

Staff Report 90

LESSEE/APPLICANT:

Pacific Gas and Electric Company

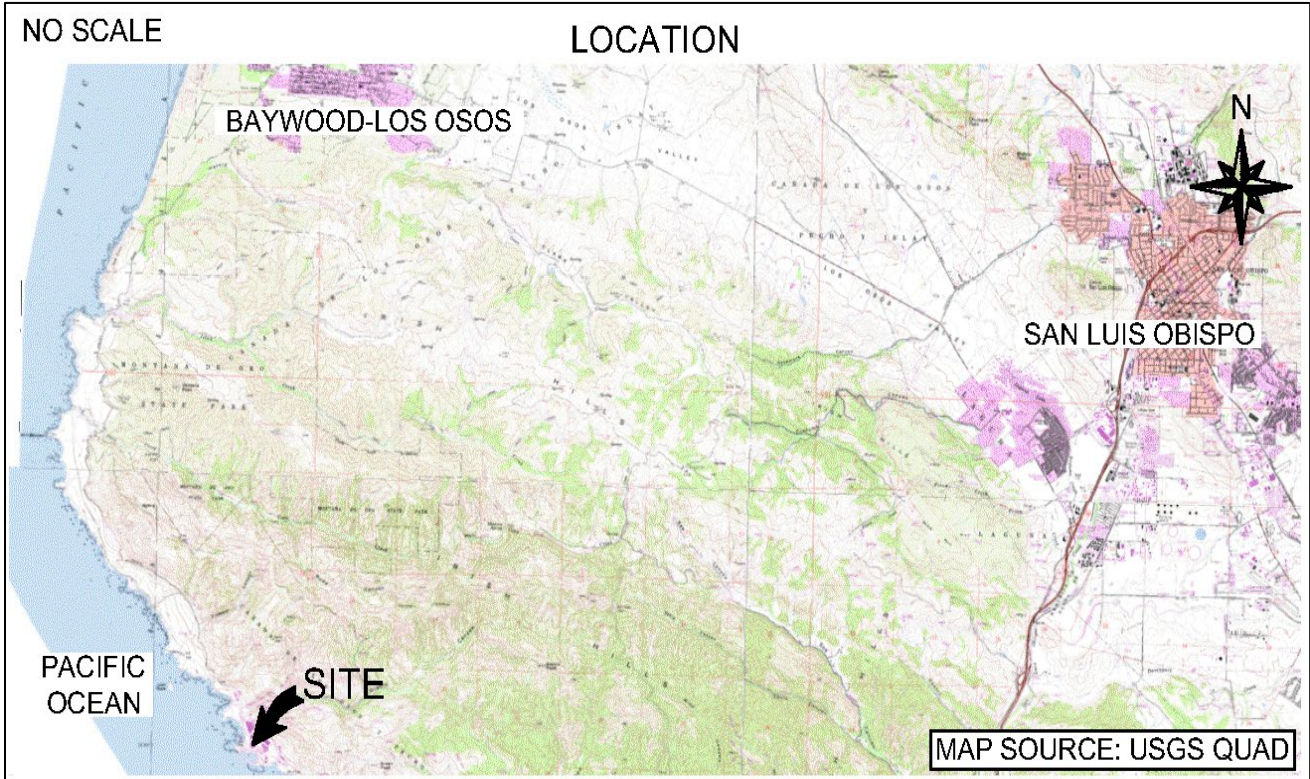
PROPOSED ACTION:

Amendment of Lease

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in and adjacent to the Pacific Ocean, near Avila Beach, San Luis Obispo County (as shown in Figure 1).

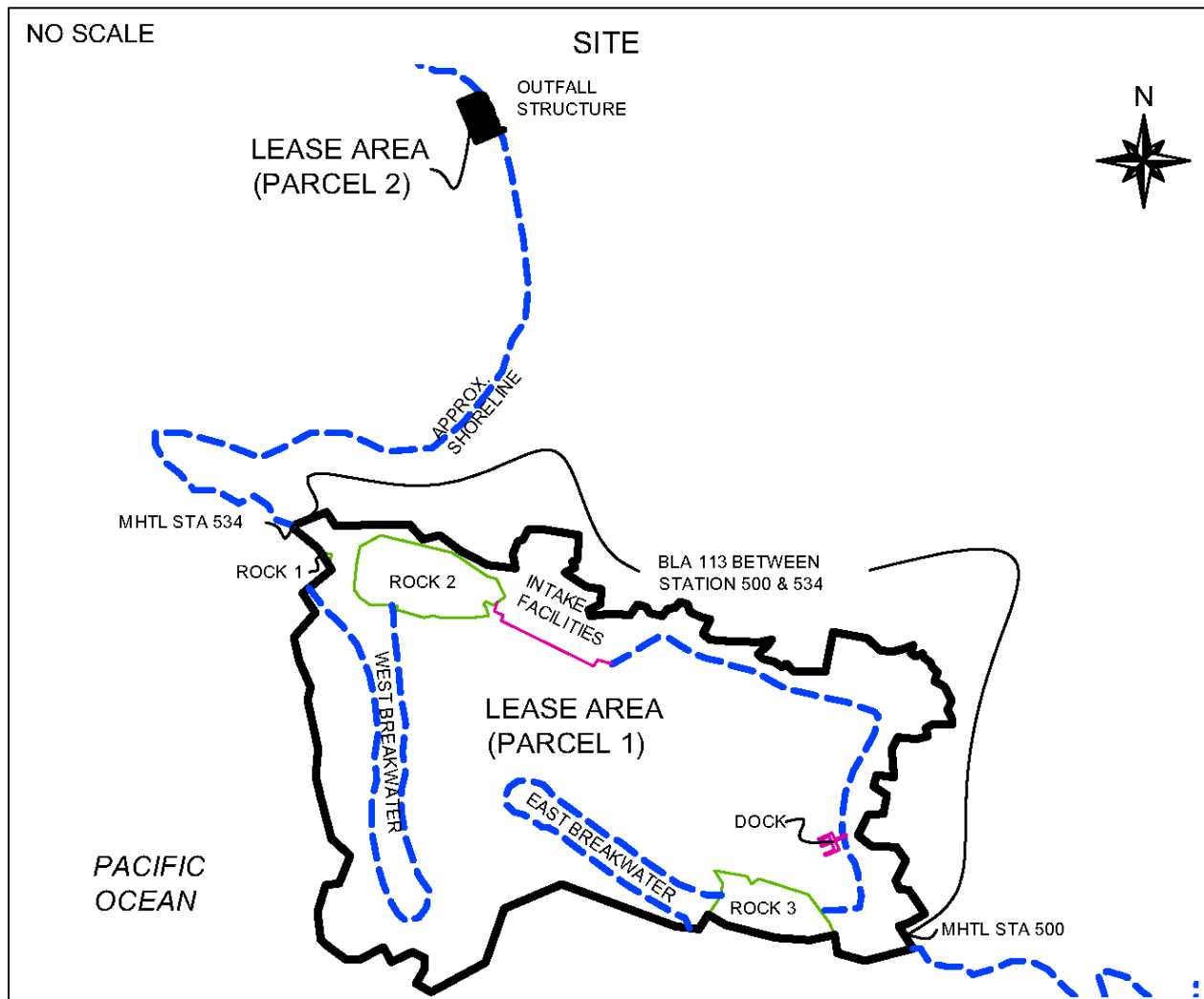
Figure 1. Location



AUTHORIZED USE:

Use of an existing cooling water discharge channel, water intake structure, breakwaters, boat dock, storage facility, office facilities, intake electrical room, intake maintenance shop, equipment storage pad, and spare tri-bar storage associated with the Diablo Canyon Power Plant (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

9 years, beginning June 28, 2016, and ending August 26, 2025.

CONSIDERATION:

\$279,450 per year, with an annual Consumer Price Index adjustment. Rent for 2023/24 invoiced at \$361,269.67.

PROPOSED AMENDMENT:

- Section 1, Term, ending date is amended from August 26, 2025, to October 31, 2030.
- Section 1, Surety Bond or Other Security amount is amended to \$70,000,000.
- Section 2, Special Provisions, Paragraph 5(iii), is amended to change the submittal date for a proposed plan for the restoration of the Lease Premises from August 26, 2023, to August 26, 2028.
- Section 2, Special Provisions, Paragraph 1, is deleted in its entirety and replaced with the following:
 1. Section 3, Paragraphs 15 (b) and (c), are deleted in their entirety and replaced with the following:
 - b. The Parties agree that Lessee will not continue operation of the Diablo Canyon Power Plant past October 31, 2030. Lessee also expressly disclaims any rights of holdover with respect to the Lease Premises.
 - c. Consistent with SB 846, and Paragraphs 5 (c), 5 (d), 7, and 12 of Section 3 of this Lease, in the event that any conditions of SB 846 required for the extension of operations or for the maintenance of the Department of Water Resources loan pursuant to Public Resources Code, section 25548.3 are not met, or if the California Energy Commission determines that extended operations are not the most cost-effective alternative pursuant to Public Resources Code, section 25233.2, such circumstance shall immediately ~~and without further notice~~ constitute a default of this Lease.
 - d. Notwithstanding Paragraph 12 (b) of Section 3 of this Lease, Lessee shall have 120 ~~60~~ days to commence a cure of such default by submitting an application for a new or amended lease for use of the Lease Premises consistent with a Decommission and Restoration Plan and with Section 2, Paragraph 5, of this Lease, to be considered by the Commission at a properly noticed public meeting.

Section 2, Special Provisions, Paragraph 2 is deleted in its entirety and replaced with the following:

Consistent with SB 846 and with the goals of maximizing reliability, minimizing interruptions to the Diablo Canyon Power Plant's generation of electricity, and minimizing the need for costly purchases of replacement electricity prior to decommissioning of the Plant, Lessee is required to conduct an updated seismic assessment under SB 846 (Pub. Resources Code, § 25548.3 (c)(13)). Within 60 days of the release of the updated seismic assessment, Lessor may direct Lessee to provide to Commission staff a written analysis of preventive actions, if any, to remediate any newly identified seismic vulnerabilities of the facilities within the Lease Premises.

- ~~2. Consistent with SB 846 and with the goals of maximizing reliability, minimizing interruptions to the Diablo Canyon Power Plant's generation of electricity, and minimizing the need for costly purchases of replacement electricity prior to decommissioning of the Plant, Lessee agrees:
 - ~~a. The updated seismic assessment that Lessee is required to conduct under SB 846 (Pub. Resources Code, § 25548.3 (c)(13)) shall include all facilities within the Commission's jurisdiction, including but not limited to the intake structure and electrical room, the cooling water discharge structure and channel, and breakwaters, and shall analyze any risk of prolonged plant outage posed by potential seismic vulnerabilities of all facilities within the Lease Premises.~~
 - ~~b. Within 60 days of the release of the updated seismic assessment, Lessee shall provide to Commission staff a written analysis of preventive actions to remediate any identified seismic vulnerabilities of the facilities within the Lease Premises. This may be included as part of the updated seismic assessment or may be a separate document integrating the findings of the updated seismic assessment. Consistent with Section 3, Paragraph 5 (a)(2), 5 (c), 7, and 12 (a)(5) of this Lease, if such preventive actions are required by other State, federal, or local agencies, Lessee shall comply with such requirements as a condition of this Lease.~~~~

- Section 2, Special Provisions, Paragraph 6 is deleted in its entirety and replaced with the following:
 6. Regarding a Decommission and Restoration Plan and/or application for a new or amended lease submitted by Lessee to the Commission, the Lessee:

- a. Shall be responsible, and fully reimburse the Commission, for all costs and expenditures paid or incurred by the Commission, its staff, and consultants, for approval of any plan and/or application for a new or amended lease, and, prior to such approval, review of the plan, application, and materials necessary to evaluate them and their effect on the Public Trust and best interests of the State. Such review may include but is not limited to any review or preparation of reports or other documents, or other actions as required pursuant to the California Environmental Quality Act (CEQA);
 - b. Shall not challenge the Commission's determination of whether an environmental impact report (EIR) is required under CEQA before the Decommission and Restoration Plan and/or application for a new or amended lease may be approved; provided, however, that PG&E's agreement not to challenge the decision whether to prepare such EIR shall not constitute a waiver of its right to pursue a legal challenge to any other aspects of the Commission's determination.
- Amend Section 2, Special Provisions, to include the following:
 7. Lessee acknowledges and agrees:
 - a. The site may be subject to hazards from natural geophysical phenomena including, but not limited to waves, storm waves, tsunamis, earthquakes, flooding, and erosion.
 - b. To unconditionally waive any claim or damage or liability against the State, its agencies, officers, agents, and employees for injury or damage from such hazards.
 - c. To indemnify, hold harmless and, at the option of the Lessor, defend the State, its agencies, officers, agents, and employees, against and for any and all liability, claims, demands, damages, or injuries or costs of any kind and from any cause (including costs and fees incurred in the defense of such claims), expenses, and amounts paid in settlement arising from any alleged or actual injury, damage, or claim due to site hazards or connected in any way with respect to this property or issuance of this Lease, any new lease, renewal, amendment, or assignment by Lessor.
 - Amend Section 2, Special Provisions, to include the following:

8. Lessee acknowledges that the Lease Premises and adjacent upland are located in an area that may be subject to effects of climate change, including sea-level rise. To prepare for the potential effects of sea level rise, including but not limited to flood damage, erosion damage, tsunamis, and damage from waves and storm-created debris, the Lessee acknowledges and agrees to the following:
 - a. Hazards associated with sea level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.
 - b. Consistent with Section 3, Paragraph 5(c) (Repairs and Maintenance) and Paragraph 8 (Indemnity), the Lessee assumes the risks associated with such potential hazards and agrees to be solely responsible for all damages, costs, and liabilities arising as a result of the impacts of such hazards on the Lease Premises. Any additional maintenance or protection strategies necessitated by such hazards may require additional approval by Lessor pursuant to Section 3, Paragraph 5(a) and be subject to environmental review.

All other terms and conditions of the lease to remain in effect without amendment.

BACKGROUND:

Pacific Gas & Electric Company (PG&E) owns and operates the Diablo Canyon Power Plant (DCPP), California's last operating nuclear power plant. PG&E completed construction of the 2,240-megawatt DCPP in 1973 and has operated the facility since 1985. DCPP contains two reactors that have been operating since 1985 (Unit 1) and 1986 (Unit 2). The units are currently licensed by the United States Nuclear Regulatory Commission (NRC) to operate until November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2).

On June 28, 2016, the Commission authorized termination of Lease Nos. PRC 4307.1 a General Lease – Right-of-Way Use, and PRC 4449.1, a General Lease – Industrial Use, and issuance of a General Lease – Industrial Use, Lease No. PRC 9347.1, to PG&E for use of an existing cooling water discharge channel, water intake structure, breakwaters, and associated infrastructure at the DCPP ([Item 96, June 28, 2016](#)).

On April 29, 2020, the Commission authorized an amendment of the lease to change the deadline by which PG&E must submit a proposed restoration plan for the Lease Premises from August 26, 2020 to August 26, 2023 ([Item 52, April 29, 2020](#)). The lease will expire on August 26, 2025.

PG&E has submitted an application requesting a 5-year lease term extension for continued use of the water intake structure, breakwaters, cooling water discharge channel, and other structures on state land associated with the DCP.

UNITED STATES NUCLEAR REGULATORY COMMISSION (NRC)

The NRC regulates commercial nuclear power plants and other uses of nuclear materials and has regulatory authority over the radiological safety aspects of nuclear power plants, including DCP. In 2009, PG&E submitted an application to the NRC requesting renewal of its NRC operating licenses for the DCP's Units 1 and 2. In 2018, PG&E requested that the application be withdrawn subsequent to the CPUC's approval of DCP retirement. On January 24, 2023, the NRC denied PG&E's request to resume review of the DCP license renewal application withdrawn by PG&E in 2018. The NRC stated that it was still considering PG&E's parallel request for an exemption from the NRC requirement to file a renewal application at least 5 years before expiration of the existing license. That exemption request was granted by the NRC on March 2, 2023. The [exemption](#) will allow PG&E to continue operating both units at DCP past their current licenses while the License Renewal Application (LRA), which is due no later than December 31, 2023, is under review. On May 3, 2023, NRC staff presented an [overview](#) of reactor oversight and license renewal processes at a public meeting in San Luis Obispo.

SB 846

On September 2, 2022, Governor Gavin Newsom signed [Senate Bill \(SB\) 846](#) (Dodd, Chapter 239, 2022). The bill authorizes the extension of DCP operations beyond the current NRC license dates, to up to 5 additional years (no later than 2029 and 2030, respectively), under specified conditions. The bill also authorizes a loan of \$1.4 billion from the state to PG&E, to facilitate DCP operational extension. The bill provides expedited permitting to facilitate DCP relicensing, including limiting state agency review of applications related to the DCP extension to 180 days, and exempting DCP from the California Environmental Quality Act (CEQA).

UNITED STATES DEPARTMENT OF ENERGY (DOE)

On November 21, 2022, the DOE [announced](#) the conditional selection of the DCP to receive the first round of funding from the Civil Nuclear Credit (CNC) Program. The \$1.1 billion grant would assist PG&E with continued DCP operation. Final terms are subject to negotiation and finalization by DOE.

STATE AGENCIES

- As required by SB 846, the CPUC began a new rulemaking to implement SB 846 in January 2023 ([R.23-01-007](#)). In February, the California Energy Commission (CEC) approved its [Final Draft Analysis of Need to Support Reliability](#), recommending the State pursue extension of DCPD operations through 2030 to ensure electricity reliability, based on data and analysis indicating risks of energy supply shortfalls during extreme weather events driven by climate change. The analysis was required by SB 846. Later this year, as required by SB 846, CEC will perform a cost comparison of extended DCPD operations versus accelerated deployment of alternatives, and the CPUC will perform a reliability analysis to inform its determination on the extension by the end of this year. The CEC also approved a [Clean Energy Reliability Investment Plan](#) as required by SB 846. Its purpose, as stated in the legislation, is to plan investments in “programs and projects that would accelerate the deployment of clean energy resources, support demand response, assist ratepayers, and increase energy reliability.” The plan provides recommendations for \$1 billion in investments for clean energy resources as allocated by SB 846 over three years from 2023-2026. The CPUC is expected to establish new retirement dates for DCPD in December 2023.
- Under SB 846, the California Natural Resources Agency (CNRA) plays a coordinating role among several state agencies. As required by the legislation, it prepared a [Detailed Description and Plan of Actions Needed to Extend Operations](#), held a [public informational listening session](#) in San Luis Obispo on February 10, 2023, and recently issued a [Land Conservation and Economic Plan \(the Plan\)](#) for consideration in future decommissioning plans.
- The California Coastal Commission is anticipated to act on the Coastal Zone Management Act consistency determination in 2024.
- In January 2023, the State Water Resources Control Board (Water Board) issued a [draft amendment](#) to its Once-Through Cooling Policy to extend DCPD’s compliance date to October 31, 2030. The Water Board regards this as a non-discretionary change without regulatory effect to make the policy consistent with the compliance date extended by the Legislature in SB 846. (For additional discussion, see “Once-Through Cooling” below under the heading Public Trust and State’s Best Interests.)
- The Central Coast Regional Water Quality Control Board is anticipated to act in 2026, on the revised National Pollutant Discharge Elimination System (NPDES) permit application.

- The State Lands Commission's consideration of the proposed lease amendment is occurring now, relatively early in the process, because proof of site control is required for other necessary permits and approvals for extension of operations.

2016 JOINT PROPOSAL

On June 20, 2016, PG&E, Friends of the Earth, Natural Resources Defense Council, Environment California, International Brotherhood of Electrical Workers Local 1245, Coalition of California Utility Employees, and the Alliance for Nuclear Responsibility (parties) entered into a settlement agreement related to the closure of the DCPD (Joint Proposal). The Commission was not a party to the agreement.

The Joint Proposal discussed, and the parties agreed to, the Commission's issuance of a lease for operations until August 2025. The Commission provided a brief overview of the 2016 Joint Proposal in the staff report for Lease No. PRC 9347.1 ([Item 96, June 28, 2016](#)). The lease approval described in the Joint Proposal was authorized by the Commission on June 28, 2016, and was carried out as described in the Joint Proposal.

On April 11, 2023, Friends of the Earth filed a [lawsuit](#) seeking declaratory relief to clarify the rights and duties of the parties under the Joint Proposal and to enjoin PG&E from extending operations.

SB 846 includes provisions supporting and continuing Joint Proposal initiatives, including:

- A requirement that the CPUC ensure completion of funding for the Joint Proposal's Community Impacts Mitigation Program
- Commits funding for the Land Conservation and Economic Development Plan supporting "environmental enhancements and access of Diablo Canyon powerplant lands and local economic development . . . consistent with existing decommissioning efforts", including the Joint Proposal's Community Impacts Mitigation Program and the Employee Retention Program, and the avoidance of "any increase in emissions of greenhouse gases" due to decommissioning. As required by SB 846, the Plan was developed by CNRA "in consultation with Labor and Workforce Development Agency and the Governor's Office of Business and Economic Development." The [Plan](#) was released by CNRA on May 12, 2023. The funding committed by SB 846 includes:
 - \$10 million in 2023-2024 fiscal year
 - \$50 million in 2024-2025 fiscal year

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

Pursuant to SB 846, "... the Diablo Canyon powerplant site, and all structures, buildings, and equipment at the site or necessary to extend operations at the site, shall conclusively be deemed an existing facility or existing facilities under Section 15301 of title 14 of the California Code of Regulations and not subject to any exception under Section 15300.2 of title 14 of the California Code of Regulations, in any agency or judicial proceeding." (Pub. Resources Code, § 25548.2, subd. (b).) Therefore, the proposed lease amendment is exempt from CEQA.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

ONCE-THROUGH COOLING (OTC)

The DCPP utilizes an OTC water system for operations whereby seawater is drawn from the Pacific Ocean through the shoreline Intake Structure and is used to cool plant components. Seawater is then discharged back to the Pacific Ocean at the Discharge Structure. Total OTC flow during routine full power operations is 1,772,000 gallons per minute (gpm), equivalent to 2.5 billion gallons of seawater circulated per day.

A seawater reverse osmosis treatment system provides the majority of freshwater for DCPP's primary and secondary systems makeup, fire protection system supply water, and source water for the DCPP drinking water system supply. The seawater reverse osmosis is supplied with raw seawater drawn from the OTC system intake and has the capacity to produce 450 gpm of freshwater, equivalent to 648,000 gallons of water per day.

The California State Water Resources Control board (Water Board) adopted a [Once-Through Cooling Policy](#) (as last amended on October 19, 2021 and effective as of December 23, 2021), which specifies state policies with respect to water quality to protect the coastal marine environment. The policy requires new or expanded coastal powerplants and other industrial installations using seawater for cooling, heating, or industrial processing to use the best available site, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life. SB 846 extends the operation of those and related provisions until 18 months after the permanent cessation of DCPD operations. SB 846 also specifies that the final compliance date of the OTC policy for the DCPD is October 31, 2030. On January 31, 2023, the Water Board released a [draft staff report and draft amendment](#) to the water quality control policy on the use of coastal and estuarine waters for power plant cooling. A public hearing was held on March 7, 2023. The Water Board indicated that the OTC compliance date for DCPD is extended to 2030 and is treated as a change made by the Legislature ([SB 846](#)) with no decision or action to be made by the Water Board.

There are impacts to marine life due to the impingement and entrainment associated with OTC; however, the OTC Policy enforced by the Water Board appropriately regulates these impacts, protecting Public Trust resources. As stated in the 2015-2016 Final Determination for DCPD, PG&E elected to comply with interim mitigation requirements in Section 2.C(3)(b) of the OTC Policy. Under this option, PG&E demonstrates compliance with the interim mitigation requirement by providing funding to the Ocean Protection Council or State Coastal Conservancy to fund appropriate mitigation projects. The interim mitigation period commenced on October 1, 2015, and continues up to and until PG&E achieves final compliance with the OTC Policy. The annual interim mitigation payment is the sum of three components: an entrainment payment using a facility-specific fee, an impingement payment, and a management and monitoring payment. The interim mitigation payment for DCPD for the operating period of October 1, 2020, through September 30, 2021, was \$4,356,867.

RENEWABLE ENERGY AND ELECTRICITY GRID RELIABILITY

The DCPD currently provides approximately 17 percent of California's zero-carbon electricity supply and 8.6 percent of California's total electricity supply. According to the CEC, preserving the option of continued operations of the DCPD for an additional 5 years beyond 2025 is necessary to improve statewide energy system reliability, reduce the risk of brown-outs during high demand periods, and reduce the emissions of greenhouse gases while additional renewable energy and zero-carbon resources come online, and until those new renewable energy and zero-carbon resources are adequate to meet demand.

In March 2023, the CEC released the [DCPP Extension-Draft CEC Analysis of Need to Support Reliability](#). The analysis was prepared pursuant to SB 846 to determine whether the state's electricity forecasts for 2024 through 2030 show potential for reliability deficiencies if DCPP operations are not extended beyond 2025 and whether extending operations to at least 2030 is prudent to ensure reliability and consistency with the state's emission reduction goals. The analysis is based on a CEC assessment of the state's electricity reliability based on forecasted demand and supply for the 2024 to 2030 period. CEC staff recommended that it is prudent for the state to pursue extension of DCPP. "This determination is driven by the risk that sufficient electricity resources may not be built in time to reach the ordered procurement and to address potential grid demands in extreme heat events associated with climate change." The CEC will conduct additional analysis this year to further inform the final report and CEC determination, including a cost comparison of extending DCPP to developing alternative resources and a reliability analysis. The CEC will make a determination on the DCPP extension by December 31, 2023.

Regardless of whether operations at DCPP are extended beyond 2025, the state will continue to act with urgency to bring clean renewable energy online to support reliability and achieve California's landmark climate goals. The state is accelerating efforts to bring offshore wind and other zero-carbon energy resources online, including action to streamline permitting for zero-carbon energy projects.

The extended operation of the DCPP through 2030 will allow PG&E to continue contributing zero-carbon electricity to California's total electricity supply. The CPUC may ultimately issue an order that reestablishes the current expiration dates (2024 and 2025) as the DCPP retirement date, or that establishes new retirement dates, if the CPUC determines that new renewable energy and zero-carbon resources that are adequate to substitute for the DCPP and that meet the state's planning standards for energy reliability have already been constructed and interconnected by the time of its decision in December 2023.

SEISMIC STABILITY

The Central Coast Ranges are a product of tectonic forces, including folding, faulting, and uplift, that continue to influence the geologic and topographic features of the region. In turn, weathering of these features and tectonic activity have resulted in erosion and deposition of sediments in the Project area. No active faults or Alquist-Priolo zoned faults cross or are in the immediate vicinity of the DCP. The offshore Shoreline fault is the closest fault to the DCP site; however, little is known about the geometry and activity of this fault. While numerous earthquakes of up to magnitude (M) 4.0 commonly occur throughout the region, larger earthquakes are somewhat rare. Only two earthquakes of M5.0 or greater have occurred within 50 miles of the DCP, with only one of those greater than M6.0.¹ The largest earthquake to occur near the Project area was the offshore 1927 M7.1 Lompoc Earthquake, which caused little damage due to the sparse population onshore near the earthquake at the time².

Landslides triggered by earthquakes have been a significant cause of regional earthquake damage. The DCP is located within an area of moderate to steep slopes, and landslides have been mapped throughout the hills over time. An assessment of seismic slope stability was conducted for numerous areas throughout the DCP to determine where landslides could impact key structures.³ The assessment revealed that while small slumps, mudslides, and rock topples may occur in an earthquake, none of the DCP structures/facilities would be negatively impacted by these slope failures.

SB 846 requires PG&E to conduct an updated seismic assessment and includes loan repayment triggers in the event PG&E fails to disclose any known safety risk, seismic risk, environmental hazard, or material defect that would disqualify any PG&E applications for grants or funds for DCP operation from a DOE funding program, or otherwise disallow or substantially delay any necessary permitting or approvals necessary for the DCP operating extension. Additionally, the CPUC may determine, in its discretion, that the costs of any upgrades necessary to address seismic safety are too high to justify incurring, or if the NRC's conditions of license renewal require expenditures that are too high to justify incurring. The CPUC may issue an order that reestablishes the current expiration dates of 2024 and 2025 as the retirement dates or establishes new retirement dates that are earlier than 2029 and 2030.

¹ [USGS Earthquake Hazards Program draft Decommissioning EIR, 2022](#)

² [Southern California Earthquake Data Center \[SCEDC\], 2022](#)

³ (Assessment of Slope Stability Near the Diablo Canyon Power Plant. April. pp. 10-85.) PG&E, 1997

The [Diablo Canyon Independent Safety Committee](#) (DCISC) is a three-person Committee charged with reviewing and making recommendations concerning the safety of operations at DCP. The DCISC was created by the CPUC, has held meetings since 1990, and issues [annual reports](#) on safety of plant operations. SB 846 requires the DCISC to review the seismic safety of the DCP facilities and to update studies related to earthquake faults near the plant. The DCISC's next public meeting will be [June 28-29, 2023](#). The DCISC website links to videos and agendas from [past public meetings](#).

Additionally, the [Diablo Canyon Independent Peer Review Panel](#) (IPRP), which is overseen by the CPUC, consults with the DCISC about the safety of the DCP operations during the current DCP NRC license period and safety-related issues associated with continued operations.

The NRC has specific requirements for the design, construction, and operation of nuclear power plants to ensure they can withstand an earthquake. The NRC's seismic regulations are based on the safe shutdown ground motion, or the level of vibration safety-related structures and equipment at a plant must endure during a seismic event and still function. The NRC requires that structures, systems, and components important to safety be designed to withstand the effects of natural phenomena such as earthquakes and tsunamis without loss of capability to perform their safety functions.

CLIMATE CHANGE:

Climate change impacts, including sea level rise, more frequent and intense storm events, and increased flooding and erosion, affect open coastal areas in California. The lease area is located in San Luis Obispo County, in a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea level rise.

The California Ocean Protection Council updated the *State of California Sea Level Rise Guidance* in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the "high emissions," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The Port San Luis tide gauge was used for the projected sea level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea Level Rise for Port San Luis

Year	Projection (feet)
2030	0.7
2040	1.2
2050	1.8
2100	6.7

Source: Table 19, [State of California Sea-Level Rise Guidance: 2018 Update](#)

Note: Projections are with respect to a 1991 to 2009 baseline.

As stated in [Safeguarding California Plan: 2018 Update](#) (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea level rise). The combination of these conditions will likely result in increased wave run up, storm surge, and flooding in coastal areas. Climate change and sea level rise will further influence coastal areas by changing erosion and sedimentation rates as beaches and coastal landscapes are exposed to increased wave force.

With the exception of the Discharge Structure, Intake Structure, Marina, and Breakwaters, the DCPD site is set back from the coast on average 60 feet from the cliffs with elevations ranging from 60 to 150 feet above mean sea level (MSL). The lower level (power block) is at 85 feet above MSL, and the upper level (where the Independent Spent Fuel Storage Installation is located) is at an elevation of approximately 310 feet above MSL, all well above projected sea level rise. Therefore, direct flooding of the main DCPD site due to sea level rise would not occur. In addition, because DCPD structures are set back from the coast and set higher than projected sea level rise, they would not be affected by sea level rise-exacerbated erosion.

The Discharge Structure, Intake Structure, Marina (and boat dock), and Breakwaters are located along the coast are also unlikely to be affected by sea level rise by 2030. The Intake Structure, Marina, and the surrounding road elevations are approximately 20 to 25 feet above MSL. The elevation of the Breakwaters is approximately 18 to 20 feet above MSL. Given a local mean higher high water (MHHW) of approximately 5.3 feet above MSL, and a 0.5 percent probability of sea level rise exceeding 0.7 feet by 2030, the resulting 2030 MHHW would be approximately 6 feet above MSL, which is at least 12 feet below the roadway, and crest elevations of the Breakwaters. Therefore, the chance of waves overtopping the Breakwaters (resulting in the Breakwaters being less effective) would not be considerably increased. Likewise, direct effects from flooding, due to sea level rise would not be notably increased by 2030.

Regular monitoring and maintenance, as referenced in the lease, may reduce the likelihood of structural degradation. Pursuant to the proposed lease amendment, the Applicant acknowledges that the lease premises are located in an area that may be subject to the effects of climate change, including sea level rise.

TRIBAL CONSULTATION

In keeping with the Commission's Strategic Plan, Environmental Justice Policy, and Tribal Consultation Policy, which stress the importance of early, frequent, and meaningful engagement with tribal governments, Commission staff reached out to geographically and culturally affiliated tribes in April 2023. The Native American Heritage Commission (NAHC) provided a Sacred Lands File search (negative results) and a Native American Contact list on March 7, 2023. The Commission's Tribal Liaison sent letters to notify the tribes of the proposed lease amendment on April 14, 2023. The Tribal Chair for the yak tityu tityu yak tithini Northern Chumash Tribe requested a copy of the lease application. Staff provided the requested information and offered the opportunity to meet. Staff received a comment letter from the Santa Ynez Band of Chumash Indians stating that the DCP "office building needs to be carefully examined for asbestos, lead paint, earthquake resilience and other updates under current and future building and safety codes. The building needs to be fully repaired or fully demolished before any transfer of ownership." The Tribe "acknowledge that Diablo is necessary to maintain the existing electrical grid. Eventually, with the successful construction and operation of off-shore wind turbines, Diablo should be closed to allow such off shore wind to use the existing Diablo electrical distribution systems. This may take longer than five (5) years." The Tribal Chair for the Northern Chumash Tribal Council requested a meeting to discuss certain stipulations about the land, specifically the tribal lands transfer and access to the sites. Staff also received an email from the Tribal Administrator for the Salinan Tribe of San Luis Obispo and Monterey Counties with similar concerns about the ancestral land return. Staff responded via email indicating that the ancestral lands return and access to the sites would be considered under SB 846 and tribal consultation for SB 846 is being led by CNRA's Assistant Secretary for Tribal Affairs. Staff continues to work with the Tribal Chair for the Northern Chumash Tribal Council to schedule a meeting.

In accordance with SB 846, on January 19, 2023, CNRA sent tribal consultation emails to geographically and culturally affiliated tribes. As part of that effort, Commission staff participated in a joint tribal consultation meeting on February 1, 2023, with CNRA and the California Coastal Commission. These consultation meetings are an ongoing effort, and Commission staff will continue coordinating with CNRA and other partner agencies.

ENVIRONMENTAL JUSTICE:

Consistent with the Commission's Environmental Policy, staff reviewed environmental justice data and concluded that neither of the Census Tracts (116 and 130) within 5 miles of the DCPD site are impacted by cumulative pollution burdens. Although not significant, the pollution burdens for both Census Tracts include hazardous waste, groundwater threats, and impaired waters. The data also showed the area does not contain low-income populations or minority populations substantially greater than that of either San Luis Obispo County or California as a whole. The primary industry of employment within Census Tract 116 is education and health care services, while the primary industry of employment within Census Tract 130 is entertainment, recreation, and food services, with both the retail trade and agricultural/mining sectors also being primary employers.

As part of an environmental justice outreach and engagement effort, staff sent emails to environmental justice organizations in San Luis Obispo County, providing notification of the proposed lease amendment and requesting input. The emails included a brief description of the lease renewal and conveyed a desire to learn from the perspectives of the local community. Commission staff sent follow-up emails and phone calls to the environmental justice organizations; however, staff did not receive any feedback from the organizations it reached out to. Ongoing activities at the DCPD site are not anticipated to affect environmental justice communities.

CONCLUSION:

The facilities at DCPD have existed for nearly 50 years. The intake structure, discharge channel, and other infrastructure on state lands directly support operations at DCPD. If the conditions of SB 846 are met and DCPD continues operations beyond 2025, the facilities will continue to support a critical public service of supplying nearly 10 percent of California's electricity generation.

The proposed lease amendment contains revised lease special provisions that provide for the Commission's continuing supervisory control over the Public Trust lands leased to PG&E. Additionally, the existing bond has been increased from \$1 million to \$70 million to adequately cover the cost of removing the authorized improvements. The proposed lease term extension is limited to five years, expiring on October 31, 2030, does not alienate the State's fee simple interest, and does not grant the lessee exclusive rights to the lease premises. The lease requires the lessee to insure and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent.

For all the reasons above, staff believes the issuance of this lease amendment will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease term extension; is otherwise consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the amendment, the Applicant would have no right to occupy the lease premises beyond August 26, 2025. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism," "Prioritizing Social, Economic, and Environmental Justice," Partnering with Sovereign Tribal Governments and Communities," "Meeting Evolving Public Trust Needs," and "Committing to Collaborative Leadership" Strategic Focus Areas of the Commission's 2021- 2025 Strategic Plan.
3. In 2021, PG&E filed a land use permit application and additional informational supplements to the County of San Luis Obispo (County) for the planned DCPD decommissioning. In October 2021, the County filed a Notice of Preparation and Notice of Scoping Meeting for the preparation of an Environmental Impact Report (EIR) for the Diablo Canyon Power Plant Decommissioning Project (DCPD Decommissioning Project). The County is the Lead Agency under CEQA for the preparation and review of the DCPD Decommissioning Project EIR. Commission staff have been closely involved with the County and other State agencies during the DEIR process. The County anticipates release of the Draft EIR for public review in 2023.

4. Commission staff has received public comments regarding the generic radiological remediation standard required by the NRC prior to termination of a nuclear power plant Part 50 operating license, and proposing that the State impose a lower generic remediation standard to be required after termination of the plant's NRC Part 50 operating license. Consistent with its roles as trustee of State sovereign lands and as a CEQA responsible agency on the upcoming EIR for plant decommissioning, the Commission is working to better understand and explore the NRC standard and any proposed variation to it. Future decommissioning activities will address the questions around the imposition of the NRC radiation remediation standards and are subject to additional Commission consideration and authorization at a publicly noticed meeting.
5. Regarding local planning for the future of the site post-decommissioning, in May 2022, the San Luis Obispo Board of Supervisors unanimously agreed to sign onto a [multistakeholder vision](#) for a cleantech innovation hub at the site.
6. Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Public Resources Code section 25548.2, subdivision (b), and Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

APPROVAL OBTAINED:

Central Coast Regional Water Quality Control Board

APPROVALS REQUIRED:

United States Nuclear Regulatory Commission
California Coastal Commission
California Public Utilities Commission

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to Public Resources Code section 25548.2, subdivision (b), and California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease amendment will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is otherwise consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize the amendment of Lease Number 9347, a General Lease – Industrial Use, effective June 5, 2023, to extend the lease term to October 31, 2030; amend the bond or other security to \$70 million; and modify the Lease Special Provisions substantially in the form described in the “Proposed Amendment” portion of this Staff Report, concerning the lands described in Figure 2 (for reference purposes only); all other terms and conditions of the lease will remain in effect without amendment.