California - Coastal Cleanup  
Operations Branch

Enclosure

**Ms. Billie C. Blanchard**  
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**cc: without enclosure**

**Governor's Office of Planning and Research**  
**State Clearinghouse**  
**P. O. Box 3044**  
**Sacramento, CA 95812-3044**

**Guenther Moskat**  
**CEQA Tracking Center**  
**Department of Toxic Substances Control**  
**P.O. Box 806**  
**Sacramento, California 95812-0806**

## LETTER E – DTSC

### *Response E1*

Master Response 2 states that the 4,000-foot replacement pipeline section is yet to be applied for, and any such replacement is not well defined. However, the Draft Mitigated Negative Declaration (DMND) included the results of a search of known sites in the vicinity of the area expected for a 4,000-foot replacement section and found no sites that require remediation. Such a search is traditionally the heart of a Phase I Site Assessment, although a Phase I analysis also includes matters outside the scope of CEQA, such as information developed for liability and insurance purposes. The DMND requires that a Phase I analysis of the entire length of the replacement pipeline route be prepared by SPBPC and submitted to CPUC in order to confirm the results of the data search reported in the DMND. Mitigation Measures VII.1a and b were included in the DMND as a precaution in case contamination is discovered from a Phase I analysis. If any remediation activity were to be required, significant impacts would be avoided by following the procedures and practices identified in mitigation measures 1a and 1b.

### *Response E2*

Contaminated soils, if encountered, would be considered as hazardous waste and would be disposed of based on the criteria described in Sections 66261.20 through 66261.120 of Title 22 of the California Code of Regulations, as enforced by DTSC and Contra Costa County. Soil would only be reused onsite if it were determined on a case by case basis not to be hazardous, if it were suitable to be used as fill, and if approval were received from DTSC. See also Master Response 2.

### *Response E3*

The comment is noted.

### *Response E4*

According to the record search conducted by ESA, the San Francisco Bay Regional Water Quality Control Board, as the lead agency designated on the Cortese List, determined that no remediation was necessary.

### *Response E5*

The CPUC agrees that DTSC should be included in future meetings relevant to DTSC statutory authority.



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November 20, 2001

Billie Blanchard, CPUC  
C/O Environmental Science Associates  
225 Bush Street  
San Francisco, CA 94104-4207

RE: **Martinez Regional Shoreline**  
CPUC Application Numbers 00-05-035 and 00-12-008

Dear Ms. Blanchard:

Pursuant to your offer made during the agency meeting regarding the above-referenced CPUC Applications, the East Bay Regional Park District hereby requests an extension of time to submit written comments on the Draft Mitigated Negative Declaration for the proposed asset transfer and pipeline reconstruction.

We request a two-week extension to submit our written comments, to December 13, 2001.

Please call me to confirm that your agency is agreeable to granting this extension.

Yours truly

Jim Townsend  
Real Estate Representative  
510-544-2604

cc: Brad Olsen, EBRPD  
Tim Morgan, ESA





**LETTER F – EAST BAY REGIONAL PARKS DISTRICT**

***Response F1***

In response to the request, an extension until December 7, 2001 was granted to the East Bay Regional Parks District by Billie Blanchard of the CPUC.



**CITY OF HERCULES**

111 CIVIC DRIVE, HERCULES, CA 94547

PHONE: 510 • 799 • 8200

November 26, 2001

Ms. Billie Blanchard, CPUC  
c/o Environmental Science Associates  
225 Bush Street, Suite 1700  
San Francisco, California 94104-4207

**Subject: Request for Additional Time to Review Draft Mitigated Negative Declaration, CPUC Application Numbers 00-05-035 and 00-12-008**

Dear Ms. Blanchard,

The purpose of this letter is to request additional time for the City of Hercules to review the Draft Negative Declaration and Initial Study for the "Pacific Gas and Electric Company's Application to Sell the Richmond-to-Pittsburgh Pipeline and Hercules Pump Station and San Pablo Bay Pipeline Company's Application to Own and Operate these Assets" project.

We have several comments that are pertinent to the proposed project which we feel should be addressed in the draft document. We would appreciate an additional two weeks to give us ample time for our staff to thoroughly review and comment on this most important project.

Please let us know if you've agreed to this additional time. I can be reached at (510) 799-8243.

Sincerely,

Dennis Tagashira,  
Planning Manager

cc: Mike A. Sakamoto, Acting City Manager  
Steve Lawton, Director of Community Development  
Alfred Cabral, City Attorney

**LETTER G – CITY OF HERCULES EBRPD**

***Response G1***

In response to the request, an extension until December 7, 2001 was granted to the City of Hercules by Billie Blanchard of the CPUC.



**TIME SENSITIVE - IMPORTANT**

Vince Kilmartin  
Associate Superintendent  
510 - 620-2206

**WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT  
1108 BISSELL AVENUE  
RICHMOND, CALIFORNIA 94801-3135**

November 28, 2001

**From:** West Contra Costa Unified School District  
Vince Kilmartin, Associate Superintendent  
1108 Bissell Avenue  
Richmond, California, 94801-3135

**To:** Billie Blanchard, CPUC  
C/o Environmental Science Associates  
225 Bush Street, Suite 1700  
San Francisco, California 94104-4207

**Subject:** Pacific Gas And Electric Company's Application To Sell The Richmond-To-Pittsburg Pipeline And Hercules Pump Station And San Pablo Bay Pipeline Company's Application To Own And Operate These Assets

**Draft Mitigated Declaration CPUC Application Numbers: 00-05-035 and 00-12-008**

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Thank you for the opportunity to review and respond to the above indicated Draft Mitigated Negative Declaration. The West Contra Costa Unified School District (WCCUSD) has a direct interest and concern about the proposed sale of the pipeline because several existing schools in the district (Lake Elementary, Peres Elementary, Seaview Elementary, and Verde Elementary) are within 0.4 miles of the project, and the pipeline is adjacent to a site in Hercules that the WCCUSD is proposing to purchase. The WCCUSD has reviewed the Mitigated Negative Declaration and finds that this document does not present sufficient

information to address impacts under CEQA Statutes (Public Resources Code, Division 13, Sections 21000-21177) and CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3 Sections 15000-15387 and Appendices A-K). More importantly, the Draft Mitigated Negative Declaration does not adequately address impacts to the existing and proposed schools within our school district. Our comments are provided below.

**CEQA Guidelines (Section 15072) – Notice of Intent Procedure**

The Mitigated Negative Declaration does not indicate that the CPUC provided a “preconsultation period” via the “Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration,” (Section 15072 of the CEQA Guidelines.) Nor is there documentation of the posting of the Notice of Intent with the county clerk of “each county within which the proposed project is located.” (Section 15072 [d].) When queried (November 15, 2001, 3 PM Public Meeting at Hercules City Hall Council Chambers) the representatives of the CPUC and the preparers of the Draft Mitigated Negative Declaration indicated that the Notice of Intent period did not result in any comments. The WCCUSD would like documentation of the Public Notice on the “Notice of Intent,” the distribution list, and the documentation of the filing of the Public Notice with the county clerk (Contra Costa County).

H1

**Consultation with the School District CEQA Statute (Section 21151.4)**

Under Section 21151.4, the CEQA statute requires consultation with the schools if the facility (construction or alteration, we consider this an “alteration”) is within .25-mile of a school that *might reasonably be anticipated to emit hazardous or acutely hazardous air emission, or which would handle acutely hazardous material in a quantity...which may pose a health or safety hazard to persons who would attend or would be employed at the school, unless both of the following occur:*

- (a) *The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.*
- (b) *The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.*

H2

The WCCUSD and the affected schools were not given this written notification. This is an action that would affect about 1,500 students, teachers, and support staff in these schools. Their consideration of the proposed action may directly affect them. We feel that each

school in our district and other districts should be given the opportunity to provide comment on this action.

**Lack of Technical Detail – CEQA Guidelines (Section 15147)**

During our review, we noted that the figures did not show in a large-scale route of the pipeline. Understandably, the 35 miles that this pipeline traverses may have required a number of figures; however, the figures in the Draft Mitigated Negative Declaration were on such a small scale (ranged from about 1-inch equaling 3 miles to 1-inch equaling 2,000 feet) that the precise location of the pipeline could not be determined. In addition, the lack of labels of places (including the storage tanks) and roads did not provide the reviewers with the specific land uses that would have identified potential impacts to sensitive receptors. Under Article 10 (relating to the preparation of EIRs and Negative Declarations): *The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public.*

H3

The WCCUSD first priority is the probable impacts that this proposed sale has to our existing schools and proposed Hercules school site, subsequently, the remainder of our comments focuses on the specific issues on our schools.

(1) The proposed project description does not address two major considerations, the first is what specifically will be conveyed in the pipeline and storage tanks, and secondly, where will the contents of the pipeline be transported (to and from). The CEQA Guidelines, Section 15063 (a)(1) states: *All phases of project planning, implementation, and operation must be considered in the initial study of the project.* The importance of this information is that it provides concerned parties like the WCCUSD with an opportunity to determine if any future foreseeable plans would impact schools.

H4

(2) On page I-8 it was stated that, “Maintenance and repair activities on the pipeline could range from excavating certain sections to allow welding a full encirclement weld sleeve over impacted areas of the pipe (with wall thickness loss or other anomalies for relatively localized problems), to replacement of entire sections of the pipeline. Usually the replacements occur within five feet of the existing pipeline and within the existing easement.” However, on page VII-2, it was stated that, “Based on maintenance procedures and the results of the most recent smart-pig test, the integrity

H5

of the pipeline is sound and could be re-activated without the need for repair or modification.” These two statements paint different pictures of the pipeline’s condition and we would recommend that these statements be reviewed and a determination made of which statement correctly identifies the condition of the pipeline.

- (3) On page VII-2 it was stated that: *The ASTs are built in conformance with National Fire Protection Agency (NFPA), state, and federal standards, and were recently inspected by the Rodeo-Hercules Fire Marshall for regulatory compliance.* The results of the inspection should be provided. Also, if the ASTs were built in conformance with the most recent standards then why was contamination found in the Phase II ESA. It should be mentioned that these ASTs are about 1,000 feet south of the proposed Hercules school site. The pipeline is located next (on the west side on San Pablo Avenue) to the proposed school. The WCCUSD had a risk analysis prepared for the oil pipeline and the storage tanks and the risk analysis determined that based on the present allowable limits, the pipeline and storage tanks do not pose a substantially great risk. However, we are concerned that the reactivation of the pipeline and ASTs may change the parameters used in this risk analysis. We feel that the long period of non-use of the pipeline and the ASTs and the recent plans for commercial, residential, and school uses are inconsistent uses. Two areas relating to risk need to be addressed in the Draft Mitigated Negative Declaration: preparation of a risk assessment of the pipeline, pump station and heating facilities, and ASTs to human health and the environment including the use of risk scenarios (e.g., accidents and criminal actions), and risk perception (e.g., impacts of the proposed project on human perception of risk including the devaluation of future home prices). This information should provide identification the type of petroleum product or other hazardous material to be conveyed or stored.

H6

H7

- (4) As mentioned previously, four existing WCCUSD schools and one proposed school is within the near vicinity of the pipeline. Page VII-6, identifies California Code of Regulations, Title 5 that requires a risk analysis study be performed if a school site is within 1,500 feet of the easement for a pipeline that can pose a safety hazard. A risk analysis study was prepared for the proposed Hercules school site. However, the proximity of the existing four schools to the pipeline may result in the WCCUSD performing risk analyses for each of the school, or may result in the limiting or restricting additional structures at the present schools. This will place a financial

burden on the school district. This economic impact is not addressed, nor are there any mitigation measures or compensation to the school district provided that such impacts may occur.

H8

- (5) The transport of fuel oil, the operation of the Hercules Pump Station, and the acknowledgement of nearby schools are mentioned on page VII-7; however, the impacts are dismissed as “less than significant.” The proposed action will result in the reuse of a pipeline that has basically not been used in about 20 years. In that sense, the existing schools have been in continual operations over a longer period of time and potential impacts should not be considered “existing.” This consideration should also be given under the discussion of the land use and planning (page IX-5). The statements made in this section appears to indicate that the City of Hercules allows the ASTs and pumping station uses with sufficient buffers. However, at the same public meeting mentioned above (November 15, 2001, 3 PM, City of Hercules City Hall Council Chambers) a meeting summary will show that the representatives of the City of Hercules were concerned about the reuse of the pipeline and ASTs next to the approved New Pacific Properties development.

H9

- (6) On page IX-11, it states: *The school siting criteria used by the West Contra Costa Unified School District would not specifically prohibit the proposed location of the school, but would require adequate setbacks and buffers, as well as safety precautions. The school site could also be exchanged with other potential land uses within the Specific Plan area.* The WCCUSD is not aware of any required setbacks or buffers required by the California Department of Education. The requirement for the school site was to prepare a risk analysis, and that has been done. Also, the location of the school on the Specific Plan was carefully sited and located and the WCCUSD finds that this location provides an optimal location for the school site; an exchange of this site for another location within the Specific Plan is not under consideration.

H10

- (7) Under the transportation and traffic section (beginning with page XV-1) we found no information on the traffic to be generated at the AST /pumping station location. The WCCUSD is concerned about truck/car traffic along San Pablo Avenue. We feel that discussion of trips and impact on San Pablo Avenue should be included especially since elementary grade school children may need to cross San Pablo Avenue and pedestrian safety issues are one of our foremost concerns.

H11



(8) Finally, we feel that the mitigation measures proposed should include, in appropriate sections, consultation and agreement with the WCCUSD.

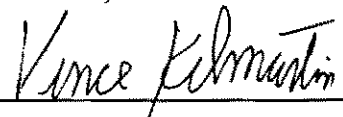
- relocation/maintenance of any pipeline section that is required next to WCCUSD existing or proposed schools
- air quality emissions and any emergency procedures for the pipeline and/or the ASTs/pumping station/heating equipment
- hazards and hazardous materials, preparation of a risk analyses for each existing and proposed school site and mitigation measures
- add traffic study and pedestrian safety concerns to the mitigation measures.

H12

The WCCUSD finds that the Draft Mitigated Negative Declaration does not provide sufficient information to determine probable impact. The document fails to understand that the non-use of the pipeline is essentially the existing situation. That the maintenance and permits that were kept current does not provide sufficient reasons to determine "less than significant impacts," because other uses and projects have continued or moved forward in the 20 years that the pipeline has been basically inactive. We would urge the CPUC to deny these applications until substantive information is made available to identify impacts. Also, that given the potential impacts that the CPUC reconsider its decision and have a full environmental impact report for the proposed action.

In closing, we continue to affirm our objections and protests to Application No. 00-12-008, filed with the CPUC on January 16, 2001.

If you have any questions or require further information, please contact our project representative Caroleen Toyama, at the IT Corporation 4005 Port Chicago Highway, Concord, California 94520-1120 - Phone number (925) 288-2042.

  
\_\_\_\_\_  
Vince Kilmartin, Associate Superintendent  
West Contra Costa Unified School District

Date: November 28, 2001

## LETTER H – WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

### *Response H1*

The commentor appears to be confused about Section 15072 Notice of Intent requirements. The CPUC has correctly followed CEQA Guidelines Section 15072 by filing a Draft Mitigated Negative Declaration (DMND), which included a notice of publication, service list of recipients of the DMND and followed proper noticing requirements of the DMND and notice of the duration of the public review period per 15072 and 15073 as its notice of its intent to adopt the DMND. Furthermore, as required by Section 15072, the DMND was filed with the Contra Costa County Clerk on November 6, 2001. Additionally, the CPUC also noticed all landowners along the Pipeline route of the publication of the DMND and availability of the DMND. Section 15072 has no requirement for preconsultation period however, as discussed in Section 4.0 of the DMND and Response to Comment H2, an agency outreach meeting held on March 5, 2001 with WCCUSD in attendance that provided the commentors the opportunity to provide input to the document preparation process.

### *Response H2*

As mentioned by the commentor, CEQA Section 21151.4 states:

**“§ 21151.4. Construction or alteration of facility within 1/4 mile of school; reasonable anticipation of air emission or handling of hazardous or acutely hazardous material; approval of environmental impact report or negative declaration**

No environmental impact report or negative declaration shall be approved for any project involving the construction or alteration of a facility within 1/4 of a mile of a school which might reasonably be anticipated to emit hazardous or acutely hazardous air emission, or which would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than the quantity specified in subdivision (a) of Section 25536 of the Health and Safety Code, which may pose a health or safety hazard to persons who would attend or would be employed at the school, unless both of the following occur:

- (a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.
- (b) The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.”

The initial consultation with WCCUSD concerning the Pipeline project occurred on March 5, 2001. WCCUSD staff present at a meeting included Gary Freshi, Jack Schreder, and Cate Burkhardt. The following were also in attendance: Mike Sakamoto, Erwin Blancaflor, and Dennis

Tagashira, City of Hercules; Jim Townsend, East Bay Regional Parks District; Jim Lopeman, New Pacific Properties; Tim Morgan, Environmental Science Associates; Billie Blanchard, California Public Utilities Commission (CPUC); and Deborah Fleischer, Public Affairs Management.

WCCUSD representatives also attended an agency meeting sponsored by the California Public Utilities Commission (CPUC) on November 15, 2001, in the City of Hercules Council Chambers to discuss the Draft Mitigated Negative Declaration for the Pipeline. Gary Freshi represented WCCUSD at the November meeting. Also in attendance was Caroleen Toyama, a WCCUSD consultant from IT Corp. Both asked questions and provided input that was considered in the preparation of the DMND.

WCCUSD received written notification not only of the meetings, but also received the proposed Mitigated Negative Declaration and the supporting Initial Study when the document was circulated on October 30, 2001. As the proposed project has not yet been adopted by the CPUC, all of this consultation and noticing has occurred well in advance of the 30-day period mentioned by Section 21151.4.

During the March 5, 2001 meeting, WCCUSD asked several questions that indicated that WCCUSD had full knowledge of the proposed Pipeline project at that time. At the November 15, 2001 meeting, WCCUSD indicated that it would undertake a risk assessment for its proposed new school at the New Pacific Properties site (inland), and that it might make the results available to the CPUC. According to the California Department of Education (O'Neill, 2002), the risk assessment was completed in October 2001, after the Pipeline environmental document was circulated. Based on the risk assessment, the California Department of Toxic Substance Control (DTSC) approved the Phase I report and stated that no further action was required. A Mitigated Negative Declaration was also adopted by WCCUSD for the new school in November, 2001. Subsequently, a Notice of Determination was filed by WCCUSD with the State Clearinghouse on November 21, 2001, after the Pipeline environmental document was circulated and before the WCCUSD Response to Comment was written. WCCUSD made no mention of the Mitigated Negative Declaration for the school at the November 15, 2001 meeting.

The CPUC, through Environmental Science Associates (ESA), has attempted to obtain copies of the risk assessment, as well as the New Pacific Properties School Mitigated Negative Declaration and the Initial Study Checklist upon which the Mitigated Negative Declaration was based. The California Department of Education, emphasizing that these are public documents, suggested contacting WCCUSD directly and talking with Vince Kilmartin, WCCUSD Associate Superintendent, or with Tom Ventura, a consultant at WCCUSD. In January 2002, ESA spoke with or left messages for Tom Ventura, Gary Freshi, and Vince Kilmartin about obtaining copies of the risk assessment, Mitigated Negative Declaration and supporting documents. All either stated that the documents would be sent or that they would be of assistance, if needed. ESA provided Tom Ventura with ESA's Federal Express account number so that the documents could be sent by overnight mail. After the documents were not received, in a follow-up call to Mr. Kilmartin's office on January 18, 2002, an assistant informed ESA that Mr. Ventura had been

advised not to release the documents “until the situation is assessed” and that ESA could discuss the request with WCCUSD counsel.

ESA also attempted to obtain a copy of the Mitigated Negative Declaration and Initial Study from a local public library. Contra Costa County operates the nearest library in the City of Pinole, which indicated it did not have a copy (telephone inquiry, January 22, 2002). ESA also contacted the City of Hercules through an e-mail and phone calls. The City responded that it does not have a copy of the MND (email of February 13, 2002). Consequently, ESA is unable to fully assess this MND and its conclusions with respect to the DMND for the Pipeline. Regardless of the lack of availability of both the risk and MND to the analysis team, from what is known about the conclusions of these documents, it is expected that these documents would only further support conclusions reached in the DMND and not cause any change to stated impacts or mitigations.

### ***Response H3***

Five new figures are provided with this Final Mitigated Negative Declaration. Figure 1-7 shows in much greater detail the existing Hercules Pumping Station environs and fuel oil pipeline in proximity to the New Pacific Properties development. Figures 1-3 through 1-6 show the approximate location of the Martinez 4,000-foot replacement section and easement boundaries.

### ***Response H4***

Please see Master Response 1 and Response to Comment B2.

### ***Response H5***

The commentor recommends the review of several statements about maintenance of the pipeline and the current state of the pipeline. These statements are not connected and are accurate within their stated context. The first reference (page I-8) is made with respect to general pipeline operation measures, which could be expected to occur at anytime and anywhere on the pipeline during the normal course of operations. The second reference (page VII-2) concerns the current status of the pipeline and concludes that the pipeline is sound.

### ***Response H6***

PG&E has indicated that the Fire Marshall interacts verbally with PG&E during site visits, discussing the results of the inspection. Because there have been no significant issues identified by the Fire Marshall, PG&E has not received any recent written reports. The DMND states that the laboratory results from the Phase II study indicate low concentrations of petroleum hydrocarbons in limited areas on the site – not significant enough to require remediation. If these measured levels are the result of any spillage onsite, then any migration offsite (to areas 1,000 feet south of the facility) would result in much lower concentrations because of dispersion and dilution.

**Response H7**

There are no changes in operating parameters expected from those that were considered in the WCCUSD risk analysis (see Master Response 1). Consequently, the conclusion reached that the pipeline and storage tanks do not pose a substantially great risk (based on the description of the risk analysis provided by the commentor). The MND states that, although the pipeline has not been used on a regular basis since 1982, the pipeline was maintained to operate on a stand-by basis, and quantities of oil were occasionally moved through the pipeline to verify its integrity until the 4,000 foot section of the pipeline in Martinez was removed in 1998. Since that time, maintenance activities have been carried out regularly. A series of steps to ensure pipeline integrity are identified in the MND, including the use of a smart pig to detect any pipeline deterioration. The MND states that, based upon the results of the most recent smart pig test, the integrity of the pipeline is sound and can be reactivated without the need for repair or modification.

The pipeline has been kept filled with an inert gas during inactive periods to eliminate corrosion, and before it is reactivated, the line will be pressurized with water and leak tested. This will ensure that the pipeline will operate safely when reactivated

**Response H8**

The WCCUSD has correctly followed CCR Title 5 regulations by conducting a risk assessment for the proposed school in the New Pacific Development. WCCUSD notes in its comment (3) that the risk assessment found that the pipeline and pump station, at the present allowable limits, did not pose a “substantially great risk.” This study has not been provided to the CPUC. This DMND assumes that the allowable limits of the pipeline will not change. Therefore, the pipeline will continue to not pose a substantially great risk. If SPBPC desires to change the operating limits of the pipeline, then a new application that assesses the new risks would have to be prepared. The comment does not indicate when the four existing schools were constructed. Furthermore, as the pipeline has been in existence since 1975, and it is very likely that these same schools have coexisted with the pipeline for some period of time, it is unclear why a risk assessment would need to be performed at this time. The risk from the pipeline has remained constant over the past 27 years. Finally, there is no evidence of any real physical environmental impact and thus there are no direct economic consequences from the proposed project.

**Response H9**

Please see Master Response 1. Some of these entitlements were in place in 1976. Furthermore, they all must be considered as part of the existing environment. The comment does not indicate when the existing schools were constructed. However, please see the Draft Mitigated Negative Declaration (DMND) at Section 1.0, *Description of the Proposed Project*, pages 1-4 through 1-6. As stated, the Pipeline (which consists of the pipeline and the Pumping Station) was constructed in 1975 and actively used from 1976 to 1982 (19 to 25 years ago). Since 1982, the Pipeline has been maintained for potential use. The last major movement of product through the pipeline was

in 1991 (10 years ago). Following 1991, product has moved through the line to maintain its integrity.

Existing schools are considered in this analysis to be operating schools and the Pipeline is considered in this analysis to be an existing Pipeline not currently in active use, but maintained in an operable condition, with entitlements that allow its use to continue. As a result, easements for the Pipeline continue to exist, product continues to occasionally move through the Pipeline for maintenance purposes, and the Pipeline can be used more actively at any time within its approved limits and uses.

This pipeline was known to WCCUSD, and the New Pacific Properties Specific Plan EIR includes mitigation measures from the Redevelopment Plan EIR that require adequate setbacks commensurate with “the types of uses, the hazardous materials handled and wastes generated, environmental conditions (wind patterns, surface and ground water flows, soils characteristics, any reported contamination and status of remediation). The width of the buffer shall be intended to avoid significant environmental impacts” (DEIR, p. 5.5-17). The New Pacific Properties Specific Plan EIR also refers to the Redevelopment EIR’s requirement for “buffers, setbacks, and design features of the type currently incorporated into the Specific Plan. These features would provide an adequate buffer between proposed sensitive receptors on the project area and existing or approved adjacent industrial uses” (DEIR, p.5.5-18).

The comments of those attending the November 15, 2001 public meeting are part of the record for this document. Please also see Response to Comment B4, for the applicable general plan policy that addresses the development of residential areas near industrial uses.

### ***Response H10***

According to the State Department of Education (O’Neill, 2002), the WCCUSD is required to comply with various state regulations for siting a new school. Among those requirements is Title 5 of the California Code of Regulations, Division, Chapter 1, Chapter 13, Subchapter 1, Section 14010 (h), which states:

The site shall not be located near an above-ground water or fuel storage tank or within 1500 feet of the easement of an above ground or underground pipeline that can pose a safety hazard as determined by a risk analysis study, conducted by a competent professional, which may include certification from a local public utility commission.

The required risk analysis study has been completed by WCCUSD and, according to the California Department of Education (CDE), the study determined that the risk was minimal (O’Neill, 2002). In addition, CDE requires a “one-quarter mile determination” to assess the risk of exposure to hazardous materials in the air, as well as other site related information (O’Neill, 2002).

In addition, WCCUSD is required to comply with the applicable mitigation measures identified in the *New Pacific Properties EIR*, which incorporates Redevelopment Plan EIR Mitigation Measure (F1(b)) (DEIR, p. 5.5-17), as follows:

10. The City shall condition approval of development proposals on the new Pacific Properties site on the provision of adequate buffers between proposed sensitive receptors on the site and existing or approved industrial uses on adjacent sites. Adequate buffers shall also be provided between such uses within the site. “Sensitive receptors” include but are not limited to residential, education and recreational uses. “Approved” refers to specific projects that have been approved as part of an overall development plan (such as a specific plan) or uses that may be developed “by right” on a parcel without additional discretionary approvals. The width of the buffers shall be determined on the basis of information regarding the type of uses, the hazardous materials handled and wastes generated, environmental conditions (wind patterns, surface and ground water flows, soils characteristics, any reported contamination and status of remediation). The width of the buffers shall be intended to avoid significant environmental impacts.

The *New Pacific Properties EIR* also incorporates (DEIR, p. 5.5-18) Redevelopment Plan EIR Mitigation Measure (F2(e)), which applies to the school site and which states:

13. The project would have buffers, setbacks and design features of the type currently incorporated into the Specific Plan. These features would provide an adequate buffer between proposed sensitive receptors on the project area and existing or approved adjacent industrial uses.

### ***Response H11***

Within the vicinity of the Hercules Pump Station, San Pablo Avenue is a four-lane divided arterial with bike lanes. Access into the Hercules Pump Station facility off San Pablo Avenue is right-turn in/out only. There are no apparent sight deficiencies at this entrance. Existing daily volumes on San Pablo Avenue in the project vicinity are approximately 7,000 vehicles per day.

As discussed in the DMND, operation of the proposed project would not change existing transportation facilities. Operation of the Hercules Pump Station would require between one to two workers daily to operate the facility. In addition, a maintenance crew of five to ten workers would be required to perform occasional maintenance at the Hercules Pump Station. These operational and maintenance activities would not result in a substantial increase in background daily or peak-hour traffic on San Pablo Avenue nor would they significantly increase the potential for conflicts on San Pablo Avenue.

The area nearest the pump station is proposed for multi-family and retail uses, while a potential school site has been identified toward the center of the Specific Plan area, accessible from San Pablo Avenue. These future uses could generate increases in vehicular, bicycle and

pedestrian traffic in the project area. However, future developments would be required to provide off-site transportation improvements as appropriate to ensure that potential increases in vehicular and pedestrian traffic from those developments would not result in a significant impact. Nevertheless, project-generated traffic from the Hercules Pump Station would not be considered a cumulatively considerable contribution to traffic on San Pablo Avenue, or to pedestrian safety issues.

***Response H12***

The commentor seeks to have consultation with the WCCUSD included in mitigation measures presented sections of the DMND. It is not necessary to specify this consultation into the mitigation measures for this proposed project. With respect to this proposed project, the CPUC has followed appropriate consultation with the WCCUSD and other agencies as required by CEQA and CPUC policies. This process is discussed in Response to Comment H2. For any future project, SPBPC may be required by CEQA and/or other laws to consult with WCCUSD, because it is assumed that SPBPC, and regulating agencies would comply with all pertinent noticing and consultations requirements, it is not necessary to further specify this as a mitigation measure for future projects.

***Response H13***

Please see Response to Comment H9.



## Memorandum

To : Ms. Billie Blanchard  
California Public Utilities Commission  
505 Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, California 94102-3298  
Fax (415) 703-1758

Date: November 29, 2001

From : Robert W. Floerke, Regional Manager   
Department of Fish and Game - Central Coast Region, Post Office Box 47, Yountville, California 94599

Subject: Proposed Pacific Gas and Electric Company Application to Sell Project, Notice of Completion (NOC), Cities of Richmond, Pittsburg, and Hercules, Contra Costa County, SCH 2001102139

Department of Fish and Game personnel have reviewed the NOC and the Draft Mitigated Negative Declaration (MND), dated October 30, 2001, for the Proposed Pacific Gas and Electric Company's (PG&E) "Application to Sell the Richmond-to-Pittsburg Pipeline and Hercules Pump Station" and San Pablo Bay Pipeline Company's (SPBPC) "Application to Own and Operate These Assets" Project.

The Department must comply with the requirements of the California Environmental Quality Act (CEQA) in issuing incidental take permits for State-listed threatened and endangered species. The Department will also act as a responsible agency for any activities affecting a stream zone that require a Streambed Alteration Agreement (SAA). The document describes two creeks, Alhambra Creek and an unnamed drainage near Ferry Street, that would be crossed for installation of the 4,000-foot replacement pipeline section and also describes several special status species that have the potential to be found in this area. The MND should adequately discuss the project's impacts and potential mitigation measures that will satisfy requirements for SAA issuance.

The Draft MND indicates that the approval of the project would have potentially significant impacts to biological resources, and proposes mitigation measures to avoid or reduce impacts to less than significant levels. The document describes Mitigation Measure IV.I, which proposes that prior to construction activities the SPBPC shall conduct a biological survey of all areas affected by construction of the replacement pipeline section in Martinez and submit the survey to the California Public Utilities Commission (CPUC) mitigation monitor. Furthermore, the document states that if the survey

report indicates an adverse effect on special status species, the SPBPC shall consult with the Department and other appropriate resource agencies and shall implement measures required by the resource agencies including monitoring by the CPUC monitor. The document includes an example of measures that might be required such as preconstruction surveys for California red-legged frogs. The mitigation alternatives discussed in the MND also describe cleaning up any bentonite released into drainages as a measure that may be required.

It is the Department's position that mitigation measures deferred to later action, such as Mitigation Measure IV.1, would not adequately comply with CEQA and mitigate potentially significant impacts. Surveys should be conducted for any rare, threatened or endangered species that may exist on-site. Surveys for sensitive species, particularly plants, should be conducted at the proper time of the year. Survey results and specific mitigation measures must be included in the document. Surveys to be conducted at a later time, or mitigation measures to be identified at some future time, are not acceptable. It has been determined by court ruling that such studies and mitigation measures would be improperly exempt from the process of public and governmental scrutiny which is required under CEQA. A document which requests future studies or future identification of mitigation is considered incomplete. The MND should be revised to include survey results and specific mitigation measures proposed to reduce potential impacts to less than significant levels.

I1

Any proposed mitigation measures should be specifically discussed in the document, initiated concurrently with the project to reduce or eliminate any significant direct, indirect, or cumulative impacts to biological resources, including special status species, and included in the site-specific project activities identified in the MND. The Department recommends that a monitoring program be included in the mitigation to ensure that the measures are part of effective, measurable, and enforceable programs. Any measures included in the MND should address both permanent and temporary impacts.

I2

Any unavoidable impacts to wetland and stream habitat should be mitigated to provide comparable habitat to the impacted habitat functions and values. If on-site habitat enhancement or off-site compensatory mitigation is proposed,

Ms. Billie Blanchard  
November 29, 2001  
Page 3

such proposed mitigation should include sufficient acreage to mitigate for the loss of impacted habitat, functions and values and to satisfy all applicable regulatory requirements such as SAA issuance.

For wetland areas and for streams, the Department recommends that the project provide adequate protection of the resources and minimize the need for future maintenance and bank armoring in the channel. The Department discourages the use of structures and rip-rap for erosion protection and recommends that suitable landscaping, consisting of native species, be planted.

I3

The U. S. Army Corps of Engineers (Corps) has jurisdiction over activities which include the discharge of fill material in wetland areas under Section 404 of the Clean Water Act. If work is to be done in wetland areas, we recommend the Corps be notified to determine if they have jurisdiction and require a permit.

I4

We appreciate your consideration of our comments. Department personnel are available to address these concerns in greater detail. Please contact John Krause, Associate Wildlife Biologist, at (415) 454-8050; or Scott Wilson, Habitat Conservation Supervisor, at (707) 944-5584.

cc: State Clearinghouse  
Post Office Box 3044  
Sacramento, California 95812-3044

Environmental Sciences Associates ✓  
225 Bush Street, Suite 1700  
San Francisco, California 94104-4207  
Fax (415) 896-0332

---

## LETTER I – DEPARTMENT OF FISH AND GAME

### *Response I1*

Please see Master Response 2.

### *Response I2*

The measures included in the DMND address the temporary impacts potentially caused by the 4,000-foot replacement project as discussed in Master Response 2. There are no permanent project impacts that require mitigation measures pertinent to the commentor's concerns (i.e., biological and cultural resource impacts).

### *Response I3*

The 4,000-foot replacement section could, as noted in the document, affect wetland and stream habitat. Approval of the proposed project would allow the proposal for such structures as rip-rap for erosion protection. Approval of such structures would be the subject of further approvals in line with what is discussed in Master Response 2.

### *Response I4*

The Regulatory Setting section of the DMND states on page IV-5 that:

“The portion of the pipeline route that would require relocation, with a stream crossing and a new pipeline installation at Martinez, may require a permit from the COE in accordance with this regulation because the pipeline replacement may fill wetlands adjacent to Alhambra Creek.”

# MORRISON & FOERSTER LLP

SAN FRANCISCO  
LOS ANGELES  
DENVER  
PALO ALTO  
WALNUT CREEK  
SACRAMENTO  
CENTURY CITY  
ORANGE COUNTY  
SAN DIEGO

ATTORNEYS AT LAW

PLEASE RESPOND TO:

P.O. BOX 8130

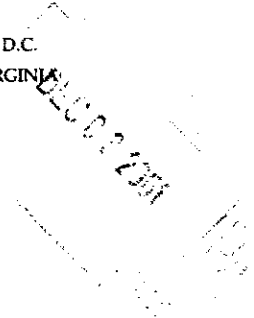
WALNUT CREEK, CALIFORNIA 94596-8130

101 YGNACIO VALLEY ROAD, SUITE 450  
WALNUT CREEK, CALIFORNIA 94596-4095

TELEPHONE (925) 295-3300

TELEFACSIMILE (925) 946-9912

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BRUSSELS  
BEIJING  
HONG KONG  
SINGAPORE  
TOKYO



November 29, 2001

Writer's Direct Contact  
(925) 295-3450  
PHanschen@mofo.com

## *Via Facsimile and US Mail*

Billie Blanchard, CPUC  
c/o Environmental Science Associates  
225 Bush St., Suite 1700  
San Francisco, CA 94104-4207

Re: San Pablo Bay Pipeline Company's Comments on Draft Mitigated Negative Declaration - CPUC Application Numbers A.00-05-035 and A. 00-12-008.

Dear Ms. Blanchard:

This firm represents San Pablo Bay Pipeline Company ("SPBPC") regarding the matters reference above. In accordance with the established schedule for public review and comments, SPBPC hereby submits its comments on the Draft Mitigated Negative Declaration, dated October 30, 2001.

SPBPC's comments on the Description of the Proposed Project are as follows:

1. As a general comment, SPBPC's parent, Tosco Corporation ("Tosco"), recently merged with Phillips Petroleum Company ("Phillips"), with the result that Tosco is now a subsidiary of Phillips. SPBPC will continue to be a wholly-owned subsidiary of Tosco, but Tosco, in turn, is now a subsidiary of Phillips. The Commission addressed this merger, albeit not with respect to SPBPC, in Decision No. 01-05-021, dated May 3, 2001. Phillips and Conoco also have announced that they intend to merge in the future.

2. The Draft Mitigated Negative Declaration is contradictory and imprecise in describing the approved uses of the pipeline assets and appurtenant facilities ("Pipeline"). For example, page 1-2 correctly notes: "The Initial Study assumes the sale

J1

MORRISON & FOERSTER LLP

Billie Blanchard, CPUC  
c/o Environmental Science Associates  
November 29, 2001  
Page 2

of the Pipeline would not change its current CPUC-approved use: transport of 'oil, petroleum, and products thereof' (CPUC Decision No. 84448)." In other places, however, the Draft Mitigated Negative Declaration uses a less inclusive description of the permitted uses. For example, in Section 1.6.11 the Draft states: "The Richmond to Pittsburg Fuel Oil Pipeline and Hercules Pump Station were constructed specifically to transport fuel oil and would require significant modification to be used for other purposes. Any change in use of the pipeline and Hercules Pump Station initiated by SPBPC would require CPUC approval." These statements could be misinterpreted to limit the CPUC approved use of the Pipeline to fuel oil. It is important that the Final Mitigated Negative Declaration clarify that the current CPUC permitted use is not limited to the transport of fuel oil, but includes the "transport of oil, petroleum and products thereof." SPBPC does not have to seek additional authority from the CPUC to transport oil, petroleum, and products thereof. Furthermore, contrary to the Draft's statement, significant modifications to the pipeline and Hercules Pump Station would not necessarily be needed to transport other types of "oil, petroleum, and products thereof."

J1 cont.

This same lack of precision with respect to the CPUC approved uses of the Pipeline occurs elsewhere. The third paragraph of Page XII-2 a) indicates that the pipeline would likely be used to transport fuel oil. This is not necessarily correct. Again, the more inclusive approved use of "oil, petroleum, and products thereof" should be substituted. This change is consistent with the CPUC approved uses and also with the last sentence of Section 1.6.11 regarding reasonably foreseeable uses of the Pipeline.

3. Section 1.6.11 states that Tosco has one refinery in the area that could be fueled by petroleum. The term "fueled" is not correct. The refinery is not "fueled" by petroleum, but "processes" oil, petroleum and products thereof that could be moved through the pipeline. The refinery is "fueled" by refinery gas, electricity and natural gas.

J2

4. Section 1.6.11 of the Draft Mitigated Negative Declaration states that Tosco has several refineries and transport facilities along the route of the pipeline. While there are several refineries and transport facilities along the pipeline route that are owned by others that could be served by SPBPC, the only facility owned by Tosco is the Rodeo refinery.

J3

5. Section 1.7.1 seems to indicate that there is more than one operator actually on site during start up operations. This is not necessarily true. During start up of pumping operations, an on site operator will monitor activities at the site, but system controls may be monitored by an operator off-site.

J4

The Draft indicates that both Pacific Gas and Electric Company and SPBPC have agreed to all of the proposed mitigation measures. While this is generally correct

MORRISON & FOERSTER LLP

Billie Blanchard, CPUC  
c/o Environmental Science Associates  
November 29, 2001  
Page 3

for most of the proposed Mitigation Measures, in a couple of instances the proposed mitigation measures seem to have been modified from that discussed with the applicants or may be improved. SPBPC's comments on the Mitigation Measures are as follows:

1. The timing associated with Mitigation Measures III.1 (Air Quality), IV.1 (Biological Resources), VII.1 (Hazards and Human Health) and VII.1b (Hazards and Human Health) are keyed to the transfer of title of the Pipeline to SPBPC. SPBPC believes that the timing for the implementation of these Mitigation Measures can be improved by referencing them to the more appropriate time of the start of construction. The Mitigation Measures should be modified accordingly.

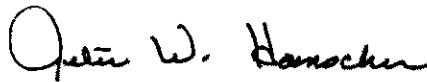
J5

2. Mitigation Measure I.1 (Aesthetics). The Mitigation Measure requires the submission of an aesthetic resources plan to the East Bay Regional Park District and to the City of Martinez. As SPBPC commented previously, it does not believe that an aesthetic resources plan should be required to be submitted to these agencies, unless they specifically request that SPBPC do so.

J6

SPBPC appreciates the opportunity to comment on the Draft Mitigated Negative Declaration.

Yours truly,



Peter W. Hanschen

cc Jeff Dill, Esq., San Pablo Bay Pipeline Company  
Robert A. McElroy, Jr., San Pablo Bay Pipeline Company  
Paul Holton, Pacific Gas and Electric Company

## LETTER J – MORRISON & FOERSTER, LLP

### *Response J0*

The comment is noted.

### *Response J1*

Please see Master Response 1.

### *Response J2*

In Section 1.6.11, the following sentence is revised to read:

Tosco has one refinery in the area that could process ~~be fueled by~~ petroleum.

### *Response J3*

Please see Master Response 1.

### *Response J4*

The last paragraph of Section 1.7.1 is changed to read:

“Currently, when the station is in stand-by mode, only one part-time operator is required to inspect the plant. When the station is in pumping mode, one operator is ~~operators are~~ needed at the station to begin pumping. One operator remains ~~in the control building on-site~~, while ~~another performs duties around the station~~ system controls may be monitored by an operator off-site. Pump station valves can be operated from the control building.

### *Response J5*

The CPUC agrees with the commentor that Mitigation Measures III.1, IV.1, VII.1 and VII.1b should be implemented prior to the start of construction. The text, as written, for Mitigation Measures III.1 and IV.1 appropriately tie the implementation of the measure to the commencement of construction, not to the transfer of the pipeline. The text for Mitigation Measures VII.1 and VII.1b is revised as follows:

From p.VII-9

**Mitigation Measure VII.1: Prior to construction SPBPC shall conduct a Phase I Environmental Site Assessment along the length of the replacement pipeline route to ascertain the....**

**Mitigation Measure VII.1b: During construction SPBPC shall comply with all applicable regulatory agency requirements including those set forth by Contra Costa**



**County and the California DTSC regulations regarding the storage, and transportation of impacted soil and groundwater.**

***Response J6***

Mitigation Measure I.1 was developed to address concerns of both the City of Martinez and the East Bay Regional Parks District expressed to CPUC Staff during the agency outreach portion of the environmental analysis process. The primary concern voiced a lack of information concerning what will actually be done in the replacement section corridor. Given the lack of detailed plans at this stage, an aesthetic resources plan ensures that the affected jurisdictions will have an opportunity for input once details are available. See also Master Response 2.

GOODIN, MACBRIDE,  
SQUERI, RITCHIE & DAY, LLP

505 Sansome Street  
Suite 900  
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California 94111

Attorneys at Law

Telephone  
415/392-7900  
Facsimile  
415/398-4321

November 29, 2001

James D. Squeri

Thor Wilcox  
1946-1979

**HAND-DELIVERED**

Ms. Billie C. Blanchard  
California Public Utilities Commission  
State Building, Room 4-A  
505 Van Ness Avenue  
San Francisco, CA 94102

**Re: PG&E Application Nos. 00-05-035 and 00-12-008; Mitigated  
Negative Declaration**

Dear Ms. Blanchard:

I have previously written on behalf of Santa Clara Valley Housing Group ("SCVHG") to express concern about obvious and significant deficiencies which appear in the Mitigated Negative Declaration ("MND") prepared in conjunction with the above-referenced applications and recently published by the Commission staff for comment due November 29, 2001. Please accept the following as SCVHG's comments on the referenced MND.

SCVHG, a real estate developer with secured, approved plans to construct a residential subdivision in the City of Hercules, has filed its protest to Application No. 00-12-008 and has a direct and immediate interest in the accuracy of the environmental documentation that is under review in conjunction with A. 00-12-008. SCVHG believes that the MND is seriously deficient, either by reason of misstatement of facts or omission of information critical to the Commission's ultimate determination of the environmental impacts associated with the proposed project. These errors and omissions include the following:

(1) While the "Project Description" indicates that the "CPUC has concluded that all potential impacts can be mitigated to less than significant levels," the project description fails to describe the ultimate use(s) to which the subject facilities will or may be put. Without delineating and considering the various potential "actual" uses that are at issue, it is impossible for the CPUC to determine what might be the potential impacts of such uses, much less define the necessary level of mitigation required with respect to each such use. The proposed project description does not address two major considerations: (1) what product(s) will be conveyed in the pipelines and stored in the tanks; and (2) what are the potential origins and destinations for transportation of the pipeline product(s). CEQA Guidelines, Section 15063(a)(1) states: "All phases of project

K1

**VIA HAND DELIVERY**

Ms. Billie C. Blanchard

November 29, 2001

Page 2.

planning, implementation, and operation must be considered in the initial study of the project.” This has not been done.

(2) At p. XII-2, the draft states as follows: “While use of the pipeline would likely transport fuel oil, the end use of the fuel oil has not been determined.” It is obvious that fuel oil storage and transportation is not the only anticipated use for which approval is sought under the pending application. Without identifying and analyzing the other potential uses, it is impossible to adequately review the impacts upon SCVHG’s housing development.

K2

(3) At p. IX-1, the document, in describing the Project “Setting,” reads as follows: “The Hercules Pump Station is located on 44.2 acres of land...and undeveloped lands to the north.” The referenced lands to the north are not “undeveloped.” They are entitled with Vesting Tentative Map 8455 granted by the City of Hercules.

K3

Further the draft document states: “The city proposes to amend the general plan so that the land can be used for residential and commercial users, as well as construction of a new school. The city has completed an EIR on the proposed specific plan but has not yet adopted it into the general plan.” This statement is erroneous. SCVHG has a vesting tentative Map as does Catellus - information which was conveyed to the applicant in A. 00-12-008 as well as the Commission’s environmental consultant when SCVHG protested the proposed project in January, 2001 as a map owner. The General Plan, specific plan and other entitlements are all recorded on the land and substantial grading has begun. The plan is for more than 800 homes, a school, and a commercial site – all of which are entitled.

K4

(4) At Section 1.0 “Description of the Proposed Project,” 1.1 INTRODUCTION, the document reads: “Two parties, West Contra Costa Unified School District and SCVHG development company, filed protests to SPBPC’s application on January 16<sup>th</sup>, 2001, raising various issues. SPBPC filed a reply to those protests on January 26<sup>th</sup>, 2001.” There is, however, no explanation in the MND of the nature of the protests that have been lodged.

K5

SCVHG submits that the MND does not provide sufficient information to determine the probable environmental impacts of the proposed project. The MND fails to recognize that non-use of the pipeline represents the existing situation or status quo. The fact that maintenance of the line and relevant permits were kept current does not provide justification to determine that resumption of use of the line, potentially for a range of purposes that have not been adequately discussed in the MND, will have “less than significant impacts.” Such a determination completely ignores the fact that while the pipeline has remained idle for many years other projects and uses have continued or moved forward.

K6

SCVHG does not believe that the Commission is in a position to lawfully consider the above-referenced applications given the inadequacies of the MND. Given the potential impacts associated with the proposed project, SCVHG asks that the Commission staff reconsider the

K7

**VIA HAND DELIVERY**

Ms. Billie C. Blanchard

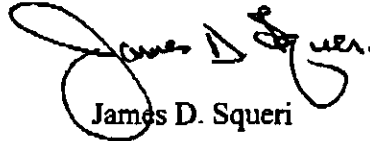
November 29, 2001

Page 3.

propriety of proceeding on the basis of a MND and instead undertake preparation of a full environmental impact report.

Should you have any questions regarding the concerns set forth herein, please contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James D. Squeri". The signature is stylized with large loops and a long horizontal stroke at the end.

James D. Squeri

2937/001/X29639-1

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**LETTER K – GOODIN, MACBRIDE, SQUERI, RIGCHIE & DAY, LLP*****Response K1***

Please see Master Response 1.

***Response K2***

Please see Response to Comment B2.

***Response K3***

Please see Responses to Comment B3 and B4.

***Response K4***

Please see Response to Comment B4.

***Response K5***

Please see Response to Comment B5.

***Response K6***

The commentor asserts that the DMND ignores the fact that the Pipeline has remained idle for many years. Actually, the DMND acknowledges this very fact on page 1-2 and explains the baseline used for the project:

“In conducting its CEQA analysis, the CPUC must set the environmental baseline, which is used to compare with the predicted effects that approval of the applications would have. Because there have been significant advancements in the design and construction techniques of oil pipelines since the Richmond to Pittsburg Pipeline was built, this Initial Study assumes that the baseline for conducting all the following potential environment impact analysis is the present day condition and status of the pipeline and pump station system (i.e., a system that has not been used for regularly scheduled fuel oil shipments for 19 years, and has not moved any products for 10 years). This document analyzes the potential changes that would occur as a result of approval of the PG&E and SPBPC applications, compared to the above baseline.”

Please also see Master Response 1 and Response to Comment H9.

***Response K7***

The comment is noted.

## DEPARTMENT OF TRANSPORTATION

P O BOX 23660  
OAKLAND, CA 94623-0660  
(510) 286-4444  
TDD (510) 286-4454



December 4, 2001

CC-GENERAL  
CC000191  
SCH# 2001102139

Ms. Billie C. Blanchard, CPUC  
c/o Environmental Science Associates  
225 Bush St., Suite 1700  
San Francisco, CA 94104-4207

Dear Ms. Blanchard:

**PG&E Divestiture of Richmond-to-Pittsburg Fuel Oil Pipeline and Hercules Pump Station/San Pablo Bay Pipeline Company – Initial Study/Mitigated Negative Declaration**

Thank you for including the California Department of Transportation in the environmental review process for the above-referenced project. We have reviewed the Initial Study/Mitigated Negative Declaration, and we have the following comments:

Any work or traffic control measures proposed within the State right-of-way (ROW) will require an encroachment permit. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans, clearly indicating State ROW, need to be submitted to the following address:


L1

Sean Nozzari, District Office Chief  
Office of Permits  
California DOT, District 4  
P.O. Box 23660  
Oakland, CA 94623-0660

If you have any questions regarding this letter, please call Rick Kuo of my staff at (510) 286-5988.

Sincerely,

RANDELL H. IWASAKI  
Acting District Director

By 

DEC 07 2001

JEAN C. R. FINNEY  
District Branch Chief  
IGR/CEQA

c: Katie Shulte Joung (State Clearinghouse)

## LETTER L – CALTRANS

### *Response L1*

The CPUC agrees that encroachment permits from CalTrans will need to be sought by SPBPC where needed. As is stated in the DMND:

**Mitigation Measure XV.1a: Prior to commencing construction activities, SPBPC shall obtain and comply with local and state road encroachment permits, and railroad encroachment permits. SPBPC shall submit all local and state road encroachment permits obtained for the replacement section in Martinez to the CPUC mitigation monitor for review. The CPUC's mitigation monitor shall monitor compliance with these permits during construction activities.**



**CITY OF HERCULES**  
111 CIVIC DRIVE, HERCULES, CA 94547  
PHONE: 510 • 799 • 8200

December 6, 2001

Billie Blanchard, CPUC  
C/o Environmental Science Associates  
225 Bush Street, Suite 1700  
San Francisco, California 94104-4207

**Subject: Comments on Draft Mitigated Negative Declaration, CPUC Application Numbers 00-05035 and 00-12-008, "Pacific Gas and Electric Company's Application to Sell the Richmond-to-Pittsburgh Pipeline and Hercules Pump Station and San Pablo Bay Pipeline Company's Application to Own and Operate these Assets"**

Dear Ms. Blanchard,

Thank you for extending the comment period to December 7, 2001, and the opportunity to comment on the Draft Mitigated Negative Declaration for PG&E Company's application to sell the Richmond-to-Pittsburgh pipeline and Hercules Pump Station and San Pablo Bay Pipeline Company's Application to own and operate these assets. The following comments are submitted for your review and consideration:

1. On the first page titled "Mitigated Negative Declaration" under "Project Description" there are two separate applications before the CPUC:
  - (a). To sell the Richmond-to-Pittsburgh pipeline to a new owner, the San Pablo Bay Pipeline Company (SPBPC), and
  - (b). SPBPC is seeking permission to operate this pipeline and the Hercules pump station.

The last sentence in the last paragraph on that page states that "under an agreement between PG&E and SPBPC, PG&E has secured the necessary rights of way for a 4,000 foot replacement section in Martinez." A representative from the East Bay Regional Park District has shared that no such easements or agreements to construct this 4,000 foot section in Martinez, exists.

2. Under Biological Resources, Mitigation Measure IV.1, Wildlife Resources, surveys of the California red-legged frog to determine presence are to be conducted "prior to construction." The U.S. Fish and Wildlife Service and the California Department of Fish and Game should have been transmitted copies of the Draft Mitigated Negative Declaration for

M1



- their comments since there is a possibility that red-legged frogs currently are in the wetland area at the bottom of the hill near State Route 4. This wetland area which may contain red-legged frogs is also identified in the Draft Mitigated Negative Declaration as a containment area in the event of a rupture of the storage tanks; however, the Draft Mitigated Negative Declaration does not have a large scale site plan showing the Hercules storage tanks, containment areas and pump station building, consequently, we are forced to guess where this containment area is within the Hercules Pump Station. Please provide a large scaled site plan showing the Hercules Pump Station storage tanks, containment areas, access roads, parking areas, outside storage yards and pump station building. M2
3. Regarding Cultural Resources, Mitigation Measure V.1a, and V.1b, an investigation of historic documents for cultural resources should be conducted now and the results made a part of the Draft Mitigated Negative Declaration. Appointing a cultural resource specialist 15 days prior to the start of vegetation clearance activities seems a trifle late. The Resource Specific Data Recovery Plan should reviewed by the CPUC and the Native American Heritage Commission at least 30 days prior to the start of any project-related construction activity. M3
  4. Regarding Geology and Soils, Mitigation Measure VI.1, an evaluation of the effect of tectonic creep on the pipeline at the Hayward and Concord fault crossings should be conducted now rather than “prior to operation of the pipeline.” M4
  5. Regarding Hazards and Human Health, Mitigation Measure VII.1, a Phase 1 Environmental Site Assessment along the replacement pipeline route should be conducted now rather than “within 10 business days prior to transfer of title.” M5
  6. Regarding Land Use and Planning, Mitigation Measure IX.2, the City of Hercules should be included in the second sentence from the end of the page. Please define what it means that “the purchaser shall assure that access to the Bay Trail remains open to the maximum extent possible, and that if necessary, a clearly marked, comparable alternative route is provided on a temporary basis.” Any changes or realignments to the proposed Shoreline Trail in the incorporated boundaries of the City of Hercules, requires a General Plan Amendment. M6
  7. Regarding Transportation/Traffic, Mitigation Measure XV.1b, access plans for highly sensitive land uses such as schools should be coordinated now rather than later. M7
  8. In Section 1.0, Description of the Proposed Project, 1.1 Introduction on page 1-1, first paragraph, fourth line, mentions a separate application No. 00-12-008 to the CPUC, that SPBPC is seeking to operate the Richmond-to-Pittsburgh Fuel Oil Pipeline and Hercules Pump Station. There is little discussion throughout this document of what the purpose of the Pittsburgh Power Plant is proposed to be doing. Please provide more detail and description of what this Pittsburgh is going to do since it is part of application no. 00-12-008. M8

- |     |   |     |
|-----|---|-----|
| 9.  | On page 1-2, please define if crude oil is contained in the “transport of ‘oil, petroleum, and products thereof.”   | M9  |
| 10. | Please provide the “detailed maps indicating the location of the pipeline are included in Exhibits A and B of the Company’s response to the CPUC Notice of Deficiency Regarding Remaining Generation Asset Applications, A.00-05-035, Richmond-to-Pittsburgh Fuel Oil Pipeline (Response to Deficiency Report.) mentioned on page 1-4.  | M10 |
| 11. | On page 1-4, describes that the pipeline was designed for the “transport oil, petroleum and other similar products to PG&E’s former Pittsburgh and Contra Costa power plants”, and that “the pipeline was designed to provide the power plants with heated, low-sulfur, residual fuel oil from the refinery.” If the product in the pipeline changes, i.e. to crude oil, then new discretionary permit will be required to be submitted by the City of Hercules.  | M11 |
| 12. | Figure 2, “Site Locations” are difficult to read (the map is faded, and there are no streets or existing developments identified) and give only generalizations. Please provide a detailed map showing which side of the railroad tracks the pipeline is on, which side of the North Shore Business Park the pipeline is located, more specific detail of improvements in the Hercules Pumping Station. In addition, the map shown and labeled “PG&E Richmond to Pittsburgh Pipeline” is outdated since a “chemical plant” was demolished over five years ago.  | M12 |
| 13. | Page 1-6 states that “safety oversight of the pipeline and pumping station operations would be the responsibility of the Office of the State Fire Marshall.”  | M13 |
| 14. | Page 1-6, Section 1-4, “Terms of the Divestiture” We would disagree with the last sentence on this page: “PG&E believes that the proposed sale is not subject to recent legislation (ABX 1-6) that prohibits PG&E from selling ‘facilities for the generation of electricity’ as the Richmond to Pittsburgh Fuel Oil Pipeline and Hercules Pump Station assets are not facilities for the generation of electricity.” The City of Hercules position is that the Richmond to Pittsburgh pipeline transports fuel oil from Richmond to Pittsburgh which is used to generate electricity at the Pittsburgh power plant; consequently, the City of Hercules believes that PG&E is prohibited from selling the Richmond to Pittsburgh pipeline since this pipeline is used to as a conduit for the generation of electricity at the Pittsburgh plant. In addition, page 1-8, Section 1.6, “General Maintenance and Construction Methods”, 1.6.1 “Procedures for Pipeline Operations”, the second paragraph states that “the Pittsburgh Pumping Station is owned by Southern Energy which would suggest that the Pittsburgh Power Plant is used to generate electricity, and that the pipeline is needed to provide a fuel source for the Pittsburgh Power Plant and Southern Energy to generate electricity. Selling the Pipeline would be a violation of ABX 1-6. | M14 |
| 15. | Please define “hot oil” as reference on page 1-7. Also on page 1-7, there is mentioned “pipeline(s).” Please clarify and describe   | M15 |

16. Please provide a detailed, scaled site plan indicating the improvements of the Hercules Pump Station described on page 1-7, Section 1.5 "Project Components." Please describe in more detail:
  - a. The size of the control building, dimensions and height.
  - b. The size of the fire water pump building and tank, dimensions and height.
  - c. The size of the equipment pad with pumps and fuel heating units.
  - d. The facility drainage collection and treatment system, where does it drain to.
  - e. The aboveground storage tanks, how big and high are they?
  - f. The two-thousand gallon underground containment tank.
  - g. Where are the water-holding evaporation ponds?
17. Please describe the inert gas mentioned on page 1-8, fourth paragraph. Does this inert gas have an odor? M17
18. Please describe the "oily water" mentioned on page 1-13, "Maintenance Procedures for Hercules Pump Station Operations." Does the oily water have an odor? Also please cite the "applicable regulations" mentioned on page 1-13 for the treatment or disposal of this oily water . M18
19. On page 1-14, Section 1.6.11 "Reasonably Foreseeable Uses of the Pipeline" the City of Hercules should be included as a approving agency, and would suggest the following:
  - a. "Any change in use of the pipeline and Hercules Pump Station initiated by SPBPC would require CPUC *and the City of Hercules* approval." M19
  - b. "Any change in use would also require negotiation of amendments to easements and rights-of-way with numerous landowners, *and a new conditional use permit from the City of Hercules for the change in product in the pipeline or the modification to existing improvements to the Hercules Pump Station.*"

There is a distinct possibility that the product in this pipeline will be changing since the "Purchase and Sale Agreement prohibits SPBPC from seeking any change in the permitted use of the pipeline before the sale closes." The City of Hercules does not agree with the CPUC's statement that "it is reasonably foreseeable that for the immediate future following the sale, the use of the pipeline would remain as transport of petroleum products quite possibly between any of the several Tosco refineries and transport facilities along the pipeline." (Last sentence on page 1-14, Section 1.6.11) Because the following sentence in Section 1.6.12, "Points of Origin and Delivery" which says that "points of delivery for the petroleum product along the Richmond to Pittsburgh Fuel Oil Pipeline would be speculative at this point."

20. Please provide the documentation for the statement that "the Hercules Pump Station was designed to allow movement of oil from a marine loading wharf that was once located at the former Gulf Refinery in Hercules, although no provisions were made to connect the wharf to the

- pipeline.” (Second paragraph, page 1-14, Section 1.6-12, “Points of Origin and Delivery”)
21. Please describe more fully how the oil storage tanks operates on page 1-15, Section 1.7 “Long-Term Operation and Maintenance”, 1.7.1 Hercules Pump Station, Operation. Does the roof float to the top as the level of oil rises? How are the odors contained? Does the roof float down as the oil level drop? Please describe what “cutter stock” is? Please describe “heavy oil”? What kinds of solvents are in the cutter stock? Where is the Tosco’s Santa Fe Springs Pipeline Control Center? If this Santa Fe Springs facility is located in southern California along the “605 Freeway Corridor”, we would have a concerns since the pipeline leak detection system is located approximately 500 miles away from a possible leak in the Richmond-Pittsburgh pipe. M22
  22. Please describe how SPBPC would control odors generated from the storage of oil at the Hercules Pump Station. There is no mention of odor control in the “Maintenance” section on page 1-15, Section 1.7 “Long-Term Operation and Maintenance”, 1.7.1 Hercules Pump Station. M23
  23. Please clarify which agency has the responsibility for inspections and maintenance of the pipeline and the Hercules Pump Station. On page 1-16, Section 1.7 “Long-Term Operation and Maintenance”, 1.7.1 Hercules Pump Station, Maintenance, the United States Department of Transportation Office of Pipeline Safety guidelines are used for inspections and maintenance of the Hercules Pump Station. However, on page 1-6, Section 1.3 Background, 1.3.1, REGULATORY, the last sentence states that the Office of the State Fire Marshall has the responsibility for safety oversight of the pipeline and pump station operations.. Which agency has the inspection of the pipeline and the Hercules Pump Station? There appears to be a conflict. M24
  24. On page 1-2, Section 2.0, Environmental Checklist and Expanded Explanation, Visual Character and Policies, second to the last sentence at the bottom of the page, the “adjacent lots are undeveloped grasslands”, however, these parcels to the north are soon to be developed with residential neighborhoods, a school and commercial land uses approved through a Specific Plan presently known as the New Pacific Properties Specific Plan. M25
  25. On page I-5, Section 2.0, Environmental Checklist and Expanded Explanation, AESTHTICS IMPACTS DISCUSSION, we would disagree with the second sentence: “The pump station, located on 44.2 acres of land in the City of Hercules, is generally shielded from view from all directions..” The storage tanks are visible from the North Shore Business Park and the New Pacific Properties Specific Plan residential neighborhoods west of San Pablo Avenue, and the Foxboro residential neighborhood across Interstate 80 on the westerly side of the City of Hercules, and the hillside residences in the community of Rodeo. M26
  26. The Mitigation Measure I.1 on page I-5, Section 2.0, Environmental Checklist and Expanded Explanation, AESTHTICS IMPACTS

- DISCUSSION is in conflict with the East Bay Regional Park Districts easements in the Martinez area since the EBRPD has just completed a restoration project which the 4,00 foot new pipeline will impact, and the EBRPD has not granted any easements for the pipeline to allow SPBPC to construct. M27
27. Please provide a photographic simulation of the 4,000 foot pipeline as it would appear in the Martinez area, before and after construction. It is difficult to visualize what the appearance and affect the proposed pipeline would have visually in this area. M28
28. Please submit more information and a discussion of potential impact of odors generated from oil products stored in the existing storage tanks on the Hercules Pump Station site, and the mitigation as it relates to air quality on pages III-1 and III-2 of Section 2.0, Environmental Checklist and Expanded Explanation, SETTING and AIR QULAITY IMPACT DISCUSSION. We are especially interested in knowing how the storage tanks floating roof will contain the odors generated from the oil clinging to the sides of the tanks, and how the CPUC and SPBPC will contain these odors. M29
29. Please provide information on the capacity, size, height and appearance of the existing storage tanks describe on page IV-1 of Section 2.0, Environmental Checklist and Expanded Explanation, Biological Resources, SETTING, Pump Station. M30
30. Please provide more detailed, larger scale maps shown on Figure 3, "Alquist-Priolo Fault Rupture Zones." The maps provided in the Draft Mitigated Negative Declaration are faded, and unreadable. M31
31. Please clarify the odor generated as a result of the "cutter stock (a light cycle oil with properties similar to fuel oil)" that will be stored in the aboveground storage tanks that is described on page VII-2, "Setting, Operation of the Hercules Pumping Station" M32
32. On page VII-6, "Schools," there is recognition of a school being proposed within 1500 feet of the existing aboveground storage tanks. The location of the school has been approved through a Specific Plan process in the later part of 2000. The West Contra Costa Unified School District is actively pursuing the purchase of the school site. Development of this proposed is important for the adopted Specific Plan known as the "New Pacific Properties Specific Plan." If the Hercules Pump Station storage tanks are re-activated, the construction of this proposed is in jeopardy of being developed. There should be further analysis conducted focusing on the impacts of the storage tanks and the contents which may be transported to the Hercules Pump Station as it relates to the proposed school, the children and employees. M33
33. Throughout this document there is reference to "heavy oil", "cutter stock" and the possibility that the petroleum product could be crude oil, however, on page VII-7, "Fuel Oil Transport", fourth line it says that the "the proposed project does not include changing the type of material to be transported through the pipeline.." Please clarify what the product in the M34

pipeline will be restricted to. Is crude oil going to be allowed to be transported through this pipeline?

34. On page VII-7, "Operation of the Hercules Pump Station", the second sentence, "The school is called for in the City of Hercules General Plan, but has not yet received its needed approvals by the Hercules School District, and the city's Planning Commission or City Council" is incorrect. The school site has been approved through the "New Pacific Properties Specific Plan." And the West Contra Costa Unified School District is actively pursuing this school site. M35
35. On page IX-5, "Setting", "City of Hercules," last paragraph, first sentence should be revised: "The City of Hercules has ~~initiated a process to~~ adopted the "New Pacific Properties Specific Plan" ~~would~~ which encompasses ~~a discrete~~ the area north of and adjacent to the pump station..." M36

We appreciate the additional time given for the City of Hercules to review this Draft Mitigated Negative Declaration, CPUC Application Numbers 00-05-035 and 00-12-008. And we look forward to seeing your response to our comments. Please send any correspondence to:

Dennis Tagashira, Planning Manager  
City of Hercules  
111 Civic Drive  
Hercules, CA. 94547

Sincerely,



Stephen R. Lawton,  
Director of Community Development

cc: Michael Sakamoto, Acting City Manager  
Mick Cabral, City Attorney

## LETTER M –City of Hercules

### *Response M1*

PG&E worked with the City of Martinez and the East Bay Regional Park District to obtain replacement easements for a new route to replace the portion of the easements and the pipeline, that were abandoned at the request of the City of Martinez and the Union Pacific Railroad in connection with the development of the Martinez Intermodal Project.

PG&E provided the following easements to ESA in December 2001:

- City of Martinez, LD 2402-03-0723, Doc-2001-0182873-00, recorded June 27, 2001 in the Contra Costa County Recorder's office.
- East Bay Regional Park District, a California special district, LD 2402-03-0724, recorded February 8, 2001 in the Contra Costa County Recorder's office.

### *Response M2*

Please see Response to Comment H3.

### *Response M3*

The commentor requests that under Mitigation Measure V.1a and V.1b, an investigation of historic documents for cultural resources should be conducted now and the results made part of the Draft Mitigated Negative Declaration (DMND). For clarification, the CPUC believes that the commentor has misunderstood these referenced mitigation measures. As provided on pages V-1 and V-2, site records and literature searches were performed at the Northwest Information Center (Sonoma State University) to establish the existing environmental condition (baseline). These searches included a review of the National Register of Historic Places (NRHP) listings, the State of California Historic Landmarks registers, and county and city registers for historic sites. Results of the listed historic and prehistoric archaeological sites as provided by the CPUC's Archaeological Consultant (Basin Research Associates) are indicated on pages V-2 through V-6. The intent of Mitigation Measure V.1a is to ensure that a CPUC approved cultural resource monitor is available at least 15 days prior to the commencement of any project-related construction activities although the analysis conducted for the MND failed to identify any significant known cultural resource sites. The cultural resource monitor presence will insure that if or when potential undiscovered resources are uncovered, appropriate action will be taken to assess and address these potential discoveries.

The last sentence of the comment states that the CPUC and the Native American Heritage Commission should review the Resource Specific Data Recovery Plan at least 30 days prior to the start of project-related construction activities. Again, the CPUC believes that the commentor misunderstood the intent of Mitigation Measure V.1b. This measure was drafted in accordance with Section 15126.4 (b)(3)(C), which states that when data recovery is the only feasible mitigation, a data recovery plan providing for adequate recovery of the scientifically consequential information about the historic resource shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be filed with the

California Historical Resource Regional Information Center (California State University at Sonoma), and as such must conform to their standards. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code (refer to Mitigation Measure V.3). As discussed in Master Response 2, the proposed project approval is really about transfer of ownership and operation not approval of the replacement section, it is premature to require a Resource Specific Data Recovery Plan at this stage.

***Response M4***

The comment states that the evaluation of tectonic creep, as required by Mitigation Measure VI.1, should be conducted now rather than “prior to operation of the pipeline.”

It is not necessary to conduct this evaluation prior to completion of the environmental documentation because it is understood that, although impacts related to fault creep are potentially significant, they can be mitigated to a less than significant level through necessary repairs if determined appropriate by an initial engineering evaluation. The mitigation measure, as stated, is adequate because it requires that a specific action needs to be taken to ensure that no impact would occur and requires that such an action be completed prior to operation of the pipeline.

***Response M5***

Please see Response to Comment E1.

***Response M6***

The proposed San Francisco Bay Trail currently follows a route that includes the use of easements that are also occupied by the Pipeline. This is the case in the City of Hercules, as well as in other jurisdictions. There is limited potential for Pipeline maintenance to be required at different points along the route, including points that may cross the San Francisco Bay Trail. Therefore, the following text change is made to Mitigation Measure IX.2:

**Mitigation Measure IX.2: For all maintenance activities that could disrupt use or enjoyment of the San Francisco Bay Trail, SPBPC shall coordinate such maintenance efforts with the Association of Bay Area Governments (ABAG) and the ~~City of Pinole~~ relevant jurisdiction in which the Pipeline is located. The purchaser shall assure that access to the Bay Trail remains open to the maximum extent possible, and that if necessary, a clearly marked, comparable alternative route is provided on a temporary basis.**

The Association of Bay Area Governments indicates that the final San Francisco Bay Trail alignment through Hercules has not yet been determined (Thompson, 2002). However, any anticipated future maintenance activities along the Pipeline would be temporary and would not require permanent changes to the San Francisco Bay Trail. Therefore, no amendment to the Hercules General Plan should be required by a temporary alternative route due to maintenance activities.



***Response M7***

It would not be appropriate to develop a traffic control plan until the final design of the project is completed. As discussed in the DMND, the construction contractor shall prepare a traffic control plan in accordance with professional engineering standards prior to commencing construction activities. This traffic control plan would be submitted to applicable jurisdictions for review and approval prior to implementation. As appropriate, the traffic control plan would include the requirements to develop and implement access plans for highly sensitive land uses such as police and fire stations, transit stations, hospitals and schools. The access plans would be developed with the facility owner or administrator. To minimize disruption of emergency vehicle access, affected jurisdictions shall be asked to identify detours for emergency vehicles, which will then be posted by the contractor. The facility owner or operator would be notified in advance of the timing, location, and duration of construction activities and the locations of detours and lane closures.

***Response M8***

While the connection to the Mirant Pittsburg Power Plant (located in Pittsburg) still exists, the Pittsburg Power Plant has no foreseeable relationship to the proposed project. Please also see Response to Comments C1 and D1.

***Response M9***

Please see Master Response 1.

***Response M10***

As these maps large size drawings and are voluminous in number, one copy of the requested maps will be provided to the City under separate cover. However, several new figures have been prepared, as discussed in response H3.

***Response M11***

Please see Master Response 1.

***Response M12***

Please see Response to Comments H3 and M10.

***Response M13***

The comment is noted.

***Response M14***

While the pipeline is a “generation-related asset,” the pipeline does not generate, and never has generated, electricity except in the past to provided fuel oil to PG&E’s former Pittsburg and Contra Costa Power Plants which today are operated by Mirant and use natural gas as fuel. However, this issue will be determined in the context of the CPUC Application proceeding process.

***Response M15***

Transporting fuel oil through the pipeline requires heating the oil due to its viscosity. The fuel oil is thick and would not be movable without being heated. No. 6 low sulfur fuel oil has a pour point of approximately 110 degrees Fahrenheit.

As described on page 1-7 of the DMND, Section 1.5 “Project Components,” the pipeline is comprised of two sections. The Richmond to Hercules section of the pipeline is an insulated, 12-inch diameter fuel oil pipeline, approximately 10 miles in length. The Hercules to Pittsburg section is an insulated, 16-inch diameter fuel oil pipeline, approximately 25 miles in length.

***Response M16***

See attached map, Figure 1-7. The control building is 30 feet wide, 60 feet long and 13.5 feet high. The fire water tank is a 1,000,000 gallon tank which is approximately 50 feet high and 58 feet in diameter, and the fire tank building is 30 feet wide, 59 feet long, and 13.5 feet high. The size of the equipment pad with pumps and heating units is 54 feet wide, 240 feet long, and 25 feet high (height of pipes, except stacks). The heater equipment area at the south end of the pad is 54 feet wide, 65 feet long and 60 feet high, including the stacks. The valving station behind the pumping pad is 25 feet wide, 95 feet long, and 25 feet high (reflecting the pipes). The three large tanks (250,000 bbl) are 193 feet in diameter and 50 feet high. The cutter stock tank is 120 feet in diameter and 50 feet high. These tanks are all painted green.

As shown on Figure 1-7, the storm and oily water drainage system feeds into the impounding basin and the water holding pond is located on the south-eastern corner of the site.

***Response M17***

This inert gas is mostly air, with possibly a small amount of nitrogen. There are no odors associated with these inert gases.

**M18** The “oily water” is a product of the pipe cleaning process. It is created when water used to clean the pipe mixes with residual cutter stock oil in the pipeline. However, there are no odors associated with this oily water. The oily water is stored/collected in tanks and transported off-site to a nearby treatment facility.

***Response M19***

Please see Master Response 1 and Response to Comment B2.

***Response M20***

Please see Master Response 1 and Response to Comment B2.

**Response M21**

In response to this comment, PG&E (Personal communication with Mr. Paul Holton of PG&E, Mr. Tim Morgan of ESA and Billie Blanchard of the CPUC, January 10, 2002) has provided the following information:

“The Hercules Pump Station was originally designed to accommodate movement of fuel oil from the wharf as an alternative to moving oil from the Chevron Facility in Richmond. No provisions for a connection to the wharf were made because the need to implement this alternative never materialized.”

**Response M22**

The roof of each oil storage tank floats to the tops as the level of oil rises, and conversely floats down as the oil level drops. There are little or no odors associated with heavy oil.

Cutter stock is light cycle oil with properties similar to fuel oil. It is used to assist with cleaning out the Pipeline prior to use of the smart pig (used for leak detection).

Heavy oil is a non-viscous fuel oil that is nearly solid in characteristic. In order to be transported, heavy oil needs to be heated and reduced to a more liquid state.

The pipeline system was designed for heavy fuel oil or “residual fuel oil” with a range of the following characteristics<sup>2</sup>:

API gravity at 60° Fahrenheit	17.5
Specific gravity at 60° Fahrenheit	0.95
Specific heat (btu/lbm-° Fahrenheit)	0.475
Pour point	20° Fahrenheit– 125° Fahrenheit
Flash point	150° Fahrenheit – 125° Fahrenheit

In the 1980s, the Bay Area Air Quality Management District limited fuel oil to 0.5% sulfur content or less, thus changing some of the fuel characteristics slightly.

Tosco’s Santa Fe Springs is located in southern California, as the commentor suggests. However, it is not uncommon at all to have such a central control facility for such operations. With leak detection system telemetry and the presence of local maintenance personnel to respond, there should be no concerns about Tosco’s ability to control pipeline operations remotely.

**Response M23**

With regard to odors from the tanks at the pump station, SPBPC is required to maintain the tanks in accordance with applicable air permits, as issued by the BAAQMD. Tank seals must be kept in good condition as required by the applicable permits, thus resulting in little or no odors associated with any oil stored at the Hercules Pump Station.

<sup>2</sup> Section 3.3: Fluid Characteristics, Definitive Design Manual, Fuel Oil Pipeline. September 1974, revised 1976.

***Response M24***

The DMND states on page 1-6 that the State Fire Marshall has the responsibility for safety oversight of the pipeline and pump station and the responsibility for inspections. The Fire Marshall is the enforcing agency in the state as designated by the Federal Office of Pipeline Safety. The US Department of Transportation Office of Pipeline Safety sets guidelines, which must be followed. There is no conflict in the text.

***Response M25***

Please see Response to Comments B3 and B4.

***Response M26***

The first paragraph on page I-5 is revised as follows:

For the existing underground pipeline, located primarily within railroad or public street right-of-ways, the sale and subsequent operation of the pipeline would have little to no effect on aesthetic resources along the pipeline route, with the possible exception of temporary disruption of views if and when SPBPC replaces or adds components of the pipeline. The pump station, located on 44.2 acres of land in the City of Hercules, is ~~generally somewhat~~ shielded from view, but still visible from the North Shore Business Park, the New Pacific Properties Specific Plan planned residential neighborhoods west of San Pablo Avenue, the Foxboro residential neighborhood across Interstate 80 on the westerly side of the City of Hercules, and the hillside residences in the community of Rodeo. ~~from all directions, and its~~ The pump station's construction, however, preceded that of the development around it, and is considered part of the baseline setting. Therefore, the project's only likely potential impact on aesthetics resources would be along the 4,000-foot replacement section in the City of Martinez. SPBPC has not yet announced its plans for the underground construction of the missing section. However, as mitigation for construction activity that SPBPC might conduct, PG&E stated in its Proponent's Environmental Assessment that "landscape features and recreational equipment would be restored to pre-construction conditions," and that "construction activities affecting parklands and trail systems would be coordinated with the East Bay Regional Park District and the City of Martinez." SPBPC would be required to implement these mitigation measures as part of the sales agreement for the Pipeline, but are also formalized below. Therefore, with these mitigation measures, the impact of construction on aesthetics resources would be less than significant.

***Response M27***

Please see Response to Comment N1 below.

***Response M28***

The 4,000-foot pipeline replacement section would be constructed underground. After construction, the pipeline section would not affect the area visually because the pipeline would be buried and below ground. Because of this, a photo simulation would serve no discernable purpose.

***Response M29***

SPBPC will operate and maintain floating roof storage tanks at the Hercules Pump Station in accordance with applicable air permits issued by BAAQMD. A floating roof tank consists of a roof that floats on the liquid surface. The roof moves up and down as the tank is filled and emptied. Seals, which are attached to the roof, contact the tank wall at the annular space between the roof and the wall. The seals remove any residue oil from the tank walls as product is withdrawn from the tank and as the roof drops. Studies have shown that properly maintained seals will reduce emissions from a floating roof tank by 95% to 99%<sup>3</sup>. Tank seals at this facility will be kept in good condition in order to maintain maximum control of vapor emissions, since they are subject to inspection by the Air District. As a result, there would be little or no product remaining on the exposed tank walls that could evaporate and cause odors.

***Response M30***

Please refer to response to comment M16.

***Response M31***

The comment requests that more detailed, larger scale maps, shown as Figure 3, Alquist-Priolo Fault Rupture Hazard Zones, be provided because those provided in the Draft Mitigated Negative Declaration are faded and unreadable. The maps provided as Figure 3, renamed as Figure VI-1, have been revised with darker lines that enhance the location of the Alquist-Priolo Fault Hazard Zones. The scale of these maps is adequate to identify a sufficient level of detail.

***Response M32***

Cutter stock is an oil similar to product that has been used before in the pipeline. Neither the product to be shipped nor the cutter stock has sufficient vapor pressure to result in odors occurring from evaporation. In addition, there have been no odor complaints from the tank farm and pump station registered with the BAAQMD.

***Response M33***

Please see to Response to Comment H9.

***Response M34***

Please see Master Response 1.

***Response M35***

Please see Response to Comments B3 and B4.

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<sup>3</sup> *Volatile Organic Compound (VOC) Emissions from Liquid Storage Tanks-Background Information*, USEPA, EPA-450/3-81-003a.

***Response M36***

Please see the text revisions made to pp. IX-6 and IX-6 for Response to Comment B4.



December 6, 2001

Billie Blanchard, CPUC  
 c/o Environmental Science Associates  
 225 Bush Street, Suite 1700  
 San Francisco, CA 94104-4207

Subject: CPUC Application Numbers 00-05-035 and 00-12-008  
 Martinez Regional Shoreline

Dear Ms. Blanchard:

Thank you for providing the East Bay Regional Park District ("District") with a copy of the Draft Mitigated Negative Declaration (MND) for Pacific Gas and Electric Company's (PG&E) proposed sale of the Richmond-to-Pittsburg Pipeline to the San Pablo Bay Pipeline Company (SPBPC). Per your fax of November 20, 2001, we are submitting our written comments prior to the extended comment deadline of December 7, 2001. Thank you for granting the one week time extension.

### Summary of Comments

The District has no comment on the purpose or need for the proposed project. Our comments focus primarily on the construction and operational impacts associated with a segment of pipeline within or adjacent to District lands at Martinez Regional Shoreline and the San Francisco Bay Trail in the Martinez area. Potentially significant impacts include construction and operational impacts to park facilities, public access, wetlands, endangered species habitats and park maintenance and operations. These impacts are not adequately discussed, nor are effective mitigation measures proposed for these impacts in the MND. The MND is clearly inadequate and should be withdrawn until these deficiencies can be adequately addressed.

It is not clear to the District that "PG&E has secured the necessary rights of way for a 4,000 foot replacement section", as described in the MND. PG&E has failed to provide consideration called for under the agreement to grant the easement required to relocate the pipeline across District property. Such a failure of consideration casts strong doubt on the legality of the document conveying the easement.

The MND should specifically state that PG&E, SPBPC and/or their successors are required to obtain a District encroachment permit to construct within District lands. As such, the District should be listed as a Responsible Agency under CEQA. We may need to rely upon the CPUC's

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N1

N2



MND in processing the required encroachment permit application. A discussion of these potential impacts and requirements are provided later in this letter.

The remainder of the pipeline passes through or near existing or proposed public open space and regional trail systems that could be affected by pipeline maintenance, future replacement, operations and possible failure and release of product. Figure 1 in the MND provides a poorly reproduced copy of an 8 ½ by 11 map of the 35-mile pipeline. The quality and scale of this map is not suitable to determine the location of the pipeline or potential impacts. As a result, we could not determine which District facilities might be affected or how they might be affected by this project. Potentially affected facilities could include Point Molate, Point Pinole Regional Shoreline, San Pablo Bay Shoreline, Carquinez Straits Regional Shoreline, Waterbird Regional Preserve, Point Edith, Bay Point Regional Shoreline, San Francisco Bay Trail and Delta-DeAnza Regional Trail. Should any of these facilities be affected by this project, we request immediate notification and consultation with PG&E, SPBPC and CPUC about such impacts. We are also requesting that the District be provided with detailed mapping of the entire pipeline route so that we can determine how other District facilities may be affected by this project. Until such information is provided, we cannot provide a complete set of comments about the proposed project. Accordingly, the public review period should be extended, and the CPUC should provide sufficient mapping and information to address potential impacts and receive complete input from affected parties.

N3

### **Martinez Regional Shoreline**

The District has owned and operated this 343-acre shoreline park since 1976. Facilities include recreational areas operated by the City of Martinez, plus large lawns, picnic facilities, nature trails, Alhambra Creek and tidal wetlands. An 18-acre portion of the park was restored in 1999-2001 through a series of agreements between the District, Caltrans and the City of Martinez. The goals of this enhancement project are to

1. provide for enhanced public access;
2. restore Alhambra Creek and its associated tidal wetlands;
3. provide new habitat for endangered species;
4. reduce District maintenance costs; and
5. provide for additional flood water capacity in Alhambra Creek.

The proposed relocation of a 4000-foot segment of pipeline has the potential for significant adverse impacts to Martinez Regional Shoreline and to achieving the five stated goals for the joint shoreline enhancement project. The MND briefly mentions that the potential for conflict with Goal 2 has the potential for significant adverse effects, but that this effect can be mitigated by coordinating project construction with the District. We do not agree with this conclusion because the MND provides insufficient information about how the project would affect Goal 2, nor does it provide adequate information on how such impacts would be mitigated. CEQA is

N4



very clear that mitigation measures must be well defined and measurable. Furthermore, the MND does not address potential impacts to the other four goals for this project. Based on the information provided in the MND, we can only conclude that this project has the potential for significant adverse effects to all five of the above goals.

N4 cont.

The MND correctly concludes that several of the project impacts to Martinez Regional Shoreline are potentially significant. However, the Negative Declaration improperly concludes that all of these impacts can be successfully mitigated to a less than significant level by imposing mitigation measures based upon the outcome of future studies. Such an approach is clearly inconsistent with CEQA. In order to meet the requirements of CEQA, the MND must provide enough information for the CPUC commissioners, regulatory agencies, responsible agencies and the public to make an informed decision about the project, its impacts and measures to reduce or avoid potentially significant impacts.

It appears that PG&E and SPBPC have not provided sufficient information to the CPUC about the project description, proposed methods of construction, potential project impacts, or suitable mitigation measures. The discussion in the MND is of a very general nature and defers the discussion of essential information until after the CPUC has taken action to approve or deny the application. Such information must be contained within the MND and not deferred to future studies. In considering this project, the CPUC must look at the whole and complete action and it must have a clear understanding the magnitude of potential impacts and feasibility of mitigation measures to reduce these impacts. In the absence of such information, the CPUC cannot conclude that in all cases potentially significant impacts can be reduced to a less than significant level as is required to prepare a Negative Declaration or file a Notice of Determination.

N5

Therefore, we must conclude from the information provided that some of these impacts will remain significant after mitigation, and on that basis the CPUC should either withdraw the MND and prepare an Environmental Impact Report (EIR) or recirculate the MND with a more comprehensive analysis of potential project impacts and mitigation measures that can be successfully implemented by the applicant.

We provide the following specific comments on the various environmental factors considered in the subject MND.

***Aesthetics:*** The discussion of visual character and agency policies fails to include District Master Plan policies relating to the visual impacts of utilities within parklands. The District's Master Plan specifically prohibits new construction of above-ground utilities. This would include valve stations as described on page I-5 of the MND. Mitigation Measure I.1 should specifically state that valve stations and other above-ground project components cannot be constructed within parkland or within the viewshed of sensitive receptors within the park or trail corridors.

N6

There are several prominent landscape trees planted along the southern boundary of the park at

the northern edge of the proposed right of way. These trees provide a significant visual buffer between the park and the adjacent concrete building on the Zocchi property. Removal of these trees would result in a significant and unmitigatable visual impact to sensitive receptors in the park. The District will not permit the removal of these trees as part of constructing the pipeline project in this area. The MND should also address the potentially adverse effects of trenching adjacent to these trees and implement the necessary mitigation measures to protect them.

N7

**Biological Resources:** The MND overlooks or understates the significance of several potential impacts from the construction and operation of this project on sensitive biological resources. This can be attributed, in part, 1.) to a poor understanding of present site conditions; 2.) lack of adequate biological survey information; 3.) a speculative analysis of construction impacts because the proposed method of project construction has not been defined by SPBPC.; and 4.) the potential effects of a pipeline failure on biological resources has not been considered.

- 1.) Present site conditions have been substantially altered since the right of way was initially mapped in 1998. The 20 foot right of way along the east side of Alhambra Creek was partially excavated by the City of Martinez in 1999 and 2000 to allow for the creation of a flood terrace. As a result, approximately 10 feet of the 20 foot right of way is now a wetland flood terrace of Alhambra Creek. The remaining 10 feet of right of way is upland fill, approximately three feet higher than the excavated flood terrace. As a result of these changes, there may no longer be adequate upland right of way in which to construct the pipeline. Excavation within the adjacent wetland would result in significant, adverse effects to wetlands and to endangered species habitats, including habitat for Delta smelt, Chinook salmon, salt marsh harvest mouse, clapper rail and black rail. Such impacts would conflict with the goals established for the District's marsh enhancement project.

N8

The MND also references that some form of bank protection may be necessary to prevent exposure of the buried pipeline. Installation of bank protection may prevent the proper establishment of native vegetation and suitable refugia cover along the creek. Such cover is important to waterfowl, nesting marsh birds and for salt marsh harvest mouse. Instead, it would be more appropriate to relocate the pipeline further away from the creek so that the risk of pipeline exposure or failure is eliminated, and so that suitable native cover can be maintained along the creek.

N9

- 2.) It appears that no field surveys or research was conducted to support the discussion of biological resource impacts or to support the conclusions regarding significance or the effectiveness of proposed mitigation measures. On page IV-3, there is a brief discussion of species that "might" or "may" be present in or near the project area, however, there is no evidence that surveys were performed, data bases searched, experts consulted or other relevant studies reviewed.

N10

The District, Caltrans and City of Martinez have all generated considerable information about biological resources in this area as part of the planning, design, permitting and construction of the Martinez Marsh Enhancement Project. This information should have been considered by the CPUC in the subject MND. This includes wetland delineations, wildlife and plant surveys, hydrological analysis, hazardous materials investigations, etc.

N10 cont

Results from field surveys at Martinez show that the endangered salt marsh harvest mouse is present in the project area. It may be adversely affected by construction of the new pipeline. California clapper rail and black rail were not located during recent surveys, however, they were present historically and are two of the targeted species for the enhancement project. Northern harrier and Suisun song sparrow are present in the project area and may be affected by project construction. Black-crowned night heron and white-tailed kite may also be nesting in the pine and eucalyptus trees in the project area. The newly restored wetland and mud flat areas within the proposed right of way have considerable usage by shorebirds and waterfowl. Fish surveys are on-going to determine which of the special-status fish species may be present, however, Delta smelt and Chinook salmon were specifically targeted when the creek was widened and adjacent wetlands restored. Several special-status plant species that were historically present in the project area and may be affected by project construction, including Delta tule pea, Mason's lilaeopsis, Delta mudwort, Suisun Marsh aster and others.

- 3.) The discussion of project impacts is incomplete and much of the analysis of impacts is speculative because the CPUC does not know the proposed method of construction and the applicants have not provided adequate information on the biological resources present or how they might be affected by the project. In all cases where potentially significant effects are identified, the MND assumes that these impacts can be mitigated to a less than significant level. This approach is flawed because the MND lacks the basic information to draw such conclusions. Furthermore, the assessment of certain project impacts and the potential success of mitigation measures are based on the outcome of future studies.

N11

The MND also errors in assuming that all potentially significant impacts to the District's Marsh Enhancement Project can be resolved by adjusting the timing of construction activities. Such an assumption is again unsubstantiated by the information provided in the MND. The District has not been formally contacted by the CPUC, PG&E or SPBPC to discuss the nature and timing of the two projects or how schedules could be coordinated to avoid potential conflicts. Furthermore, as described under #1 above, project site circumstances have changed considerably since 1998 and it may not be possible to avoid conflicts between the two projects as presently described. The District will not likely grant an encroachment permit that will allow for the construction of new pipeline within the newly restored Alhambra Creek and marsh. Therefore, the potential for conflict between the two projects may not be resolvable in the manner described in Mitigation Measure IV.2 on pages IV-10 and IV-11 of the MND.

- 4.) We could find no discussion in the subject MND about the potentially significant adverse effects of pipeline failure on the biological resources at Martinez Regional Shoreline. The proposed 4,000 foot segment of new pipeline will require a new crossing under Alhambra Creek, and then installation of another ~1,000 foot segment parallel to the creeks east bank (including two 90° turns), and then another ~1,000 segment adjacent to tidal marsh, and finally another small crossing of a drainage into Alhambra Creek near DiMaggio Way. Failure along any portion of the new 4,000 foot section of pipeline would likely result in the discharge of petroleum into Alhambra Creek, adjacent tidal marshlands, and ultimately, San Francisco Bay. Such a discharge would result in a number of significant effects to biological resources, including wetlands, wildlife, and several special-status plant and animal species. The MND does not adequately discuss this potentially significant effect.

N12

On pages VII-1 and VII-2 of the MND, there is a discussion about pipeline maintenance and inspection. It appears that the existing pipeline has not been test for pipe-wall deterioration for six years. This would appear to be too infrequently for this pipeline when returned to operation in a corrosive saline environment. Given the sensitively of many areas along the route, how frequently would it be tested under normal operations by SPBPC?

The discussion of leak detection on page VII-2 of the MND states that remote control isolation valves can be located up to 10 miles apart along the pipeline. In the event of pipeline failure, how far away would the nearest valve be from the Martinez Shoreline? If the valve was 10 miles away, how much residual oil could actually be discharged from a failure into Alhambra Creek? This could potentially be several thousand gallons of oil. What secondary controls can be implemented to prevent the residual oil from being discharged once the isolation valve has been closed? This potentially significant impact could be greatly reduced in magnitude if the right of way were relocated in the Martinez area away from Alhambra Creek and associated wetlands.

**Land Use and Planning:** The discussion of consistency with land use and planning fails to include a discussion of this project's consistency with the District's 1997 Master Plan. As one of the responsible agencies who may be permitting construction of the new pipeline in Martinez, the District may need to rely upon the CPUC's MND to meet its own CEQA requirements. As such, the MND should contain a discussion of project consistency with our Master Plan. This would include our policies regarding protection of natural and cultural resources, public access, trails, planning and permitting, facility development, underground utilities, maintenance and operational costs. If ultimately, the MND does not meet District CEQA standards, we may need to prepare our own CEQA document at the applicants expense.

N13

Park users can currently access Martinez Regional Shoreline from three separate locations. Each of the locations may be subject to closure during some portion of the proposed pipeline

construction. The mitigation measures described in this section do not adequately protect the park from potentially significant impacts due to road and trail closures that access the park. There should be specific mitigation requirements in the MND that prohibit SPBPC and their successors from closing more than one point of access at any given time and these closures should be kept to the minimum necessary to minimize impacts to the public. During each period of closure, SPBPC will need to provide informational signage about how to access other entrances to the park. Flaggers should also be provided to direct park and Bay Trail users to these alternative locations.

N14

Contrary to the statements contained in the MND, construction activities will not be permitted in the park on Saturdays, Sundays or holidays. In addition, construction activities outside the park during these periods should not restrict access to the park. Construction activities will need to be coordinated to accommodate major events in the park, such as weddings and holiday celebrations. The 4<sup>th</sup> of July is a major event in the park with thousands of visitors accessing the shoreline to observe fireworks. Open ditches and closures during this period could pose significant safety hazards to park users and should be avoided.

***San Francisco Bay Trail:*** Portions of the San Francisco Bay Trail within Alameda and Contra Costa Counties have been formally adopted by the District and are shown in our 1997 Master Plan. In addition to coordinating with Janet McBride of ABAG, the CPUC and applicants should also be coordinating with the District about potential project impacts to Bay Trail segments under District jurisdiction. Please contact Steve Fiala (note spelling), Trails Specialist, for information about the Bay Trail. The District and City of Martinez are currently finalizing plans for the construction (in 2002) of a new bridge across Alhambra Creek and a key segment of the San Francisco Bay Trail. The 4,000 foot replacement pipeline is proposed for construction along the route of the planned trail and new bridge at Martinez Regional Shoreline. The proposed pipeline project has the potential for significant adverse effects to these public access facilities. Impact IX.2 on page IX-10 and Mitigation Measure IX.2 on page IX-11 should both specifically identify these potential impacts and propose mitigation measures.

Potential impacts to the Martinez Regional Shoreline Bay Trail segment would include both construction and long-term operational impacts. Since the construction schedule and method of construction are not provided in the MND, we are assuming that the proposed pipeline would be constructed after completion of the new Bay Trail segment and new bridge across Alhambra Creek. The new Bay Trail segment will begin at the Nejedly Staging Area at Carquinez Strait Regional Shoreline, dropping down to the south side of the Southern Pacific Train tracks, crossing at-grade at Berrellessa Street, then along Berellessa to the staging area, crossing Alhambra Creek on a new bridge, along the north side of the Zocchi property, crossing the small drainage ditch to connect with DiMaggio Way and continuing through the park. The new Bay Trail segment will intersect or run parallel to the proposed pipeline route at three locations: 1.) the new underground segment along Embarcadero Street; 2.) the at-grade crossing at Berrellessa Street on the north side of the train tracks, west of Alhambra Creek; and 3.) along a ~1,000

N15

segment starting at the east end of the new bridge over Alhambra Creek to the intersection with DiMaggio Way. Each of these areas of concern are discussed below.

- 1.) Pipeline construction along Embarcadero could restrict or prevent access to the park office, Pidgeon Club, Sportsman's Club, and public access to the shoreline trails. As described above, construction would need to be carefully coordinated with the District to minimize disruption.
- 2.) The at-grade crossing of the Bay Trail at Berrellessa Street may be affected by construction of the new pipeline. Since the method of construction has not been provided by the applicant, we are unsure how this segment would be affected. In general, construction activities that result in closure of Berrellessa Street would impact park and trail users and park operations staff. This could also be a concern for emergency vehicles needing to access the shoreline. If a trench is cut through the trail, this would need to be carefully compacted afterwards to assure that there is no subsidence that would create trip-fall hazards for trail users. Construction would need to be carefully coordinated with the District to minimize disruption.
- 3.) Perhaps the most significant area for potential conflict would be along the northern boundary of the Zocchi property where the proposed pipeline right of way would intrude into the area of the foundation for the new bridge across Alhambra Creek. As currently designed, the east footing and wingwall of the bridge would be located within the proposed right of way, which is already constrained to a 10 foot wide upland area. Since it is likely that the bridge footings will be constructed before the pipeline, it is likely that the pipeline right of way will need to be shifted east at this location to avoid this conflict.

Another area of potential conflict at this location is the ~1,000 foot segment of Bay Trail that will be located immediately adjacent to or on top of the proposed pipeline right of way. Installation, maintenance or replacement of pipeline along this right of way has the potential to damage or destroy the trail surface, landscaping, irrigation system and other park facilities. Furthermore, trail closure may be necessary because of the tight construction area between the existing concrete buildings and the row of landscape trees. Construction would need to be carefully coordinated with the District to minimize disruption. SPBPC would need to repair or replace these facilities as necessary to their pre-construction conditions. Additional compensation will also be necessary for District oversight of project construction.

**Noise:** Construction related noise may have disruptive effects to park users and wildlife. Construction activities near Alhambra Creek and adjacent wetlands should be timed to avoid noise impacts during high use periods. This would include weekends and holidays for park users in which no construction would be allowed within the park. The winter-spring months for migratory birds would also be an area of concern which should be avoided. There may also be

N15 cont

N16

specific restrictions for fisheries and special-status species which should be determined in consultation with National Marine Fisheries Service, U.S. Fish and Wildlife Service and California Department of Fish and Game.

N17

**Public Services:** Maintenance or replacement of the pipeline underneath the San Francisco Bay Trail at Martinez Regional Shoreline has the potential to disrupt trail users and damage or destroy the trail surface and other park facilities. Pipeline maintenance also has the potential to disrupt maintenance and public safety vehicle access to the Bay Trail and adjacent parklands. A District encroachment permit will be required for such activities and SPBPC will be responsible for repairing or replacing damaged facilities and for coordinating with the District to avoid access conflicts.

N18

**District Encroachment Permit:** As a condition of granting an encroachment permit to the applicants, the District will require at a minimum the following fees, information, approvals and protections:

- Warranty for any trail or facility replacement;
- Permit application and project inspection fees;
- Review and approval of construction plans at all phases;
- Copies of all regulatory permits and approvals;
- Copies of all CEQA documents and technical studies prepared to obtain CPUC approvals; and
- District project inspectors ability to stop work for non-compliance with permit conditions.

N19

Should you have any questions regarding this letter, please contact me at (510) 544-2622. Specific questions regarding trails issues should be directed to Steve Fiala at (510) 544-2602 and questions regarding rights of way should be directed to Jim Townsend at (510) 544-2604.

Sincerely,



Brad Olson  
Environmental Program Manager

cc. Richard Pearson, City of Martinez  
Steve Fiala, EBRPD  
Jim Townsend, EBRPD

## LETTER N – EAST BAY REGIONAL PARKS DISTRICT

### *Response N1*

PG&E and the East Bay Regional Park District entered into the Agreement Modifying an Easement executed by the East Bay Regional Park District (EBRPD) on November 29, 2000, and recorded in the Official Records of Contra Costa County on February 8, 2001 (the “Agreement”). On page 3 of the Agreement, it provides as follows: “This agreement shall inure to the benefit of and bind the successors and assigns of the respective parties hereto.”

PG&E owned an existing easement for the pipeline over a portion of the East Bay Regional Park District property. Pursuant to the Agreement, the location of that easement was changed. In the Agreement, PG&E relinquished its rights to use the original easement location, and in consideration for such relinquishment, the East Bay Regional Park District granted to PG&E an easement for the pipeline in a new location. The easement in the new location would accommodate a portion of the 4,000-foot replacement section of the pipeline, as described in the DMND. New figures 1-3 through 1-6 show in better detail these easements.

### *Response N2*

As the commentor suggests, Section 1.6.2 is revised as follows:

“Transport of product through the entire length of the pipeline is currently not possible due to the severed 4,000-foot section of pipeline in Martinez. In order for the new owner (SPBPC) to use the entire pipeline, this 4,000-foot section will need to be reinstalled. PG&E has obtained a 20-foot wide permanent easement (as shown in Figure 2) from the City of Martinez, and also has an easement from the East Bay Regional Park District to allow for the construction of the replacement section. SPBPC will be responsible, at its own expense, for the construction and reconnection of the new section of pipeline, and for obtaining any additional temporary easements or encroachment permits from the City of Martinez or the East Bay Regional Park District required for construction.”

### *Response N3*

None of the parklands and facilities listed by the commentor would be affected by the replacement pipeline. Please see the new figures described in Response to Comment H3 for new detailed maps of the replacement pipeline area. In addition, a full set of the aerial photos of the entire pipeline alignment have been sent to the District.

### *Response N4*

As discussed in Master Response 2, the 4,000-foot replacement section is not adequately defined and mitigation measures are at a programmatic level. The commentor presents five goals for their Martinez Regional Shoreline which, because of the agreed to lack of detail in the DMND they conclude that the replacement project could have an adverse impact on these goals. Even though, as discussed in Master Response 2, approval of the 4,000-foot replacement section is not the purpose of this document, since the replacement section Pipeline would be underground it would



not have any impact on at least 4 of the 5 goals presented by the commentor. Potential impacts would only occur during pipeline construction, which would be the subject of further permitting as discussed in Master Response 2. The remaining goal – restoring Alhambra Creek – remains a potential impact until SPBPC specifies how the Pipeline will cross the creek.

***Response N5***

Please see Master Response 2.

***Response N6***

Mitigation Measure I.1 is changed to read:

**Mitigation Measure I.1: Prior to commencing construction activities, the new owner (SPBPC) of the Richmond to Pittsburg Fuel Oil Pipeline and Hercules Pump Station shall coordinate construction activities affecting parklands and trail systems with the East Bay Regional Park District and the City of Martinez. This shall include submittal of an aesthetic resources plan to the City and the Parks District that addresses the potential for construction activities to have impacts on aesthetics resources, including specific measures that will be taken to restore such resources to pre-construction conditions or to make improvements to these resources in cooperation with the City and the Parks District. The plan shall also include: details of the methods of shielding and placement of new aboveground components, such as valve stations, that would be viewable where no such components currently exist. The plan shall include a discussion of actions taken such that final pipeline alignment and construction activities associated with this project shall not interfere with the implementation of the Martinez Intermodal Project (which includes the new bridge over Alhambra Creek) and the Martinez drainage project. Above ground facilities, such as valve stations, shall not be constructed within EBRPD parkland or within the viewshed of sensitive receptors within EBRPD park or trail corridors. SPBPC shall not commence construction activities along the replacement segment in Martinez until the aesthetics resource plan is reviewed and approved by the East Bay Regional Parks District, the City of Martinez, and the CPUC mitigation monitor. The CPUC's mitigation monitor shall verify compliance with the aesthetics plan during construction of the replacement section.**

***Response N7***

While the exact route of the 4,000-foot replacement section is not known, it does not appear that construction within the EBRPD easement as presented in Figures 1-3 through 1-6 and as verified by site visits would remove or harm any trees as the pipeline would be installed in the existing roadways.

***Response N8***

The analysis presented in the Draft Mitigated Negative Declaration (DMND) determined that if the 4,000-foot replacement occurs, significant impacts to listed species, as well as conflict with goals for the District's marsh enhancement project, could occur without mitigation (see checklist,

page IV-1, and Impact IV.2 page IV-10 in the DMND). Although the DMND notes the potential for these impacts, and provides provisions for future CPUC review should the sale result in a pipeline replacement, the analysis in this document cannot fully examine potential impacts, nor require specific mitigation measures for the replacement because the replacement is not the subject of this document, and substantial details of replacement will be required for full environmental analysis of pipeline replacement. As Mitigation Measure IV-1 states, these activities would also be reviewed by a CPUC monitor at the time of that future review. Furthermore, the specific area of the commentor's concern along Alhambra Creek appears to be avoided with the easement granted by the City and the EBRPD (see Figure 1-3 and 1-4). See also Master Response 2.

### ***Response N9***

Details of the 4,000-foot pipeline replacement are not yet determined sufficiently to fully assess the need for or nature of potential streambank protection measures. While the placement of a buried pipeline under Alhambra Creek might require some bank protection to prevent erosion following installation, the materials and nature of installation of any bank protection cannot be determined until that project is planned. At this time, pipeline replacement is only a foreseeable action that will be subject to appropriate regulatory and design criteria when the action is planned. The requirements of these, as well as CPUC administered monitoring as noted in Mitigation Measure IV-1, would determine the need for and nature of bank stabilization for a pipeline replacement project. See also Master Response 2.

### ***Response N10***

Please see Master Response 2. Field surveys and literature reviews were conducted by both PG&E and CPUC biologists familiar with the biological resources of the project area. These studies were sufficient to support analyses of the issues identified for Biological Resources (i.e., see questions a – f, DMND, pg. IV-1 -- endangered species, riparian habitat, wetlands, wildlife movement and reproduction, or conflicts with other plans or provisions regarding biological resources). These studies were conducted at a level of detail to determine whether there were potentially significant impacts to each of the biological resources. It was not necessary to review planning documents or conduct studies in greater detail related to the potential pipeline placement at this time because sufficient information was available to make the necessary conclusions of potential significance of impacts to biological resources. The document states on page IV-6, "Pipeline replacement in Martinez may significantly impact special status animal species protected by State and Federal Endangered Species Act. Several species could be impacted by habitat alteration or direct displacement along the pipeline replacement corridor." Impacts to other biological resources (i.e., riparian, wetlands, and wildlife habitat) were determined to be less than significant. Relevant documents, including those available, or yet to be produced, from EBRPD, Caltrans, and the City of Martinez, would continue to be reviewed for details of relevant biological resources when, and if, the project is planned in more detail (see Master Response 2).

***Response N11***

Please see Master Response 2 and Response to Comment N2. The analysis of biological resources in the DMND reveals reasonably foreseeable impacts to biological resources. This analysis included coordination with Jim Townsend, of the East Bay Regional Parks District, which provided information concerning the timeline and other information related to marsh restoration plans adjacent to the potential pipeline corridor. This information, in concert with known information of biological resources on and around the project site, allowed the following conclusions as stated in the DMND on pages IV-10 and 11:

“Impact IV.2: Pipeline replacement in Martinez may include impacts that conflict with marsh restoration activities planned at the potential construction site, and adjacent marshlands within Martinez Shoreline Park, by East Bay Regional Parks District,” and Impact IV.3: “Pipeline replacement in Martinez may conflict with habitat conservation plans administered by the East Bay Regional Parks District for the Martinez Shoreline Park adjacent to the proposed construction corridor.”

The proposed mitigation should mitigate the potentially significant conflicts to a less than significant level. The proposed mitigation does not assume that all impacts can be resolved by adjusting the timing of construction activities – construction timing was noted as an example of potential measures to avoid conflicts that might be significant. Finally SPBPC will, as discussed in Response to Comment N2 above, have to obtain encroachment permits from the EBRPD prior to construction and can approve or disapprove of the replacement project based on detailed SPBPC plans submitted at that time.

***Response N12***

Please see Master Response 2. The existing pipeline has been subject to frequent maintenance and inspection. This includes using a smart pig every five years to detect and measure pipe-wall deterioration, and to hydro-statically test the line for possible leaks. The most recent test using a smart pig, as well as the latest hydrostatic test, indicated that the pipeline is sound and can be re-activated without the need for repair or modification. The evidence thus indicates that the pipeline is safe to operate.

To minimize any impacts of a possible pipeline leak, a leak detection system was incorporated into the system design. As indicated in the DMND, a possible leak would be detected through a loss in pressure, and remotely controlled isolation valves would respond rapidly to minimize oil loss. The isolation valves are inspected every six months to insure proper function. Therefore, there is an extremely low probability for a spill to occur that could cause significant effects on biological resources.

The nearest valves to Martinez are at Crockett approximately 0.5 mile east of the sugar plant along the railway and at the Shore Terminal station approximately 1.0 mile east of the Shell Refinery. This is considerably closer than the 10-mile distance mentioned in the comment.

***Response N13***

This proposed Mitigated Negative Declaration provides the environmental analysis required for the sale of the Pipeline, and it addresses replacement of the 4,000-foot segment in Martinez as a foreseeable consequence of the sale of the Pipeline (see Master Response 2).

The East Bay Regional Park District's 1997 Master Plan addresses very broad issues, and, in general, does not address, either generally or specifically, lands owned by railroads that pass through parklands, nor does it specifically address easements. The Pipeline project would not, on the basis of 1997 Master Plan policies, nor the Martinez Waterfront Land Use-Development Plan Environmental Impact Report, appear to conflict with the Master Plan. As stated in the DMND, the Pipeline is located underground, and is adjacent to or passes through parklands almost entirely within existing and actively used railroad right-of-ways. As stated in the Master Plan (p. 3):

Public service is the District's primary function. To this end, the Master Plan provides policies and guidelines for achieving the highest standards of service in resource conservation, management, interpretation, public access, and recreation. These policies seek to guide the stewardship and development of the parks in such a way as to maintain a careful balance between the need to protect and conserve resources and the recreational use of parklands for all to enjoy now and in the future.

The following policies referred to by the commentor are listed below. However, because the Pipeline is mostly within railroad right of way areas, these policies may not be applicable to the Project:

**Rare, Threatened, and Endangered Species Management (p. 14):**

The District will identify, evaluate, conserve, enhance, and restore rare, threatened, endangered, or locally important species of plants and animals and their habitats, using scientific research, field experience, and other proven methodologies. Populations of listed species will be monitored through periodic observations of their condition, size, habitat, reproduction, and distribution. Conservation of rare, threatened, and endangered species of plants and animals and their supporting habitats will take precedence over other activities, if the District determines that other uses and activities will have a significant adverse effect on these natural resources.

**Cultural Resource Management (p. 18):**

The District will maintain a current map and written inventory of all cultural features and sites found on park land, and will preserve and protect these cultural features and site "in situ," in accordance with Board policy. The District will evaluate significant cultural and historic sites to determine if they should be nominated for State Historic Landmark status or for the National Register of Historic Places; may acquire cultural and historic resource sites when they are within lands that meet parkland acquisition

criteria; and will maintain an active archive of its institutional history and the history of its parklands and trails.

**Transportation Accessibility** (p. 22):

The District will provide access to parklands and trails to suit the level of expected use. Where feasible, the District will provide alternatives to parking on or use of neighborhood streets. The District will continue to advocate and support service to the regional park system by public transit.

**Open Space Protection** (p. 34):

The District will participate in efforts to protect scenic or cultural resources, develop larger, multi-agency open space preserves, provide recreational opportunities, protect agricultural use, avoid hazards, and plan for appropriate urban growth boundaries. The District will work with other jurisdictions to develop open space preservation plans and policies that recognize the District's public interests in open space preservation and that are consistent with Board policy.

**Liaison with Other Jurisdictions** (p. 35):

The District will work actively with cities, counties, districts, and other governmental agencies to assure that they understand and consider District interests. The District will protect its interests when other jurisdictions plan or approve projects that affect the District and will work with them to develop and articulate mutual goals. The District will seek to understand the perspectives of other governmental agencies and to resolve conflicts in mutually satisfactory ways.

**Regional Shoreline** (p. 44):

A Regional Shoreline (one area or a group of smaller shoreline areas that are connected by trail or water access) must contain a variety of natural environments and manageable units of tidal, near-shore wetland, and upland areas that can be used for scientific, interpretative, or environmental purposes; and/or contain sufficient land and water to provide a variety of recreational activities, such as swimming, fishing, boating, or viewing. The Recreation/Staging Unit providing for public access and services may comprise no more than 30 percent of a Regional Shoreline.

**Development Proposals** (p. 59):

The District will follow established procedures and guidelines consistent with the Master Plan in considering proposals from individuals and groups who wish to develop or use facilities within the parks. It may be necessary to prepare an amended or focused planning or project document before the project can be approved. Fees may be charged to the individual or group proposing the project to cover permit,

environmental, and planning costs. (Please refer to the Concession and Special Use Policy, Appendix, page 72).

**Environmental Compliance** (p. 59):

The District will fully comply with the requirements of the California Environmental Quality Act (CEQA) for the development of new facilities. Evidence of CEQA compliance will be provided in the planning document or separately as a project-specific CEQA document. The District will also comply, when appropriate, with [sic] National Environmental Policy Act (NEPA).

**Undergrounding of Utilities** (p. 59):

New utility lines will be placed underground on land owned, operated, or managed by the District to retain the optimal visual qualities of the area. Rights-of-way and easements for utilities will not be granted without undergrounding. The District will work in cooperation with the utility companies to place existing overhead utilities underground (unless so doing conflicts with applicable codes) as soon as practical and will work with other agencies and neighbors to reduce visual impacts on adjacent lands. The District will seek to avoid the construction of high voltage power lines within the parklands, particularly in areas of sensitive or aesthetically important resources and in preserve areas.

Other policies address potential impacts to parkland from pollutants, but the focus appears to be the potential for storm water pollutants.

In addition, the 1997 Master Plan includes Planning and Management Guidelines that are listed below for public information purposes:

- The District will provide access and staging opportunities for fire prevention, police, maintenance, and public use . . . (p. 53-54);
- The District will strive to expand public shoreline access to a **Regional Shoreline**. Landing or launching spots for small boats will be incorporated when feasible. Except for facilities that must be on the shoreline or over the water surface, the Director will confine all staging and recreational facilities, where possible, to uplands that are a minimum of 100 feet from the actual shoreline. Facilities such as parking that do not depend on water will be located in areas that are screened from view, when practical (p. 56-57).

It should be noted that a Martinez Waterfront Land Use-Development Plan and Environmental Impact Report were adopted in October 5, 1976. Little mention is made of refinery activities in the vicinity, including underground pipelines, other than “[i]mmediately to the east of the site are oil refineries. These refineries and the county administrative center constitute the major economic base of the city” (p. 7). The railroad tracks are acknowledged and the EIR states that the “[t]he on-grade railroad crossing will remain” (p. 10).

***Response N14***

It would not be appropriate to develop a traffic control plan until the final design of the project is completed. As discussed in the Initial Study, the construction contractor shall prepare a traffic control plan in accordance with professional engineering standards prior to commencing construction activities. This traffic control plan would be submitted to applicable jurisdictions for review and approval prior to implementation. Please see Master Response 2.

***Response N15***

Please see Master Response 2. Please also see Figures 1-3 through 1-6, which show the proposed 4,000-foot replacement route. The route would not intersect the new bridge, nor would it intersect the approximately 1,000-foot segment of the Bay Trail referred to by the commentor.

***Response N16***

The project would intermittently and temporarily disrupt use of recreational facilities at the Martinez Regional Shoreline Park for the duration of project construction. However, given the linear nature of the construction route, the duration of noise impacts to the park users would be relatively brief. This means that any disruption of recreational facilities would be limited to a matter of days or weeks. Therefore, this would be a short-term impact on recreational uses. In addition, construction contractors would be required to limit noisy construction activity to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday. No construction would be allowed weekends and holidays to avoid impacts on park users during peak use hours of the park. Mitigation Measure XI.1 is now changed to read as follow:

**“Mitigation Measure XI.1: During construction of the 4,000-foot replacement section in Martinez, the new owner (SPBPC) will implement the following measures:**

- **Require construction contractors to limit noisy construction activity to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday ~~Saturday~~, or more restrictive hours required by permits and ordinances as specified by the City of Martinez.**

Given compliance with this and other measures described under Mitigation Measure XI.1, the impact on park users would be mitigated to a less than significant level. Restrictions to reduce impacts (including noise) of project construction on migratory birds, fisheries and special-status species have been discussed under Responses to Comments N10 and N11.

***Response N17***

The comment is noted.

***Response N18***

Please refer to Response to Comment N2.

***Response N19***

The comment is noted.



**CALIFORNIA STATE LANDS COMMISSION**  
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December 10, 2001

File Ref: PRC 5040

Ms. Billie Blanchard  
California Public Utilities Commission  
c/o Environmental Science Associates  
505 Van Ness Avenue, 4th Floor,  
San Francisco, CA 94102-3298

Ms. Nadell Gayou  
The Resources Agency  
901 P Street  
Sacramento, CA 95814

Dear Ms. Blanchard and Ms. Gayou:

Staff of the California State Lands Commission (CSLC or Commission) has reviewed the Mitigated Negative Declaration (MND), SCH#2001102139, for Pacific Gas and Electric Company's Application to Sell the Richmond to Pittsburg Fuel Oil Pipeline and Hercules Pump Station, and San Pablo Bay Pipeline Company's Application to Own and Operate these Assets. Based on our review of the MND, we offer the following comments.

CSLC Jurisdiction

As general background, upon admission to the Union in 1850, California acquired nearly 4 million acres of sovereign land underlying the State's navigable waterways. Such lands include, but are not limited to, the beds of more than 120 navigable rivers and sloughs, nearly 40 navigable lakes, and the 3 mile wide band of tide and submerged lands adjacent to the coast and offshore islands of the State. These lands are managed by the California State Lands Commission. The CSLC has an oversight responsibility for tide and submerged lands legislatively granted in trust to local jurisdictions (Public Resources Code Section 6301). All tide and submerged lands, granted or ungranted, as well as navigable rivers, sloughs, etc. are impressed with the Common Law Public Trust. A lease from the CSLC is required for any portion of a project extending onto State-owned lands that are under its exclusive jurisdiction.

Based on the information provided, it appears that the proposed project will be located on lands under the CSLC's jurisdiction and a lease from the Commission is required. Please, however, provide a more detailed site specific map of all project components to assist staff of the CSLC in making a more definitive response regarding the CSLC's jurisdiction.

01

Staff of the CSLC is particularly concerned that the MND does not meet the requirements of the CEQA. The MND, page 1-9, states that, "Because SPBPC has not defined in its Application (A.00-12-008) the exact methods to be used, this analysis assumes that the replacement pipeline section will be constructed using standard trenching and boring methods." It further states that, "Thus, this document examines impacts at a general level, based on available information and reasonable assumptions". In order for the document to assess the potential impacts from the proposed project, as required under the California Environmental Quality Act (CEQA), specific project details, impacts and mitigation measures must be known and identified in the environmental document. If the CEQA document cannot provide for full public and agency review at this time, then a supplemental or subsequent CEQA process may be initiated when project description details, potential impacts and mitigation measures have been identified during the CSLC's leasing process.

02

The MND, (front section, without page numbers), under Environmental Determination, states that, "Each of the identified impacts can be mitigated to avoid the impact or reduce it to a less than significant level." The biological resources section, however, states that, "Prior to commencing construction activities, SPBPC shall conduct a biological survey of all work areas that may be affected by construction of the replacement section in Martinez and submit the survey for review and approval by the CPUC mitigation monitor". It is stated that, "The survey shall include a biological assessment of the potential of construction activities to create an adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service". It is stated that, "If the survey reveals that such a potential exists, SPBPC shall conduct a formal consulting process with appropriate resources agencies to address the potential to create a significant impact to listed species". "Based on the consultation process, SPBPC shall implement measures deemed necessary by these agencies to reduce impacts to a less than significant level." Staff of the CSLC questions how a determination can be made, at this time, and that potentially significant project impacts can be mitigated to a less than significant level absent consultation with the resource agencies prior to circulation of the MND. The MND uses this approach in other issues areas listed in the document, as well.

03

The Environmental Checklist, Biological Resource Impact Discussion, acknowledges that numerous rare or endangered plant species and special status wildlife may be found at the project area. It also states that the potential to impact listed species is not fully known without a complete biological survey of the areas potentially affected by construction activities. It further states that, "Mitigation measures, such as

04

Ms. Billie Blanchard  
Ms. Nadell Gayou  
December 10, 2001  
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avoidance of work during critical life stages of potentially affected species, replacement of valuable vegetation for habitat, or soil erosion and sediment transport avoidance, are commonly used and approved by resource agencies to reduce potential adverse effects to less than significant levels to species that might be affected at this site". Again, the mitigation measures proposed are standard mitigation measures that are not specific to the proposed project.

04 cont.

Page I-9, the Construction Schedule and Procedures section states that, "Though neither SPBPC nor PG&E have released details of any construction plans related to the missing section in Martinez, the likely sequence of events for a typical replacement project is as follows:..." Is this a "typical replacement project? Is the location a typical location? Although the document describes general activities that could apply to any given project, it does not provide project methodologies specific to the project at hand, nor does it identify specific site locations where some of the activities will take place. As an example, where will the staging areas be located? Will fueling of equipment and vehicles take place at the staging areas? Has a Spill Contingency Plan been developed?

05

In summary, Sundstrom v. County of Mendocino (202 Cal. App. 3d 296, 307) determined that future "studies" are insufficient mitigation. Instead, it required that detailed information about project effects be provided to agencies and the public. Further, in Citizens for Quality Growth v. City of Mount Shasta (198 Cal. App. 3d 443), it was established that future compliance with regulatory programs of other agencies is insufficient as mitigation. As such, staff of the CSLC believes that the proposed MND is not adequate to meet the requirements of the CEQA. All specific potential impacts and mitigation measures that relate to this project should be identified in the document and circulated for public and agency review. The Mitigation Monitoring Program, as well, should identify, in detail, all mitigation measures proposed to reduce potentially significant impacts to a less than significant level.

06

We appreciate the CPUC's consideration of these comments and apologize for their lateness. For questions regarding the CSLC's jurisdiction, please contact Nanci Smith at (916) 574-1872. For questions regarding content of the Mitigated Negative Declaration, please contact Betty Silva at (916) 574-1872.

Sincerely,

  
Stephen L. Jenkins, Assistant Chief  
Division of Environmental Planning  
And Management

Cc: Nanci Smith  
Betty Silva

## **LETTER O – California State Lands Commission**

### ***Response O1***

Please see Response to Comment H3. In addition, detailed maps have been sent to CSLC for a more definite determination of CSLC jurisdiction and if a CSLC lease will be required for pipeline construction.

### ***Response O2***

Please see Master Response 2.

### ***Response O3***

Please see Master Response 2.

### ***Response O4***

Please see Master Response 2. The analysis of biological resources in the Draft Mitigated Negative Declaration (DMND) reveals reasonably foreseeable impacts to biological resources – the document states definitively on page IV-6:

“Pipeline replacement in Martinez may significantly impact special status animal species protected by State and Federal ESA. Several species could be impacted by habitat alteration or direct displacement along the pipeline replacement corridor.”

### ***Response O5***

Please see Master Response 2.

### ***Response O6***

Please see Master Response 2.