

SECTION 5

COMMENTS AND RESPONSES

CHAPTER 5

COMMENTS AND RESPONSES

5.1 INTRODUCTION

A total of eight comment letters were received from various agencies and organizations in response to the Draft Mitigated Negative Declaration (MND) for Pacific Gas and Electric Company's (PG&E) Richmond-to-Pittsburg Pipeline Divestiture (Application Numbers 00-05-035 and 00-12-008).

5.2 LIST OF COMMENT LETTERS RECEIVED

The comment letters received on the Draft MND are listed below in order of their arrival. Each comment letter has been assigned a corresponding alphabet letter designation. The agencies, organizations, and individuals that sent letters are listed below in **Table 5-1**. In addition to the comment letters on the Draft MND, there were three letters received from the State Lands Commission, the East Bay Regional Park District, and Best Best & Krieger (PG&E) regarding follow up information related to the Draft MND comments (see Appendix D). Further, confirmation correspondence was received from the Contra Costa County Clerk and the Governor's Office of Planning and Research State Clearinghouse (see Appendix E).

**TABLE 5-1
LIST OF COMMENTERS**

Letter #	Commenter	Date
A	Louis M. Meunier	December 4, 2004
B	East Bay Regional Park District	December 15, 2004
C	California Department of Toxic Substances Control	December 17, 2004
D	City of Martinez	December 20, 2004
E	Best Best & Krieger for Pacific Gas & Electric Company, ConocoPhillips Company, Santa Clara Valley Housing Group, and Shell Pipeline Company LP	December 23, 2004
F	Pillsbury Winthrop for Chevron U.S.A. Inc.	December 27, 2004
G	San Francisco Bay Conservation and Development Commission	December 27, 2004
H	State of California Department of Transportation	January 6, 2005

5.3 RESPONSES TO COMMENTS

This section contains responses to all of the substantive comments received on the Draft MND up to the date of publication of this Final MND (the official public review period extended from November 24, 2004 through December 27, 2004). 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. A-1, A-2, 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 other 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~~. Added and deleted text is also shown in Section 2, *Environmental Checklist & Expanded Explanation*.

Several comments regarding the project description were raised repeatedly in the comment letters. Rather than address them in each of the letters, one consolidated master response (see below) was prepared and is referred to in the relevant responses.

MASTER RESPONSE FOR PROJECT DESCRIPTION

Certain commenters have expressed concerns that the Mitigated Negative Declaration (MND) does not analyze the potential environmental impacts associated with possible residential and/or commercial development of the Hercules Pump Station property. Some commenters also contend that the MND should analyze as part of the project studied in the MND possible tie-in points or pumping station(s) that may be needed in connection with future pipeline operations. As explained in this Master Response neither of these potential future activities is proposed as part of the project and, in order for either of them to proceed, additional discretionary land use approvals and associated CEQA review processes would be required by agencies other than the CPUC. Further, given the uncertainties surrounding these possible future actions (i.e., whether they will occur, where they will be located, and when and how they would proceed), such activities cannot credibly be considered a reasonably foreseeable consequence of the project. Moreover, any environmental review of such activities at this point would be speculative and provide no meaningful information. Environmental review will be undertaken by the appropriate agencies at the appropriate time, i.e., if and when such activities are proposed.

In summary, the possible redevelopment of the Hercules Pump Station and construction of the tie-in points and pumping station(s) are not proposed as part of the project and cannot be considered a reasonably foreseeable consequence of the project. Further, any environmental analysis of such development at this time would be speculative and provide no meaningful information. Environmental review will be undertaken at the appropriate time by the appropriate agencies if and when such activities are proposed, and any of these possible future activities would require review and approval by agencies other than the CPUC if and when they are proposed.

SCOPE OF ANALYSIS

The “project” that is the subject of the current environmental review consists of the sale of PG&E’s heated Richmond to Pittsburg Fuel Oil Pipeline (Pipeline) to the San Pablo Bay Pipeline Company (SPBPC). The project also includes SPBPC’s proposal to own and operate the Pipeline as a common carrier pipeline corporation and to amend the Certificate of Public Convenience and Necessity (CPCN) governing use and operation of the Pipeline to restrict the products that could be transported in the Pipeline to crude oils, black oils, and refined petroleum products. The CPCN currently authorizes use of the Pipeline to transport oil, petroleum, or derivative oil or petroleum products.

Thus, the focus of the MND is on the potential environmental impacts associated with SPBPC’s future operation and maintenance of the Pipeline, including the change in environmental conditions from using the Pipeline for the transport of fuel oil and cutter stock (per PG&E’s historical use of the Pipeline) to SPBPC’s proposed more expansive use of the Pipeline for the transport of crude oils, black oils, and refined petroleum products. The MND also examines the construction of a 5,500-foot replacement pipeline segment since such replacement is plainly a reasonably foreseeable consequence of the sale of the Pipeline assets, it is an integral component of Pipeline operations, and it may have potential environmental effects different from or in addition to the direct impacts of the sale and use of the Pipeline assets.

The proposed sale of the Pipeline includes the transfer of ownership of the Hercules Pump Station and related lands (comprising approximately 44 acres) located within the City of Hercules. Under the terms of the transfer, SPBPC would abandon the Pump Station and remove it from public utility service. While “abandonment” of the Pump Station would not involve any physical changes to the Pump Station, SPBPC’s abandonment of the Pump Station does signify that it would no longer use the Pump Station. It is anticipated that the Hercules Pump Station and associated lands would subsequently be transferred by SPBPC to the Santa Clara Valley Housing Group (SCVHG).

POTENTIAL DEVELOPMENT OF HERCULES PUMP STATION PROPERTY

SCVHG has indicated that it is interested in demolishing the Pump Station and remediating the land on which Pump Station is located in order to reuse the land for residential and/or commercial uses. The site is currently zoned by the City of Hercules for industrial land use. In order to use the land for anything other than industrial land uses (i.e., for residential and/or commercial uses), SCVHG would need, at minimum, approval by the City of Hercules of a General Plan amendment and rezoning, among other discretionary land use entitlements. When such entitlements are sought, environmental review under CEQA will be required. In addition, environmental remediation (under the regulatory jurisdiction of the Department of Toxic Substances Control and/or the San Francisco Regional Water Quality Control Board) would be needed in order to reuse the Pump Station land. Since the requirements for remediation depend on the intended use of the property, the nature and extent of remediation will not be known until the intended use is finally determined. As of the publication date of this document, no application

or plans have been submitted to the City of Hercules for development of the Pump Station property.

Since the details associated with future development of the Pump Station property are largely unknown at this point, such development is properly excluded from the project analyzed in this MND. Not only is the future use of the Pump Station property uncertain (i.e., it could be used for residential and/or commercial uses or alternatively for industrial uses in accordance with the site's existing zoning), but the density and configuration of any future development of the Pump Station property — essential information needed in order to meaningfully analyze, among others, traffic impacts, air quality impacts, noise impacts, etc. — are also unknown at this point in the process. Thus, this case is not analogous to the facts of *Laurel Heights Improvement Association v. Regents of the University of California*, 47 Cal.3d 376 (1988), cited by some commenters. The EIR at issue in *Laurel Heights* had only examined the impacts of the University's plan to devote a small portion of an office building located in a residential neighborhood to laboratory facilities, even though there was "credible and substantial evidence" in the record of the University's intent eventually to occupy the entire building with biomedical research laboratories. The court held that the EIR was inadequate because it failed to discuss the clearly anticipated future uses of the building and the environmental effects of those uses. Here, by contrast, there is no evidence in the record of either the particular land use likely to be proposed by SCVHG (e.g., residential, commercial, industrial, open space or some combination) or the likely configuration or density (e.g., single-family homes versus apartment buildings) of such possible future land use. Whereas in *Laurel Heights*, the University itself was preparing an EIR on its own readily foreseeable plans for the building, in this case, it would be presumptuous and meaningless for the CPUC to speculate on SCVHG's eventual proposed use of the Pump Station property.

Moreover, the potential environmental impacts associated with possible remediation and redevelopment of the Pump Station property would be fully analyzed in an environmental document prepared by the City of Hercules if and when such a proposal is submitted for City review. The City of Hercules would serve as the lead agency for such a project. In a June 2004 meeting with CPUC staff, the City indicated that in the event it was asked to review a proposal to change the land use of the Pump Station site or otherwise develop the site, it would likely prepare an EIR. The City is the proper entity to conduct such a review since it is the primary permitting agency for the land use entitlements needed for such a project. In addition, feasible mitigation measures and a reasonable range of alternatives will be explored for any significant environmental impacts in accordance with CEQA. The critical point is that the impacts of the remediation and redevelopment will be addressed in detail at the appropriate time, and mitigated as appropriate, through the project-level environmental document to be prepared by the City of Hercules if and when an actual development plan is devised and proposed.

POTENTIAL TIE-IN POINTS AND PUMPING STATIONS

Commenters have also expressed concerns that the MND does not address the environmental impacts associated with potential tie-in points and pumping station(s). As with the uncertainty surrounding, and remote nature of, development of the Pump Station property, the details

associated with potential tie-in points or pumping stations are largely unknown. SPBPC has not applied for permission to construct any such facilities. Instead, after the transfer of ownership of the Pipeline to SPBPC, and after transfer of SPBPC to Shell, SPBPC has indicated that it intends to determine how to adapt and use the Pipeline and which particular crude oils, black oils, and refined petroleum products would be transported through the Pipeline. This process is projected to entail a comprehensive, comparative evaluation of the overall technical, economic, and commercial feasibility of use of the Pipeline for transporting various potential products. The need for and location of facilities such as tie-in points and pumping station(s) will not be known until SPBPC has completed this detailed evaluation process and determined what specified products it intends to transport in the Pipeline. Indeed, it is possible that no pumping station facilities would be needed at all. For instance, the Pipeline could be operated without the use of a pump station if it is connected to an existing pump station located at one of the refineries at either end of the Pipeline or if it is connected with another pipeline to which the existing pump station is connected.

Until SPBPC has completed its intended, comprehensive evaluation process and determined what specific products it intends to transport in the Pipeline, the analysis of tie-in points and future pump station(s), if any, would be too speculative and meaningless to evaluate under CEQA. The facts of this case are analogous to the facts of *National Parks and Conservation Association v. County of Riverside*, 42 Cal.App.4th 1505 (1996). In *National Parks*, the court rejected claims that an EIR for a regional solid waste landfill was inadequate for failing to analyze the impacts of solid waste transfer stations that would sort, recycle, and compact the solid waste before sending it to the landfill. The court reasoned that, similar to the tie-in points and pumping station(s) at issue here, obtaining more information on the transfer stations was not meaningfully possible since the location and operators of the facilities were unknown. 42 Cal. App.4th at 1519. Thus, the EIR was not required to contain an analysis of such facilities. The reasoning of the *National Parks* case applies with equal force to the tie-in points and pumping station facilities at issue here since whether such facilities are needed, where they would be located, and their size and other construction details, are unknown at this point. As such, the MND is not required to speculate as to the impacts associated with such facilities. If the ultimate use of the Pipeline requires the construction of such facilities, SPBPC will be obligated by law to seek the necessary approvals if and when it seeks to develop any such facilities. At that time, the environmental impacts associated with the location, size, and use of such facilities can and will be adequately analyzed. SPBPC would likely need discretionary approvals from at least the following agencies in order to construct tie-in points or pumping station(s): Contra Costa County, the Bay Area Air Quality Management District, and the State Fire Marshal.

December 2, 2004

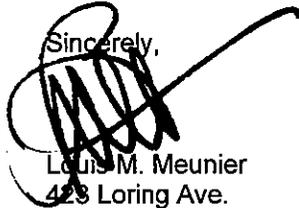
Heidi Vonblum
Richmond-to-Pittsburg Pipeline Divestiture
c/o Evenvironmental Sciene Associates
225 Bush Street, Suite 1700
San Francisco, CA 94104

Dear Ms. Vonblum:

The recent explosion of the gas line in downtown Walnut Creek would give one to pause on any divestiture, transfer or sale of the PG&E's pipeline from Richmond to Pittsburg. So, I would object to that divestiture and would insist on a full Environmental Impact Report in any and all circumstances.

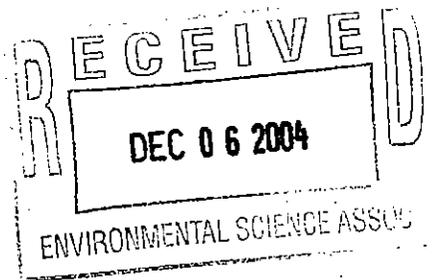
A-1

Sincerely,



Louis M. Meunier
428 Loring Ave.
Crockett, CA 94525
(510) 787-2711

Reference: (CPUC Application Numbers A.00-05-035 and A.00-12-008)



LETTER A – LOUIS M. MEUNIER

Response A-1 The commenter objects to the proposed project and requests that an EIR be prepared for the project.

For projects that are subject to CEQA, a mitigated negative declaration is required when the initial study identifies potentially significant effects but:

- 1) Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and
- 2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment (CEQA Guidelines Section 15070).

While it was determined that the proposed project could result in potentially significant environmental effects, mitigation measures were identified that would reduce those impacts to a less than significant level. The mitigation measures were agreed to by the project applicants prior to the release of the MND for public review. The MND determined that the proposed project, as revised with the identified mitigation measures, would result in a less than significant effect on the environment. Therefore, a mitigated negative declaration is the appropriate CEQA document for this project.

The commenter cites a recent explosion that occurred in Walnut Creek as a reason for its objection to the proposed project. It is assumed that the commenter is referring to an explosion and fire that occurred on November 9, 2004 during replacement of an East Bay Municipal Utility District (EBMUD) water pipeline near a Kinder-Morgan gasoline pipeline. Details of this accident are currently under review and therefore, no official conclusions from state or federal agencies regarding the accident are currently available. However, following is a summary of the currently known facts about the incident:

- A gasoline fire resulted when a contractor crew was excavating a trench to install a new water line for EBMUD.
- The exact cause of the fire is not known.
- EBMUD was installing a water line along the same right-of-way as the Kinder-Morgan pipeline.

- No one from Kinder-Morgan was present during the excavation.
- Kinder-Morgan has stated that they were not notified of the excavation (which conflicts with safety guidelines for excavating near gasoline pipelines).
- The construction firm that was excavating the trench for EBMUD stated that Kinder-Morgan inaccurately marked the path of the gasoline pipeline and failed to account for a bend in the gasoline pipeline that brought it nearer to the excavation.
- Kinder-Morgan contends that the construction firm was warned of the bend in the gasoline pipeline and that this bend appears on the contractor maps.
- The construction crew that was excavating the trench for EBMUD was operating a backhoe, whose bucket may have ruptured the gasoline pipeline.
- The EBMUD contractor may have been welding when the gasoline pipeline ruptured.
- The fire resulted in the death of five contractor employees.

There is no official final report and the CPUC is not privy to the full details of the incident. The summary of facts above, suggest that the incident may have nevertheless been caused by the failure to comply with applicable safety requirements and utility construction protocols. By comparison, SPBPC would comply with applicable safety requirements and mitigation measures described in the MND to prevent a similar incident from occurring. To ensure that no such similar event occurs during construction of the 5,500-foot replacement pipeline segment, SPBPC would also work in accordance with Shell's Technical Specifications for on-shore pipelines (Lacourciere, 2005), which meet or exceed applicable regulatory safety requirements and industry standards. Mitigation Measure 2.P-1a requires SPBPC to notify the local office of Underground Service Alert (USA) at least 14 days prior to initiation of construction of the 5,500-foot replacement pipeline segment in Martinez. USA verifies the location of all existing underground utilities and alerts the other utilities to mark their facilities in the area of anticipated construction activities¹. Similarly, any future underground utility project that is planned near any portion of the Pipeline would also be required to notify USA. USA would then notify SPBPC and SPBPC would be required to mark the

¹ Until USA has identified the exact location of any subsurface utilities, contractors can only proceed with excavation with hand tools in such areas.

location of the Pipeline prior to commencement of any other nearby construction activities.

The MND identified Mitigation Measures 2.G-1 through 2.G-4 to address spill prevention reduction of hazards and Mitigation Measure 2.H-1, which requires inspection of the Pipeline with a smart pig to identify corroded or deteriorated locations. To further clarify this, the first full paragraph on MND page 2.G-8 is modified as follows:

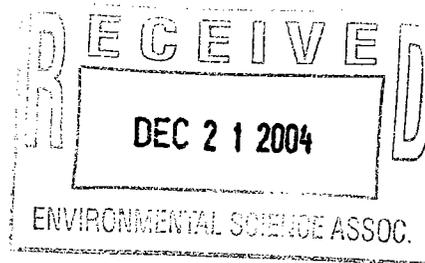
Pipeline construction activities associated with the 5,500-foot replacement pipeline segment in Martinez would require the use of certain hazardous materials such as fuels, oils, solvents, and glues. Inadvertent release of large quantities of these materials into the environment could adversely impact soil, surface waters, or groundwater quality. However, the on-site storage and/or use of large quantities of materials capable of impacting soil and groundwater are not typically required for a project of the size and type proposed for this project. The use of construction best management practices typically implemented as a condition of building and encroachment permits issued by local jurisdictions for construction would also minimize the potential negative effects to groundwater and soils. State and Federal regulations governing the construction of hazardous liquid pipelines require that the Pipeline be designed and constructed to meet the latest accepted industry standards. These regulations and industry standards specify the depth and the spacing that must be maintained to safely construct and operate pipelines. Construction of the replacement pipeline segment must follow these regulations and industry standards.

Finally, Mitigation Measures 2.G-3 and 2.G-4 provide operational measures to limit impacts from accidental spills to a less than significant level.



December 15, 2004

Ms. Heidi Vonblum
Richmond-to-Pittsburg Pipeline Divestiture
C/o Environmental Science Associates
225 Bush Street, Suite 1700
San Francisco, CA 94104



Subject: Comments on MND for Richmond-to-Pittsburg Pipeline Divestiture
Martinez Regional Shoreline

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Dear Ms. Vonblum:

Thank you for providing the East Bay Regional Park District ("District") with a copy of the draft Mitigated Negative Declaration (MND) for the PG&E Richmond-to-Pittsburg Divestiture project. The following are the District's comments on this project.

B-1

The District has previously provided written and verbal comments on this project in which we raised concerns about number of potential impacts and other issues that we believe had not been adequately addressed by the CPUC in its review of the proposed sale of the pipeline. Most of these concerns have been addressed in the revised MND; however, the MND still does not provide adequate information about the status of the proposed pipeline easement through Martinez Regional Shoreline and it does not appear to make a commitment to install shut off valves at both ends of where the pipeline would cross through the Shoreline. Each of these concerns is discussed in more detail below.

B-2

Pipeline Easement

In September 2000, the Park District entered into an agreement with the City of Martinez and PG&E for the relocation of several easements within Martinez Regional Shoreline. This agreement included the proposed relocation of the 4000' section of the underground fuel oil pipeline. While the Park District did forward an executed easement document for the pipeline relocation to PG&E, neither PG&E nor the City has provided the compensation called for in the 2000 agreement. Therefore, the easement conveyed to PG&E for the 4000' section of pipeline within Martinez Shoreline is not valid.

B-3

Additionally, the 1976 legislation conveying the Martinez Shoreline property from the State to the Park District expressly prohibits the Park District from conveying any permanent property rights without prior approval of the State Lands Commission. No



such approval has been granted by State Lands. Again, therefore, PG&E has no valid easement through Martinez Regional Shoreline on which to construct the proposed replacement pipeline.

B-3 cont.

Pipeline Shutoff Valves

In our comment letter on the April 23, 2002, MND for this project, the District specifically requested that the proposed project include the installation of shut off valves at both ends of the pipeline where it passes through or adjacent to Martinez Regional Shoreline. We also reiterated this same request in our meeting of September 1, 2004, with CPUC staff and project consultants. In reviewing the current MND, we could find no reference to this request in the project description or proposed mitigation measures.

As noted during our September 1 meeting, the shut off valves were a requirement of our recent agreement with Kinder-Morgan Company for the CPUC-approved pipeline project through Waterbird Regional Preserve, also in Martinez. Kinder-Morgan currently operates a leak detection system in their existing pipeline similar to the SCADA system referenced on page 1-19 of the MND; however, this system failed to detect a recent leak in their pipeline at Suisun Marsh for more than 24 hours. Remote leak detection systems without additional shut off valves in sensitive areas will not be adequate to protect Martinez Regional Shoreline in the event of a similar leak in the PG&E pipeline.

B-4

As noted in the MND, PG&E and its successors will need to obtain an Encroachment Permit and reach other agreements with the District before this project could be constructed at Martinez Regional Shoreline. These permits will be in addition to the acquisition of a valid easement through the Shoreline on which to construct the pipeline. The District will require the installation of the additional shut off valves as a condition of these permits and agreements. This may require the acquisition of additional easements, permits or discretionary approvals that may delay construction of the replacement section of the pipeline. We strongly recommend that the CPUC make these shut off valves a condition of its approval, such that any additional environmental impacts can be addressed and fully mitigated now, and not result in delays in the future.

B-5

Please call me at (510) 544-2622 or Jim Townsend at (510) 544-2604 should you have any questions regarding this letter.

Sincerely,



Brad Olson
Environmental Programs Manager

cc. Jim Townsend, EBRPD
Billie Blanchard, CPUC
Richard Pearson, City of Martinez

LETTER B – EAST BAY REGIONAL PARK DISTRICT

Response B-1 This comment is a general statement and does not state a specific concern or question regarding a significant environmental impact or the adequacy of the MND. The comment states that the commenter has reviewed the MND and has comments, as discussed below.

Response B-2 The commenter states that although the CPUC has addressed most of its concerns in the MND, it still does not believe that the MND provides adequate information about the status of the proposed pipeline easement through Martinez Regional Shoreline Park. The conveyance of the easement is a transactional matter that does not implicate any environmental issues. The commenter states that no commitment has been made to install shutoff valves at both ends of where the Pipeline would cross through the Shoreline.

In the *Martinez Intermodal Amendment Memorandum of Understanding* between EBRPD and the City of Martinez, EBRPD agreed to convey a pipeline easement and an electrical line easement to PG&E in order to accommodate construction of the replacement pipeline segment. In exchange, EBRPD was to receive, through the City of Martinez, a surface trail easement over an adjacent property, as well as the quitclaim deeds to the nine other PG&E easements. Although EBRPD has not yet received the promised easements, PG&E is willing to cooperate and complete the transaction, conveying rights to the nine easements in question (Wenninger, 2005) (see Appendix D). However, because the easement has not yet been conveyed at this time, SPBPC would not be able to construct its 5,500-foot replacement pipeline segment. PG&E and SPBPC will need to take the necessary steps to secure the easement prior to any project construction activities.

Mitigation Measure 2.G-3 requires the installation of shut off valves to protect against spills in the shoreline area. However, to clarify, the text of Mitigation Measure 2.G-3 will be modified slightly as follows:

Mitigation Measure 2.G-3: SPBPC and/or its contractor(s) shall install remotely activated block valves (shut off valves) on the replacement pipeline segment at locations designed to provide optimum protection against spills near Alhambra Creek and the unnamed drainage near Ferry Street as approved by applicable governmental agencies.

Response B-3 The commenter discusses the easement agreement between its agency and PG&E and the City of Martinez. The commenter states that the easement for the 5,500-foot replacement pipeline segment in Martinez is not valid because

EBRPD has not received the required compensation for that easement. Please see Response B-2, above. In addition, the commenter states that the easement is also invalid because the State Lands Commission has not granted approval of the easement. However, in a letter from the State Lands Commission dated October 13, 2004, the State Lands Commission writes that the “area[s] over which the project will extend are located within the legislative grant to East Bay Regional Park District pursuant to Chapter 815 Statute of 1976, [and] therefore is not subject to the Commission’s current leasing or permitting requirements” (Smith, 2004) (see Appendix D).

Response B-4 Regarding shut off valves, please see Response B-2, which refers the commenter to MND Mitigation Measure 2.G-3 requiring installation of shut off valves to protect against spills in the shoreline area.

With regard to the SCADA system, SPBPC has recently provided additional information regarding the system that would be used on this project (Lacourciere, 2005). To further clarify and define the proposed SCADA system, the description of Pipeline Operations on MND page 2.G-9 is revised as follows:

Pipeline Operation

With safety oversight and regulation by the State Fire Marshal, potential hazards to the public caused by any future operation of the Pipeline would be less than significant. To minimize the consequences of a possible leak and/or accidental spill, the existing Supervisory Control and Data Acquisition System (SCADA) system for the Pipeline would be upgraded by Shell and incorporated into Shell’s SCADA system for their other pipeline operations in the United States. The Shell pipeline system consists of about 13,000 miles of pipeline of which about 1,100 miles are in California. Shell’s SCADA system monitors the pipelines on a real-time basis from its control center located in Houston, Texas. The control sensors measure field pressure, temperature, flow level, density, and other parameters and store them in the Remote Terminal Unit (RTU). The RTU is constantly polled via leased telephone lines or satellite communication by the master control center. The master control center allows the operators to issue both routine operational commands and/or corrective commands (as needed) to allow the system to operate safely. Based on operations of other SCADA systems operated by Shell on similar pipelines, the Pipeline’s SCADA system would be capable of identifying leaks from the Pipeline within 2-3 minutes. The Pipeline’s SCADA system would activate block valves (shut off valves) to stop the flow within 1-2 minutes after a leak is detected. This type of response time minimizes a spill from a break in the line.

To the extent that the existing leak detection system does not satisfy the applicable requirements or cannot be integrated with the new operator's SCADA system, the necessary upgrades would be made. This may involve the installation of new equipment on the Pipeline that does not currently exist and replacing key components of the SCADA system. Before the Pipeline is returned to operation, it must be upgraded in order to be compatible with the operator's SCADA system and to comply with the applicable laws and regulations. The State Fire Marshal must check that these tasks are completed prior to approving the Pipeline for operation.

The MND further analyzed the probability of such a large break, based on historical data for California, and it was determined that the probability would be very low.

In summary, the SCADA system that would be installed on the Pipeline would be an upgrade to the existing Pipeline SCADA system, as it would incorporate the latest improved sensing and communication system that is not present on the existing system.

Response B-5

The commenter states that in addition to a valid easement through the Martinez Regional Shoreline Park, PG&E and its successors (SPBPC) will be required to obtain an encroachment permit and reach other agreements with the EBRPD. The commenter states that the EBRPD will make the installation of shut off valves a condition of approval of these permits and agreements and recommends that the CPUC also include the same conditions of approval. Please see Responses B-2 and B-4 regarding shut off valves. Regarding the need for an encroachment permit and easement, please see Responses B-2 and B-3. The need for an encroachment permit is acknowledged in Mitigation Measures 2.D-3a and 2.D-3b, and on MND page 1-27.



Department of Toxic Substances Control



Terry Tamminen
Agency Secretary
Cal/EPA

700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

Arnold Schwarzenegger
Governor

December 17, 2004

Richmond-to-Pittsburg Pipeline Divestiture
c/o Environmental Science Associates
225 Bush Street, Suite 1700
San Francisco, California 94104
Attn: Heidi Vonblum

Dear Mrs. Vonblum:

Thank you for the opportunity to comment on the Pacific Gas & Electric Company (PG&E)'s Richmond-to-Pittsburg Pipeline Divestiture Draft Mitigated Negative Declaration (Revised). 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 Responsible 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.

C-1

The project background section states that PG&E's 42-mile long Richmond-to-Pittsburg pipeline and Hercules Pump Station was used to transport low sulfur fuel oil from the refinery in Richmond to power plants in Pittsburg from 1976 to 1982. The proposed project would transfer ownership of PG&E's Hercules Pump Station (Pump Station) and its associated 44.2 acres of property to the Santa Clara Valley Housing Group (SCVHG). The SCVHG would then "demolish the Pump Station and remediate the land on which the Pump Station is located in order to reuse it for residential and/or commercial uses." The 44-acre Pump Station property "will be remediated under the regulatory oversight of the California Department of Toxic Substances Control and will then be developed". Additional sampling may be necessary in order to adequately characterize the extent of impacted soil and / or groundwater that will need to be addressed prior to property development for residential or commercial uses.

C-2

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.

C-3

Mrs. Heidi Vonblum
December 17, 2004
Page 2

Please contact Ryan Miya at (510) 540-3775 if you have any questions or would like to schedule a meeting. Thank you in advance for your cooperation in this matter.

Sincerely,



Denise Tsuji,
Unit Chief
Northern California - Coastal Cleanup
Operations Branch

Enclosures

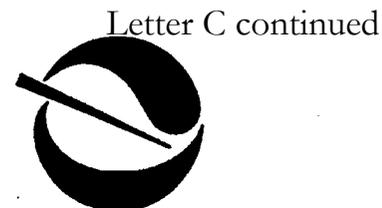
cc: without enclosures

Governor's Office of Planning and Research
State Clearinghouse
P.O. Box 3044
Sacramento, California 95814-3044

Guenther Moskat
CEQA Tracking Center
Department of Toxic Substances Control
P.O. Box 806
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California Environmental Protection Agency
Department of Toxic Substances Control



The Voluntary Cleanup Program

The California Environmental Protection Agency's Department of Toxic Substances Control (DTSC) has introduced a streamlined program to protect human health, cleanup the environment and get property back to productive use. Corporations, real estate developers, local and state agencies entering into Voluntary Cleanup Program agreements will be able to restore properties quickly and efficiently, rather than having their projects compete for DTSC's limited resources with other low-priority hazardous waste sites. This fact sheet describes how the Voluntary Cleanup Program works.

Prior to initiation of the Voluntary Cleanup Program, project proponents had few options for DTSC involvement in cleaning up low-risk sites. DTSC's statutory mandate is to identify, prioritize, manage and cleanup sites where a release of hazardous substances has occurred. For years, the mandate meant that, if the site presented grave threat to public health or the environment, then it was listed on the State Superfund list and the parties responsible conducted the cleanup under an enforcement order, or DTSC used state funds to do so. Because of staff resource limitations, DTSC was unable to provide oversight at sites which posed lesser risk or had lower priority.

DTSC long ago recognized that no one's interests are served by leaving sites contaminated and unusable. The Voluntary Cleanup Program allows motivated parties who are able to fund the cleanup -- and DTSC's oversight -- to move ahead at their own speed to investigate and remediate their sites. DTSC has found that working cooperatively with willing and able project proponents is a more efficient and cost-effective approach to site investigation and cleanup. There are four steps to this process:

- / Eligibility and Application
- / Negotiating the Agreement
- / Site Activities
- / Certification and Property Restoration

The rest of this fact sheet describes those steps and gives DTSC contacts.

The Voluntary Cleanup Program

Step 1: Eligibility and Application

Most sites are eligible. The main exclusions are if the site is listed as a Federal or State Superfund site, is a military facility, or if it falls outside of DTSC's jurisdiction, as in the case where a site contains only leaking underground fuel tanks. Another possible limitation is if another agency currently has oversight, e.g., a county (for underground storage tanks). The current oversight agency must consent to transfer the cleanup responsibilities to DTSC before the proponent can enter into a Voluntary Cleanup Program agreement. Additionally, DTSC can enter into an agreement to work on a specified element of a cleanup (risk assessment or public participation, for example), if the primary oversight agency gives its consent. The standard application is attached to this fact sheet.

If neither of these exclusions apply, the proponent submits an application to DTSC, providing details about site conditions, proposed land use and potential community concerns. No fee is required to apply for the Voluntary Cleanup Program.

Step 2: Negotiating the Agreement

Once DTSC accepts the application, the proponent meets with experienced DTSC professionals to negotiate the agreement. The agreement can range from services for an initial site assessment, to oversight and certification of a full site cleanup, based on the proponent's financial and scheduling objectives.

The Voluntary Cleanup Program agreement specifies the estimated DTSC costs, scheduling for the project, and DTSC services to be provided. Because every project must meet the same legal and technical cleanup requirements as do State Superfund sites, and because DTSC staff provide oversight, the proponent is assured that the project will be completed in an environmentally sound manner.

In the agreement, DTSC retains its authority to take enforcement action if, during the investigation or cleanup, it determines that the site presents a serious health threat, and proper and timely action is not otherwise being taken. The agreement also allows the project proponent to terminate the Voluntary Cleanup Program agreement with 30 days written notice if they are not satisfied that it is meeting their needs.

Step 3: Site Activities

Prior to beginning any work, the proponent must have: signed the Voluntary Cleanup Program agreement; made the advance payment; and committed to paying all project costs, including those associated with DTSC's oversight. The project manager will track the project to make sure that DTSC is on schedule and within budget. DTSC will bill its costs quarterly so that large, unexpected balances will not occur.

Once the proponent and DTSC have entered into a Voluntary Cleanup Program agreement, initial site assessment, site investigation or cleanup activities may begin. The proponent will find that DTSC's staff includes experts in every vital area. The assigned project manager is either a highly-qualified Hazardous Substances Scientist or Hazardous Substances Engineer. That project manager has the support of well-trained DTSC toxicologists, geologists, industrial hygienists and specialists in public involvement.

The project manager may call on any of these specialists to join the team, providing guidance, review, comment and, as necessary, approval of individual documents and other work products. That team will also coordinate with other agencies, as appropriate, and will offer assistance in complying with other laws, such as the Resource Conservation and Recovery Act.

Step 4: Certification and Property Restoration

When remediation is complete, DTSC will issue either a site certification of completion or a "No Further Action" letter, depending on the project circumstances. This means "The Site" is now property that is ready for productive economic use.

To learn more about the Voluntary Cleanup Program, contact the DTSC representative in the Regional office nearest you:

<p>Southern California Tina P. Diaz 1011 North Grandview Avenue Glendale, California 91201 (818) 551-2862</p>	<p>Central California Tim Miles 8800 Cal Center Drive Sacramento, CA 95826-3200 (916) 255-3710</p>
<p>North Coast California Lynn Nakashima, Janet Nanto 700 Heinz Avenue, Suite 200 Berkeley, California 94710-2737 (510) 540-3839 (510) 540-3833</p>	<p>Central California - Fresno Satellite Tom Kovac 1515 Tollhouse Road Clovis, California 93612 (209) 297-3939</p>

(Revised 10/18/02)

VOLUNTARY CLEANUP PROGRAM APPLICATION

The purpose of this application is to obtain information necessary to determine the eligibility of the site for acceptance into the Voluntary Cleanup Program. Please use additional pages, as necessary, to complete your responses.

SECTION 1 PROPONENT INFORMATION

Proponent Name	

Principal Contact Name	Phone () _____

Address	

Proponent's relationship to site	

Brief statement of why the proponent is interested in DTSC services related to site	

SECTION 2 SITE INFORMATION

Is this site listed on Calsites? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, provide specific name and number as listed			

Name of Site			

Address	City	County	ZIP
_____	_____	_____	_____
(Please attach a copy of an appropriate map page)			

SECTION 2 SITE INFORMATION (continued)

<p>Current Owner</p> <p>Name _____</p> <p>Address _____</p> <p>Phone () _____</p>
<p>Background: Previous Business Operations</p> <p>Name _____</p> <p>Type _____</p> <p>Years of Operation _____</p> <p>If known, list all previous businesses operating on this property</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>What hazardous substances/wastes have been associated with the site?</p> <p>_____</p> <p>_____</p>
<p>What environmental media is/was/may be contaminated?</p> <p><input type="checkbox"/> Soil <input type="checkbox"/> Air <input type="checkbox"/> Groundwater <input type="checkbox"/> Surface water</p>
<p>Has sampling or other investigation been conducted? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Specify _____</p> <p>_____</p> <p>_____</p>
<p>If Yes, what hazardous substances have been detected and what were their maximum concentrations?</p> <p>_____</p> <p>_____</p> <p>_____</p>

SECTION 2 SITE INFORMATION (continued)

Are any Federal, State or Local regulatory agencies currently involved with the site? Yes No
 If Yes, state the involvement, and give contact names and telephone numbers

Agency	Involvement	Contact Name	Phone

What is the future proposed use of the site? _____

What oversight service is being requested of the Department?
 PEA RI/FS Removal Action Remedial Action RAP Certification
 Other (describe the proposed project) _____

Is there currently a potential of exposure of the community or workers to hazardous substances at the site?
 Yes No If Yes, explain _____

SECTION 3 COMMUNITY PROFILE INFORMATION

Describe the site property (include approximate size) _____

Describe the surrounding land use (including proximity to residential housing, schools, churches, etc _____

Describe the visibility of activities on the site to neighbors _____

SECTION 3 COMMUNITY PROFILE INFORMATION (continued)

What are the demographics of the community (e.g., socioeconomic level, ethnic composition, specific language considerations, etc.)? _____ _____
Local Interest Has there been any media coverage? _____ _____
Past Public Involvement Has there been any past public interest in the site as reflected by community meetings, ad hoc committees, workshops, fact sheets, newsletters, etc.? _____ _____
Key Issues and Concerns Have any specific concerns/issues been raised by the community regarding past operations or present activities at the site? _____ Are there any concerns/issues anticipated regarding site activities? _____ Are there any general environmental concerns/issues in the community relative to neighboring sites? _____
Key Contacts Please attach a list of key contacts for this site, including: city manager; city planning department; county environmental health department, local elected officials; and any other community members interested in the site. (Please include addresses and phone numbers.) _____

SECTION 4 CERTIFICATION

The signatories below are authorized representatives of the Project Proponent and certify that the preceding information is true to the best of their knowledge.

Proponent Representative	Date	Title
--------------------------	------	-------

LETTER C – CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

- Response C-1 This comment is a general statement and does not state a specific concern or question regarding a significant environmental impact or the adequacy of the MND. The comment notes that the commenter oversees the cleanup of sites where hazardous substances have been released pursuant to the California Health and Safety Code, Division 20, Chapter 6.8 and that it is submitting comments to ensure that the MND adequately discusses any required remediation activities that may be needed to address any hazardous substances release.
- Response C-2 The commenter accurately describes the proposed project. The commenter also states that additional sampling may be necessary to adequately characterize the extent of impacted soil and/or groundwater that will need to be addressed prior to development of the Hercules Pump Station property for commercial or residential uses. Remediation and redevelopment of the Pump Station property is not part of the proposed project. However, if and when development is proposed, full environmental review will be conducted under the jurisdiction of the City of Hercules and the Department of Toxic Substances Control (DTSC) (please refer to Master Response for *Project Description*). As stated on MND page 1-20, "...environmental site remediation would likely occur under the regulatory oversight of the DTSC." The additional sampling that the commenter identifies as potentially necessary would be performed under the oversight of the DTSC as stated in the MND.
- Response C-3 The commenter states that its agency can assist in overseeing characterization and cleanup activities through its Voluntary Cleanup Program. The commenter also requests that its agency be included in any meetings where issues relevant to their statutory authority are discussed. The CPUC met with DTSC in July 2004 to discuss this project. If and when redevelopment of the Pump Station property is proposed with the City of Hercules as Lead Agency, a remedial action plan would be submitted to DTSC and/or the San Francisco Bay Regional Water Quality Control Board for its review and approval.

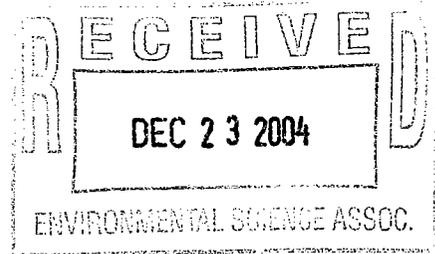


City of Martinez

Letter D

525 Henrietta Street, Martinez, CA 94553-2394

December 20, 2004



Richmond-to-Pittsburg Pipeline Divestiture

C/o Environmental Science Associates
225 Bush Street, Suite 1700
San Francisco CA 94104

Attn: Heidi Vonblum

Dear Ms. Vonblum:

We have reviewed the Draft Mitigated Negative Declaration in regard to the proposed sale and reconstruction by PG&E of its old fuel oil line through Martinez. We believe that the document is deficient in the area of safety. The document notes that the proposed pipeline route crosses heavily used public parkland in Martinez. The document also notes on page 2.I-10 that the proposed pipeline encircles a current industrial use (Alhambra Industrial Park, west of the north end of Ferry Street), and that the City is considering changing the land use designation of this industrial property to residential. The document also notes on page 2.G-7 that the new pipeline owner plans to change the operation of the pipeline from fuel oil to all petroleum products, and that these may be more volatile or explosive. Although the document states that explosions are infrequent, we disagree that the resulting impact would be less than significant. Witness the recent accident involving a similar pipeline in Walnut Creek. That resulted from other utility work near the pipeline, not the operation of the pipeline itself. We would suggest that in urban areas, this risk is significant (as opposed to open or vacant areas). We request that a mitigation measure be included, such as directional boring of the line at a greater depth to increase the distance between the pipeline and other utilities and avoid such accidents. By using directional boring through Martinez, many of the other impacts noted in the document could be avoided entirely.

D-1

Sincerely,

Richard Pearson (handwritten signature)

Richard Pearson
Community Development Director

LETTER D – CITY OF MARTINEZ

Response D-1 The commenter states that it disagrees with the determination in the MND that a change in the use of the Pipeline would result in less than significant safety impacts. The commenter cites a recent explosion that occurred in Walnut Creek as a reason for its objection to the proposed project. Please refer to Response A-1.

BEST BEST & KRIEGER LLP

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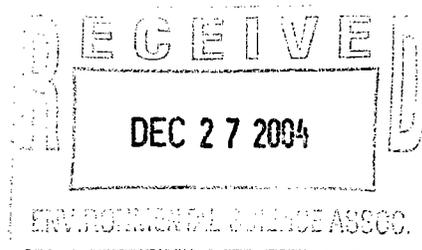
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December 23, 2004

VIA FIRST-CLASS MAIL

Richmond-to-Pittsburg Divestiture
c/o Environmental Science Associates
225 Bush Street, Suite 1700
San Francisco, CA 94104
Attn: Heidi Vonblum



Re: Richmond-to-Pittsburg Pipeline Divestiture
Comments to Draft Mitigated Negative Declaration
(Revised) (A.00-05-035 and A.00-12-008)

Dear Ms. Vonblum:

I am writing on behalf of Pacific Gas and Electric Company ("PG&E"), ConocoPhillips Company, Santa Clara Valley Housing Group ("SCVHG"), and Shell Pipeline Company LP ("Shell") – all parties to the proposed transaction at issue here – to submit joint comments to the Draft Mitigated Negative Declaration (Revised) ("Draft MND") for Application Nos. 00-05-035 and 00-12-008.

E-1

First, we believe it is important to stress that this transaction offers tangible benefits to the public in several ways. The proposed transaction is beneficial not only to PG&E ratepayers, since the money from the sale will reduce the electric rate base, but also to the residents of the City of Hercules and the general viewing public, since the transaction would pave the way for removing the large storage tanks at the Hercules Pump Station so that the site can be used for something more compatible with the surrounding area. Finally, the transaction will begin the process of returning the existing pipeline to useful service, allowing the continued transport of petroleum products in the safest way reasonably possible.

E-2

We have reviewed the Draft MND and agree with the environmental conclusions set forth in the document. We support the decision to proceed with a Mitigated Negative Declaration as the appropriate environmental document for review of the impacts of this divestiture, rather than an Environmental Impact Report ("EIR"), especially considering that future environmental review will take place before any major physical changes to the properties will occur. We appreciate the opportunity to offer the following comments on this comprehensive document.

E-3

Richmond-to-Pittsburg Divestiture
December 23, 2004
Page 2

1. Figure 1-9 at page 1-17 does not accurately represent the sequence of this complicated transaction. The description below the first arrow states “PG&E Company sells assets to SPBPC.” The description below the second arrow then states: “ConocoPhillips sells SPBPC to SCVHG.” This sequence should be revised to show that, following Commission approval, the first step will be ConocoPhillips sells SPBPC to SCVHG. After that sale is completed, PG&E will sell the assets to SPBPC. E-4

2. At page 2.G-11, the Draft MND states that fuel oil is “not highly flammable.” While this is generally a true statement for stored fuel oil, fuel oil is highly viscous and must be heated to approximately 180 degrees prior to pumping so that it will move through the pipes. PG&E heated all fuel oil when it used the pipeline to transport fuel oil to its power plants. Heated fuel oil exhibits volatility characteristics similar to many crude oils that are shipped at much lower temperatures. When the Commission evaluates the incremental environmental risks associated with transporting crude oil, black oils and refined petroleum products, it should consider the flammability of heated fuel oil and PG&E’s prior use. E-5

3. At page 1.G-12, the Draft MND discusses schools located within ¼ mile of the existing pipeline. In addition to PG&E’s existing pipeline, there are also other existing pipelines within ¼ mile of these schools, and in some cases other pipelines are closer to the schools than PG&E’s pipeline. These other pipelines, like PG&E’s pipeline, have been in operation for many years. They are used to transport various petroleum products, including crude oil, gasoline and jet fuel. E-6

4. At page 2.G-3, there is a reference to natural gas lines owned by Shell. This reference should be to natural gas lines owned by Shell’s affiliates. E-7

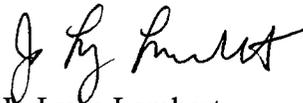
5. At page 6 of the Mitigation Monitoring and Reporting Program, under “General Reporting Procedures,” there is a requirement that “Applicants” provide written quarterly reports to the CPUC on the progress of construction and related issues. Since SPBPC will be responsible for complying with all construction mitigation measures after consummation of the divestiture and related transfers, this language should be revised to specify that SPBPC, not other applicants, will be responsible for such reports. E-8

In addition to these substantive comments, we have attached a list of minor errata.

Richmond-to-Pittsburg Divestiture
December 23, 2004
Page 3

Thank you again for the opportunity to provide comments.

Very truly yours,



Jo Lynn Lambert
for BEST BEST & KRIEGER LLP
Attorneys for Pacific Gas and Electric Company

JLL:lch

cc: Billie Blanchard (CPUC, Energy Division)
Peter W. Hanschen (ConocoPhillips and
San Pablo Bay Pipeline Company)
Paul C. Lacourciere (Shell Pipeline Company LP)
James D. Squeri (Santa Clara Valley Housing Group, Inc.)
Frank Nicoletti (Santa Clara Valley Housing Group, Inc.)

Richmond-to-Pittsburg Divestiture
December 23, 2004
Page 4

List of Errata

1. November 24, 2004 cover letter to Interested Parties: “ConocoPhillips Corporation” should read “ConocoPhillips Company” | E-9
2. Page S-2, Project Description, Line 10: change “abandonl” to “abandon” | E-10
3. Generally, should capitalize “City,” using “City of X” rather than “city of X” | E-11
4. MMRP, p. 5, Dispute Resolution Process, last line: words seem to be missing. | E-12

LETTER E – BEST BEST & KRIEGER (FOR PACIFIC GAS AND ELECTRIC COMPANY, CONOCOPhillips COMPANY, SANTA CLARA VALLEY HOUSING GROUP, AND SHELL PIPELINE COMPANY LP)

- Response E-1 This comment is a general statement and does not state a specific concern or question regarding a significant environmental impact or the adequacy of the MND. The commenter states that it is submitting comments on the MND on behalf of Pacific Gas and Electric Company (PG&E), ConocoPhillips Company (ConocoPhillips), Santa Clara Valley Housing Group (SCVHG), and Shell Pipeline Company LP (Shell).
- Response E-2 The commenter states its belief that the proposed project would be beneficial to the public. This comment is a general statement and does not state a specific concern or question regarding a significant environmental impact or the adequacy of the MND.
- Response E-3 The commenter expresses support for the conclusions contained in the MND. This comment is a general statement and does not state a specific concern or question regarding a significant environmental impact or the adequacy of the MND.
- Response E-4 Figure 1-9 is revised per the commenter’s remarks.
- Response E-5 The comment is correct that heated fuel oil can be considered flammable, because at its highest temperature in the Pipeline (180 degrees Fahrenheit (F)) it would exceed the flashpoint for fuel oil, which is 140 to 150 degrees F. The flashpoint is the lowest temperature at which a liquid gives off enough vapor to ignite if a source of ignition is present. Since the heated fuel oil would exceed its flashpoint, it can ignite if an ignition source is present. However, the future proposed use for the Pipeline is expected to transport a number of other petroleum products, such as gasoline, which have much lower flashpoints than fuel oil. Substances with lower flashpoints are more volatile and subsequently more flammable than heated fuel oil. The flashpoints of some of the refined petroleum products that are likely to be transported through the Pipeline are shown in **Table 5-2**. The table shows that gasoline is more volatile than heated fuel oil because of its flashpoint of minus 40 degrees F. Some of these other flammable products are also more volatile than fuel oil. The resulting evaporating liquid from a leak or an accidental spill could extend farther from a spill (than heated fuel oil) and thus would be more likely to encounter an ignition source. Consequently, the potential for a fire after a spill would be greater for these refined petroleum products than the existing condition for heated fuel oil. The MND analyzed the potential hazards associated with transporting refined petroleum products

and imposes necessary mitigation measures (see Mitigation Measures 2.G-1 through 2.G-4, 2.F-1, 2.F-2, and 2.H-1).

**TABLE 5-2
FLASHPOINTS FOR VARIOUS PETROLEUM PRODUCTS**

Product	Classification	Flash Point
Gasoline with ethanol	Flammable	-40 F
Mid range unleaded gasoline	Flammable	-49F
Jet Fuel JP-4		-10 F
Diesel Fuel no. 2	combustible liquid	52F
Fuel oil no 6	Combustible	150F
Fuel oil no 6		140F
Fuel oil - Cutter		>200F
Petroleum Crude Oil	Flammable	20 to 100F

SOURCE: ESA (2005) compiled from Material Safety Data Sheets (MSDS)

- Response E-6 The commenter notes that while the Pipeline is in the vicinity of existing schools, there are other existing pipelines that are also in the vicinity of existing schools. The MND only discussed potential environmental impacts related to the future operation of the Richmond-to-Pittsburg Pipeline, and therefore, a discussion of potential risks to schools associated with other nearby pipelines was not included in this CEQA document.
- Response E-7 In response to the comment, the fifth and sixth sentences of the third full paragraph of MND page 2.G-3 are changed to read:
- Several natural gas lines owned by Shell's affiliates and Tesoro parallel the Pipeline between Martinez and Bay Point. Just west of Pittsburg, several Chevron, Shell-affiliate, and Kinder-Morgan petroleum liquid and/or natural gas lines parallel the Pipeline route.
- Response E-8 In response to the comment, the fifth sentence of the first full paragraph on page 6 of MND Appendix C is changed to read:
- ~~The Applicants~~ SPBPC shall provide the CPUC with written quarterly reports of the project, which shall include progress of construction, resulting impacts, mitigation implemented, and all other noteworthy elements of the project.
- Response E-9 The commenter states that the Notice of Intent to Adopt a Mitigated Negative Declaration incorrectly referred to ConocoPhillips Company as

ConocoPhillips Corporation. Any future notices regarding this project will include this correction.

Response E-10 In response to the comment, the fourth sentence of the first paragraph under Project Description of MND page S-2 is changed to read:

SPBPC has indicated that upon completion of the sale by PG&E, it would then abandon¹ the Pump Station and remove it from public utility service.

Response E-11 The commenter states that the word “city” should be capitalized when using “City of X.” When referring to a city as a general location, the word “city” is generally not capitalized. However, when referring to a city as a government body, the word “City” is generally capitalized. This grammatical rule was used during the preparation of the MND.

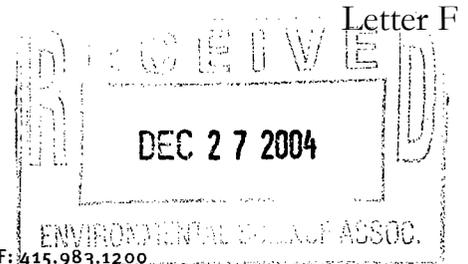
Response E-12 In response to the comment, the second paragraph on page 5 of MND Appendix C is changed to read:

Parties may also seek review by the Commission through existing procedures specified in the Commission’s Rules of Practice and Procedure for formal and expedited dispute resolution, although a good faith effort should first be made to use the foregoing procedure.



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December 27, 2004

L. Elizabeth Strahlstrom
Phone: 415.983.1240
lstrahlstrom@pillsburywinthrop.com

Hand-Delivered

Ms. Heidi Vonblum
Environmental Science Associates
225 Bush Street, Suite 1700
San Francisco, CA 94104

Re: Comments on the Draft Mitigated Negative Declaration (Revised) for
PG&E's Richmond-to-Pittsburg Pipeline Divestiture

Dear Ms. Vonblum:

We submit these comments on behalf of Chevron U.S.A. Inc. ("Chevron") regarding the draft Mitigated Negative Declaration (the "MND"), published November 24, 2004, for PG&E's application to sell its Richmond-to-Pittsburg Fuel Oil Pipeline (the "Pipeline") and the Hercules Pumping Station (the "Pumping Station") to the San Pablo Bay Pipeline Company ("SPBPC"), and the separate application by SPBPC requesting authority to own and operate the Pipeline as a common carrier pipeline corporation.¹

F-1

If the Commission approves the Application, the Pipeline will be used to transport crude oil, black oils, and refined petroleum products and the Pumping Station site will be developed for residential and commercial purposes. For the reasons set forth in these comments, the Commission is required to prepare an environmental impact report ("EIR") prior to considering the Application, rather than the MND, in order to comply with the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq.

F-2

¹ PG&E's Application (No. A.00-05-035) seeks authority under Public Utilities Code Section 851 from the California Public Utilities Commission (the "Commission" or "CPUC"), to sell the Pipeline and Pumping Station to SPBPC. In a separate application (A.00-12-008) (also analyzed as part of this project), SPBPC seeks authority from the CPUC to own and operate the Pipeline as a common carrier pipeline corporation and to amend the Certificate of Public Convenience and Necessity ("CPCN") to restrict the products that could be transported in the Pipeline to crude oil, black oils, and refined petroleum products. MND, p. 1-1. The consolidated applications are referred to herein as the "Application," and PG&E and SPBPC are referred to as the "Applicants."

Ms. Heidi Vonblum
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Page 2

There are a number of significant CEQA deficiencies associated with the MND. First, the Pipeline originates on property not owned by the Applicants and cannot be operated without the construction of tie-ins and new pumping station(s). However, the Application does not explain how the Pipeline will operate without these critical components, and the MND similarly fails to include them in the project description. As a result, there is no environmental analysis of any potential impacts associated with the origin of any materials to be placed in the Pipeline for transport to Pittsburg. Second, the MND improperly defers analysis of project impacts in a number of areas to future studies. However, these impacts must be studied in a current EIR prepared before the Commission may act on the Application, not deferred to a time after the Commission has approved the project.

F-3

F-4

Third, the MND improperly treats PG&E's prior operation of the Pipeline to transport fuel oil as the "baseline" under CEQA for the purposes of assessing environmental impacts, even though the Pipeline has been out of operation since 1982.

F-5

As a result of these and other deficiencies discussed below, the MND violates CEQA by failing to adequately address and mitigate the potentially significant environmental impacts of this project. Rather than demonstrating that the project will not result in any potentially significant environmental effects, the MND provides substantial evidence to support a fair argument that the project may result in significant impacts. Accordingly, the Commission is required to prepare and certify an EIR before considering the Application.

F-6

I. Background Information.

The Pipeline was originally certified in 1975 by the Commission (Decision No. 84448) as part of PG&E's electrical system. Its purpose at the time it was certified, built, and operated was to transport fuel oil from Chevron's Richmond Refinery to PG&E's Pittsburg and Contra Costa power plants. When PG&E ceased using fuel oil on a regular basis for its power plants, PG&E discontinued regular operation of the Pipeline. In the 29 years since it was initially certified, the Pipeline was used to transport fuel oil to power plants or was not in use at all. Regular use of the Pipeline ceased in 1982.

F-7

On December 12, 2000, PG&E filed an application under Public Utilities Code Section 851 to sell the Pipeline and Pumping Station to SPBPC, who in a separate application requested authority to "own and operate" the Pipeline pursuant to Public Utilities Code Sections 216 and 228. The consolidated application included a Proponent's Environmental Analysis ("PEA") which assumed that the Pipeline would continue to be



PILLSBURY WINTHROP LLP

Ms. Heidi Vonblum
December 27, 2004
Page 3

used for the same purpose for which it had historically and exclusively been used: the transportation of fuel oil. The Santa Clara Valley Housing Group, Inc. ("SCVHG") protested the Application due to the adverse effects that the operation of the Pumping Station would have upon its plans to develop adjacent property for residential and commercial uses.

The Application was amended in 2002 to request use of the Pipeline to transport all products allegedly permitted under the 1975 CPCN.² The 2002 proposal eliminated the Pumping Station, yet provided no information as to how SPBPC proposed to pump oil in and out of the pipeline. The 2002 proposal also provided for SCVHG's brief ownership of SPBPC in order to (1) transfer the Pumping Station property to itself or an affiliate for remediation and residential and commercial development, and (2) transfer its ownership interest in SPBPC to Shell.

On June 24, 2004, Chevron filed a Protest to the Application, on the ground that it failed to disclose how the Pipeline can be operated as a public utility in its current configuration, without a pumping station or tie-ins. The Protest also pointed out that the Commission's existing CEQA documentation, a "final" MND prepared in 2002 but not adopted (the "2002 MND"), failed to analyze the project as a whole or to consider SPBPC's proposed expanded use of the Pipeline beyond transporting fuel oil.

F-7 cont.

Following Chevron's Protest, in September, 2004, the Application was amended again. Instead of claiming that the proposed use of the Pipeline was permitted by the 1975 CPCN, the Application now concedes that the proposed use requires authorization for the "more expansive use of the Pipeline for the transport of crude oil, black oils, and refined petroleum products." MND at p. 1-3.

The Commission has prepared the MND to analyze the potential environmental effects of the project as proposed in the Application. The MND states that its focus is upon "the potential environmental impacts associated with SPBPC's future operation and maintenance of the Pipeline and the reconstruction of a 5,500-foot replacement pipeline segment to replace an isolated 4,000-foot pipeline section in Martinez, California." MND at p. S-1. However, like the 2002 MND, this document considers only pieces of

² The Applicants relied upon a faulty "baseline" premised on the 1975 CPCN which allegedly permitted the Pipeline's use for the transport of "oil, petroleum and products thereof." Applicants reasoned that the change in ownership and operation would not result in any new environmental impacts requiring an EIR. In its Protest, Chevron pointed out that this 30-year old approval could serve as the baseline for CEQA purposes if it actually represented the existing environment, a requirement that is not met here.

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the project, and does so in vague terms without an adequate assessment of the existing environment and the project's reasonably foreseeable impacts. The MND also acknowledges that the Application will result in demolition of the existing Hercules Pumping Station and its development by one of the Applicants for residential or commercial use, yet fails to conduct even a general level CEQA analysis of this "part" of the project.

F-7 cont.

II. The MND Improperly Relies Upon an Inadequate Project Description.

The courts have held that "an accurate, stable and finite project description is the *sin qua non* of an informative and legally sufficient [CEQA document]." County of Inyo v. City of Los Angeles, 71 Cal. App. 3d 185, 193 (1977). The MND does not provide an adequate description of the future operation of the Pipeline or the construction of the new 5,500-foot segment. It fails to analyze key project components such as tie-ins along the pipeline route and "future pumping station(s)" required for the Pipeline's operation. MND at p. 1-19. The MND dismisses these features as "speculative" and defers their review under CEQA to an unspecified future date. The MND also fails to analyze at even a general level the effects of abandoning the Pumping Station though the future activities are described in adequate detail to allow some level of analysis at this time. MND at p. 1-20 - 1-23.

F-8

To facilitate the Commission's analysis of the environmental impacts associated with the Application,³ the Applicants are required to provide the Commission with a description of the entire project to ensure that environmental review will consider the impacts of all project components. The First Amended Application describes a complicated series of transactions by which the Pipeline would be transferred to and owned and operated by Shell, and the Pumping Station property would be removed from Pipeline use and remediated for residential and commercial development. However, the Application provides little detail about these actions.⁴ As a result, the MND's project description is inadequate for CEQA purposes due to the Applicants' failure to provide sufficient detail.

F-9

³ In reviewing a proposed sale under Public Utilities Code Section 851, the Commission is required to focus on "the usefulness of the property to the provision of utility service, the ratemaking treatment afforded the transaction, and the environmental consequences of the sale."

⁴ Rule 35 requires an application under Public Utilities Code Sections 851 through 854 to contain information sufficient to demonstrate (1) the character of the business performed and the territory served by each applicant; (2) a description of the property involved in the transaction, including any franchises,
 (... continued)

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A. Future Pipeline “Tie-Ins” and “Pumping Station(s).”

Presently, the Pipeline originates on Chevron’s Richmond Refinery property unconnected to any supply source, and terminates at a location with no connected customers. The Applicants also propose dismantling the Hercules Pumping Station and adjacent fuel storage tanks. As a result, some form of “tie-ins” will be needed in order to place product into the Pipeline at its origin, yet no analysis is provided in the Application of how, where or with what environmental consequences these facilities may be developed. The MND obliquely references “future tie-in points and future pumping station(s)” that would be needed for either full or partial operation of the Pipeline, but does not include them as part of the project and therefore avoids any associated environmental effects. MND at p. 1-19.

According to the MND, “[t]ransport of product through the entire length of the Pipeline is currently not possible due to the 4,000-foot gap that exists in the Pipeline. It is said that prior to replacement of the 4,000-foot gap, segments of the Pipeline may be used by SPBPC to transport product between future tie-in points and future pumping station(s).” MND, pp. 1-18 – 1-19. While it is clear that approval of the Application will lead to construction of the tie-ins needed by Shell to “own and operate” the Pipeline, the MND excludes them from the project on the ground that their locations are “speculative.” No effort is made to describe their possible size, number and operational characteristics.

F-10

However, the locations of the tie-ins are not too speculative to warrant review under CEQA. The need for the tie-ins and their probable location were identified in the 2002 MND, which stated that “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.” 2002 MND at p. 5-12. The 2002 MND noted the presence of such amenities on the “Hercules to Pittsburg section of the pipeline... adjacent to Tosco’s Rodeo refinery,” as well as amenities located “at the Shore Terminal Tank Farm facility in Martinez.” 2002 MND at p. 5-12. It appears that the 2002 MND assumed that the tie-ins would be constructed at these locations, and that the Hercules Pumping Station would also be used. *Id.* Based upon this, the 2002 MND deferred environmental review of the pipeline tie-ins. With the removal of the Pumping Station, the location and description of the pipeline tie-ins is

(... continued)

permits, or operative rights and; (3) detailed reasons upon the part of each applicant for entering into the proposed transaction and all facts warranting the same.



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even more critical to an understanding of the project the Applicants propose and the facilities it will require.

F-10 cont.

In addition, the MND does not describe any new proposed pumping facilities or explain how the Pipeline can be operated in the absence of those facilities. The MND acknowledges the need for “future pumping station(s)”, stating that “In the future to return the Pipeline to full operation, SPBPC would need to locate and install a new pump station, as explained in Section 1, Project Description.” MND at p. 2.C-4. Claiming that “[i]t is not known at this time where or when this new installation would occur,” the MND excludes this critical component from its analysis. MND, pp. 2.C-4, 2.G-7. The MND could estimate the anticipated size of each pumping station based upon the existing Pumping Station as well as others utilized in the industry, from which potential impacts could be determined. It is no answer that the Commission will conduct environmental review of whatever new pumping facilities or tie-in connections it ultimately decides to allow; the reasonably foreseeable impacts of the Commission’s approval of the entire project must be addressed at this time. CEQA Guidelines, § 15144. “CEQA places the burden of environmental investigation on government rather than the public.” Sundstrom v. County of Mendocino, 202 Cal. App. 3d 296, 311 (1988).

F-11

As a result of the MND’s deficient project description, potentially significant impacts on the 5,500-foot pipeline construction route, the points of product origin and delivery, and the sites of the future pumping station(s) are ignored, in violation of the CEQA requirement for a stable and complete project description.

F-12

B. Conversion of the Hercules Pumping Station to Residential and Commercial Use.

Once the Commission authorizes PG&E’s sale of the assets, “but prior to the actual sale by PG&E,” a complicated series of transactions will ensue with the end goal of giving sole ownership of the Pumping Station to SCVHG and ownership of the Pipeline to Shell. MND at p. 1-1.⁵ The MND states that “SCVHG would demolish the Pump Station and likely remediate the land on which the Pump Station is located in order to reuse it for residential and/or commercial uses. Any action proposed for the Pumping Station property by the SCVHG would be subject to a separate environmental review by the City of Hercules.” MND at p. 1-2. The MND found that “[i]t would be speculative to

F-13

⁵ The Pipeline ultimately would be owned and operated by SPBPC, which would, pursuant to A.00-12-008, be operated as a subsidiary of Shell. MND at p. 1-2.



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determine the density and configuration of any future development on the property and therefore, it would be speculative to analyze the environmental impacts that could result from the unknown potential future development of the Pump Station property.” MND at p. 1-2.⁶

As part of this project, the Pumping Station property will be severed from Pipeline operation for remediation and residential/commercial development. Even if SCVHG has not yet submitted an application the City of Hercules detailing the precise “density and configuration” of the residential/commercial project, the MND could readily analyze a residential - commercial mixed use project in general terms.

F-13 cont.

CEQA does not allow this type of piecemeal review of environmental impacts, but requires an analysis at the earliest possible time, when a CEQA document can serve as an informational and planning document which alerts decisionmakers and the public to environmental impacts when mitigation measures can still be imposed and alternatives considered. The project analyzed in the MND must include all key components, notwithstanding their characterization by the MND as “speculative,” or the fact that a more detailed environmental review would occur at some point in the future.

In Laurel Heights Improvement Ass’n v. Regents of the Univ. of Cal., 47 Cal. 3d 376 (1988), the California Supreme Court rejected the Regents’ claim that its EIR need not analyze the anticipated but unapproved future use and expansion of a medical research facility. Id. at 397. Despite the Regents’ claimed lack of precise plans, the Court held that there was “telling evidence” that at the time the Regents prepared the EIR, they “had either made decisions or formulated reasonably definite proposals as to future uses of the building.” Id. at 398. “The fact that precision may not be possible. . . does not mean that no analysis is required. Drafting an EIR involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.” Id. at 398.

F-14

⁶ The MND states that “As of the publication date of this document, no application or plans have been submitted to the City of Hercules for development of the Pump Station property, which is currently zoned for industrial land uses. The specific future use of each portion of the property is unclear at this time as it could be used for industrial purposes as currently zoned, or it could be used for residential or commercial purposes, or a combination of both, if the zoning and General Plan designations are amended.” MND at p. S-3.



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Moreover, regardless of the specific project developed on the Pumping Station property, its remediation will occur once the pumping facilities are dismantled. MND at p. 2.G-7. The MND indicates that the remediation and future development would be the subject of a future environmental review by the City of Hercules. *Id.* The sale of property which requires remediation has been deemed a project subject to CEQA whose effects must be considered at the time of the transfer, and not at some future date. In McQueen v. Board of Directors of the Midpeninsula Regional Open Space District, 202 Cal. App. 3d 1136, 1143 (1988), an open space district sought to defer CEQA review of its remediation and management of surplus federal property until after it had acquired the property. In treating the acquisition as exempt, the lead agency described the project in terms of the transfer of title rather than the acquisition of property which would be subject to a remediation plan due to its contaminated state. The court rejected this approach, explaining that, “An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity. . . . A project is the ‘whole of the action, which has a potential for resulting in a physical change in the environment, directly or ultimately,’ including ‘the activity which is begin approved and which may be subject to several discretionary approvals by governmental agencies. . . . Project is given a broad interpretation in order to maximize protection for the environment.” *Id.* at 1143. Laurel Heights and McQueen confirm that the MND cannot completely ignore the impacts of transferring the contaminated Pumping Station property whose interim use could result in potentially significant environmental impacts, even if the ultimate use is not yet precisely known.

F-15

C. Fitness of Existing Pipeline for Expanded Use.

In addition to omitting key components required for the Pipeline to operate, the MND also fails to provide adequate information to determine whether its design can accommodate the wider range of products it will be used to transport. The record makes clear that the Pipeline was designed to transport fuel oil possessing specific characteristics. *See* 2002 MND, Responses to Comments, Response No. M22. The Pipeline “[was] constructed specifically to transport fuel oil and would require significant modification to be used for other purposes.” 2002 MND at p. 1-19. The MND indicates that, “Some of the petroleum products that SPBPC has indicated could be transported in the Pipeline are more volatile than fuel oil,” such as gasoline and some jet fuels. MND at p. 2.G-7. The MND briefly describes pipeline maintenance, but does not provide enough information to assess whether the Pipeline is adequate and safe for the proposed uses.

F-16

The MND also does not explain how SPBPC would gain access to property needed to conduct diagnostic and maintenance activities, such as the “smart pig” launcher/receiver

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at Richmond located on Chevron's property, or which refinery would have to furnish the water treatment facility needed to facilitate the maintenance process. These project components have impacts which must be identified, analyzed and mitigated in accordance with CEQA.

F-17 cont.

According to the MND, it is only *after* the Commission approves the Application and ownership of the Pipeline is transferred to SPBPC that SPBPC would undertake the evaluation and analysis required to "determine how to adapt and use the Pipeline and which product(s) would be transported through the Pipeline." MND at p. 1-21. This process would involve the following steps:

- 1) Identification of potential uses for the Pipeline;
- 2) Selection of an engineering team to work on technical issues;
- 3) Collection of data to analyze the physical status of the assets;
- 4) Collection of data to evaluate the potential markets of possible uses;
- 5) Evaluation of the technical feasibility of each option;
- 6) Design of technical modifications to the Pipeline required for each option;
- 7) Estimation of costs to build and operate the complete system for each option;
- 8) Identification of potential customers for each option;
- 9) Evaluation of required tariffs or other fees required for the economic feasibility of each option;
- 12) Comparison of the overall technical, economic, and commercial feasibility of all the options considered; and
- 13) Adoption of a decision on the proposed use for the Pipeline. MND at pp. 1-21 – 1-22.

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This exercise would be undertaken with the “oversight” of the State Fire Marshal and would occur “prior to returning the Pipeline to active operations.” MND at p. 1-21. However, the MND does not describe any subsequent permit which would be required at the time SPBPC “adopts a decision on the proposed use for the Pipeline.” As described in the MND, this decision would be made without input from the public, the Commission or other regulatory agencies with jurisdiction over potentially impacted resources. The process described by the MND is the type of analysis which should occur before the Commission approves the Application for SPBPC to “own and operate” the Pipeline.

F-19

III. The MND Underestimates the Project’s Impacts.

The MND claims to “focus” on the significant environmental impacts resulting from construction of the new 5,500 foot pipeline segment and the expanded use of the Pipeline for a broader array of products. However, the MND conducts only a cursory examination of the impacts of these project components.

F-20

As an initial matter, the MND assumes that the “baseline” for CEQA purposes constitutes the existing pipeline and its impacts. MND at p. 1-3. Under CEQA, the “baseline” is the existing physical environmental conditions at the time of the initial assessment of the project. CEQA Guidelines § 15125. While some leeway is allowed for unusual conditions, Section 15125 cannot be stretched to mean a pipeline which has not been operated for over 20 years. In this case, the relevant “baseline” for Pipeline operation does not include its use for the transport of “crude oil, black oils, and refined petroleum products” as the MND suggests. MND at p. 1-3. These uses never occurred, have not been permitted, and must be evaluated as a new project in an environment in which no pipeline currently operates.⁷ To the extent that any of the potential impacts have been reduced by taking “credit” for an existing baseline based on pipelines operations over twenty years ago, that is inconsistent with CEQA. The project must be assessed at this time without regard to any baseline associated with those older operations.

F-21

⁷ The Pipeline has not been permitted for the uses proposed by SPBPC. The MND assumes that the Pipeline “has the capability to transport and was granted a license per its 1975 CPCN to transport ‘oil, petroleum, and products thereof’ (Decision No. 84448 [May 20, 1975]).” MND at p. 1-21. However, Decision No. 84448 does not contain the phrase “oil, petroleum and products thereof” such that the MND can now claim that the Pipeline was somehow certified for this use.



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A. Biological Resources.

The Commission's approval of the Application will lead to the construction of a 5,500-foot pipeline segment across sensitive habitat, streambeds and wetlands, and the development and construction of pipeline tie-ins and pumping station(s) to allow the pipeline to operate. The approval also will result in potentially significant biological impacts arising from the expanded use of the Pipeline for an array of fuel oil products never before permitted or transported by PG&E.

F-22

The MND's analysis of impacts to biological resources is deficient due to the deferred assessment of the existing environment. Before adopting a negative declaration or certifying an EIR, a lead agency is required to "find out and disclose all that it reasonably can." CEQA Guidelines, § 15144. Knowledge of a project's environmental setting is critical to the assessment of its potential impacts. A CEQA document must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and a regional perspective. CEQA Guidelines, §15125; see also Environmental Planning and Info. Council v. County of El Dorado, 131 Cal. App. 3d 350, 354 (1982). The description of a project's environmental setting plays a crucial part in the subsequent analysis in a CEQA document because it provides the "baseline physical conditions by which a lead agency determines whether an impact is significant." CEQA Guidelines, §15125(a). Without a determination and description of the existing physical conditions, the lead agency cannot undertake a meaningful assessment of the environmental impacts of the proposed project. Save Our Peninsula Committee v. Monterey County Board of Supervisors, 87 Cal. App. 4th 99, 119 (2001).

F-23

The MND does not include any analysis or evaluation of the existing environment which would be necessary to evaluate and mitigate the Project's impacts. Deferring the preparation of required studies and surveys until after Project approval renders the MND useless as an informational and planning document, and defeats CEQA's purpose of alerting decisionmakers and the public to environmental impacts when mitigation measures can still be imposed and alternatives considered. The MND's failure to adequately assess the existing biological resources of the project's environmental setting undercuts the legitimacy of its impact analysis.

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1. Operation of the "Existing" Pipeline.

The MND acknowledges that "the pipeline corridor passes through substantial areas of federally protected wetlands with habitat for special-status species," but finds that its operation would not alter biological resources in those areas because it would not require removal, filling, or hydrological interruption, or other actions affecting those wetlands and the plant and wildlife species within them." MND at p. 2.D-9. This conclusion ignores the fact that future tie-ins, valve stations and pumping stations will be required in order to operate the Pipeline. The impacts of siting this infrastructure along the pipeline corridor must be evaluated as part of the Application.

F-25

Based upon "historical information" regarding hazardous liquid pipelines over a 10-year period, the MND concludes that the estimated accident rate for portions of the pipeline near sensitive receptors (which is about half the length of the Pipeline) would be one incident every 10.8 years. MND at p. 2.G-10. The MND states that an accidental spill along the Pipeline corridor "would have the potential to adversely impact biological resources through hazardous materials contamination of Alhambra Creek and other wetland and water resources." MND at p. 2.D-15. An accidental pipeline spill could contaminate these valuable habitat areas, which could result in wetland habitat loss and degradation, loss of wildlife breeding success, and direct mortality of special status species. MND at pp. 2.D-10, 2.D-15 - 2.D-18. However, the MND concludes that operation of the Pipeline along the entire "pipeline corridor" will not result in any significant impacts on biological resources due to an accidental pipeline spill. This conclusion is not based upon substantial evidence.

F-26

The MND relies upon the installation of "block valves" on the part of the 5,500-foot replacement pipeline segment where it crosses over watercourses to mitigate this potential impact, yet no information is provided to demonstrate their ability to prevent significant impacts resulting from accidental spills. MND at pp. 2.G-10, 2.G-11. An EIR must propose mitigation measures that are designed to minimize the project's significant impacts by substantially reducing or avoiding them. Pub. Res. Code §§ 21002, 21100. A lead agency may not rely upon vague, incomplete, or untested mitigation measures. A CEQA document is inadequate if suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness.⁸

F-27

⁸ San Franciscans for Reasonable Growth v. City & County of San Francisco, 151 Cal. App. 3d (1989) (requirement that fee of undetermined amount be paid for unspecified transit funding mechanism is

(... continued)



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The MND also relies upon a 30-year old leak detection system and what it deems “frequent testing” of the existing pipeline as a basis for concluding that the pipeline appears “safe to operate.” MND at p. 2.D-10. However, pipeline maintenance that occurs only once every five years cannot be deemed “frequent.” The viability of the original leak detection system has not been evaluated. The MND also concedes that it is unknown whether “the Pipeline material is chemically compatible with the petroleum products to be transported,” since the requisite pipeline testing has yet to occur. MND, p. 1-18. No additional mitigation is imposed, yet the MND concludes that the potential impact is less than significant. The MND must analyze potential impacts to biological resources from the standpoint of a non-operational pipeline whose safety and ability to transport the products SPBPC proposes has not been evaluated.

F-28

2. 5,500-Foot Replacement Pipeline Segment.

The construction of the 5,500-foot replacement pipeline segment would cross two creeks which provide habitat for numerous special status and sensitive species. MND at p. 1-23. The MND describes the proposed construction methods SPBPC would use to cross the creeks and acknowledges that “the likelihood of impacts to species or habitat exists.” MND at p. 2.D-11. “Restoration activities have increased native marsh vegetation and habitat within Alhambra Creek,” and “special status species may be found at the project area.” MND at p. 2.D-11. Without substantial evidence, the MND concludes that “the extent of the effect would not likely be substantial.” MND at p. 2.D-11. This conclusion appears to be based upon a series of measures which are set up to quantify the impact they are supposed to mitigate, and then mitigate “to the extent feasible” the project’s impacts on biological resources.

F-29

For example, Mitigation Measure 2.D-1 states:

“Prior to commencing construction of the 5,500-foot replacement pipeline segment, SPBPC shall perform a pre-construction survey at the project site to determine whether these Special-Status Species are present. If Special-Status Species are present and a potential impact is unavoidable, SPBPC

F-30

(... continued)

inadequate mitigation measure); Kings County Farm Bureau v. City of Hanford, 221 Cal. App. 3d 692, 727 (1990) (EIR was inadequate in part because it found groundwater impacts to be insignificant on the basis of a mitigation agreement that called for purchases of replacement groundwater supplies without specifying whether water was available); Citizens for Quality Growth v. City of Mt. Shasta, 198 Cal. App. 3d 433, 442 (1998).

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shall develop a Special-Status Species Protection Plan to prevent significant impacts to Special-Status Species and provide the Plan to CPUC staff as well as the applicable regulatory agencies. (i.e. USFWS, CDFG, Corps, RWQCB, etc) for review and approval.”

F-30 cont.

The “Special-Status Species Protection Plan” required by Mitigation Measure 2.D-1 must include requirement that “SPBPC and/or its contractors shall minimize disturbance to sensitive habitat at Alhambra Creek, the unnamed drainage, and associated wetlands through trenchless construction techniques or other techniques approved by the applicable governmental agencies.” Yet, the MND makes it clear that SPBPC need only avoid impacts to “wetland and riparian habitat” to the “extent feasible.”⁹ If wetland vegetation cannot be avoided and must be removed during construction, a preconstruction survey is required to determine which special-status plant species’ habitat may be impacted. Project construction “shall avoid” special status plant species, but “in the event that it is infeasible to avoid, then SPBPC shall compensate for the loss of special-status plant species and their habitat at a 2:1 ratio within the project vicinity. . . .” MND at pp. 2.D-13 – 2.D-14. There is no indication that compensating at a 2:1 ratio would adequately mitigate adverse impacts to special status plant species. Agencies with jurisdiction over these resources may determine that different or greater mitigation is required.

F-31

There also is no requirement that SPBPC must change its proposed pipeline route to avoid impacts to Special-Status Species that are detected by the “pre-construction surveys” required by Mitigation Measure 2.D-1. Given that the extent of the existing biological resources is unknown and that impacts need only avoid “to the extent feasible,” there is no basis for the MND to conclude that all potential impacts to these resources will be mitigated to a less than significant level. The fact that the 5,500-foot pipeline route traverses numerous sensitive resources which have yet to be quantified more than supports a fair argument that the project may result in a significant impact.

F-32

The MND also acknowledges that the Project may result in a significant adverse impact to jurisdictional wetlands. According to the MND, “Jurisdictional wetland habitat adjacent to the east side of Alhambra Creek within the revegetation area may be located within the construction corridor and may be impacted during construction.” MND at p.

F-33

⁹ The plan is required to contain the following measure: “SPBPC shall install flagging and/or fencing to protect wetland and riparian habitat within the project area to exclude construction equipment and prevent impacts to the area through avoidance to the extent feasible.” MND at p. ES-5.



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2.D-16. Without the benefit of a wetland delineation, the MND nonetheless concludes that these disturbances would be “relatively short duration” and therefore are not significant. *Id.* This finding is based upon mitigation measures which do not require the project to avoid wetlands.

F-33 cont.

For example, Mitigation Measure 2.D-2 states that SPBPC “shall avoid disturbance to or fill of potential jurisdictional wetlands in the project area to the extent feasible as determined by CPUC staff by using trenchless construction technique for the crossings of Alhambra Creek and the unnamed drainage. . . .” MND, at p. 2.D-17. Mitigation Measure 2.D-2c provides that “if it is infeasible to avoid filling and excavating potentially jurisdictional wetlands, then SPBPC shall conduct a formal wetland delineation and have it verified by the U.S. Army Corps of Engineers. . . . If the Corps and/or CDFG determine that potentially affected water-associated features are jurisdictional, then SPBPC shall obtain appropriate wetland permits. . . .” MND at p. 8. Since it is known at this time that the project may impact jurisdictional wetlands, a wetland delineation is required now, so that the project’s potential impacts can be analyzed and all feasible mitigation can be required before the Commission takes action on the Application.

F-34

The MND also fails to determine whether construction of the 5,500-foot pipeline segment will impact habitat for the California clapper rail, California black rail, and/or California red-legged frog. Instead of finding out now whether the Project will significantly impact these species, the MND states that “if construction activities occur within wetland or riparian habitat with the potential to support” these species, prior to construction, surveys shall be performed to determine their presence or absence within the project area. MND at p. 2.D-14. If the species will be impacted, then SPBPC is required to consult with the USFWS, prepare a Biological Assessment and Biological Opinion as required by the federal Endangered Species Act. MND, at p. 2.D-14.

F-35

The time to conduct these studies is now, prior to project approval, so that impacts to these sensitive species can be avoided through project redesign and the imposition of concrete mitigation measures. The MND improperly defers the analysis of the existing environment and the project’s impacts to some future date, after project approval, in violation of CEQA. As a result, the decision-maker and public do not know the extent to which the project’s 5,500-foot pipeline route will destroy wetland resources or adversely impact sensitive drainages such as Alhambra Creek and the “unnamed drainage.” The MND finds that all potential impacts upon the yet-to-be-quantified biological resources can be mitigated to insignificance. This finding is not supported by substantial evidence.

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B. Geology and Soils.

The MND indicates that the existing Pipeline may not withstand future seismic events because the amount of “pipeline distortion from historical creep is unknown.” MND at p. 2.F-8. Portions of the Pipeline are located with an Alquist-Priolo Earthquake Fault Zone, and such areas are “subject to displacement.” MND at p. 2.F-6. The Pipeline also crosses the Hayward and Concord-green Valley faults, and could be subject to an overall horizontal displacement of approximately 5 feet in the event of an earthquake. The MND describes how the Pipeline was originally designed to withstand “dynamic loads from lateral offset of the faults,” but contains no information regarding the Pipeline’s current seismic fitness. MND at p. 2.F-7. There has been no geological evaluation to determine the Pipeline’s condition and the extent to which it has been affected by previous seismic events. Again, the MND proposes that such an evaluation occur in the future rather than as part of the current CEQA review process, with no provision for public review or comment on the evaluation or its findings regarding the Pipeline’s suitability to withstand a major seismic event. MND at p. 2.F-8. Before the Commission approves the Application, the fitness of the 30-year old pipeline for the proposed expanded uses must be evaluated and assured.

F-37

The MND states that the 5,500-foot replacement pipeline segment would be located in an area “subject to strong seismic ground shaking.” MND at p. 2.F-9. “Seismic ground shaking is unavoidable but appropriate site evaluation, engineering analysis, and structural design. . . could reduce the potential for damage caused by earthquakes.” MND at pp. 2.F-9 – 2.F-10. The MND contains no information about the seismic hazards present in the 5,500-foot pipeline replacement route project area. The critical site evaluation and engineering analysis would be deferred until some future date, after the Commission has already approved the Project. The MND requires only that it occur at some time “prior to the commencement of construction activities.” MND at p. 2.F-10. The potential for damage to the 5,500-foot pipeline replacement segment due to liquefaction and expansive soils is improperly found less than significant on the basis that the required site evaluation and engineering analysis would occur in the future. MND at pp. 2.F-10 to 2.F-13.

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C. Hazards and Hazardous Materials.

The MND fails to adequately assess the presence of hazardous materials in the project area, particularly in the route of the 5,500-foot replacement segment where construction activities could potentially encounter contaminated soil and/or groundwater. A Phase I environmental assessment has not yet be done, despite the MND’s acknowledgement of

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the that construction activities will occur in areas known to have hazardous substances. MND at p. 2.G-13. Instead, the MND requires that SPBPC conduct a Phase I environmental assessment along the length of the 5,500-foot replacement route at some time “prior to the commencement of construction activities.” There is no evidence to indicate that this assessment would occur at a point where the route could be altered to avoid disturbing contaminated soils and/or groundwater, or that the impacts to workers and the general public resulting from exposure to impacted materials could be mitigated. MND at p. 15.

F-39 cont.

The MND also concedes that the assessment of the potential for accidental leaks and spills to the environment that could result from the Pipeline’s operation does not consider other future pipeline infrastructure that would be needed to move product through the Pipeline, such as a future pump station. MND at p. 2.G-10. An EIR must be prepared to consider these project components and the potential hazards associated with them.

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D. Aesthetics.

The MND fails to assess the project’s significant impacts on aesthetic resources resulting from, among other things, construction of the 5,500-foot pipeline route. Once again, the MND relies upon future mitigation to both assess and mitigate potentially significant impacts to aesthetic resources. As mitigation of the unquantified aesthetic impacts, Mitigation Measure 2.A-1a states that “prior to commencing construction activities, SPPC shall coordinate construction activities that would affect parklands and trail systems with [East Bay Regional Park District] EBRPD and the City of Martinez,” by submitting an “aesthetic resources plan.” This plan will “address the potential for construction activities to have impacts on aesthetic resources, including specific measures that will be taken to restore such resources to pre-construction conditions. . . .”

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The sort of analysis required by the aesthetics resources plan should occur as part of the current CEQA review process, and before project approval, so that the construction route can be designed in a manner protective of aesthetic resources. The construction route is now known, and no reason exists why the impacts to aesthetic resources cannot be assessed now. Under the MND, the analysis required by this plan need not occur until immediately prior to commencing construction, and therefore, aesthetic impacts need not be taken into account when the final route is designed. There is no requirement that the SPBPC design its construction route or activities in a manner which minimizes aesthetic resource impacts, or any indication that it can be required to alter its plans if either the EBRPD or the City of Martinez determine that the potential impacts to resources in their jurisdictions require alterations.

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There is also no evidence to support a finding that all impacts can be mitigated. The plan is supposed to contain “specific measures” to ensure that the numerous “above-ground valve stations” are “appropriate shielded” from view. However, the MND does not describe the “new above-ground valve stations” in terms of their size, likely locations, or operational characteristics. As such, it is not possible to determine that their impacts on aesthetic resources can be mitigated simply by placing them behind trees and bushes as the MND concludes. MND at p. 2.A-6. Instead of engaging in required analysis, the project proponent has deferred its obligation to assess and mitigate the impacts it may create to some future date. Deferral of mitigation is inappropriate where a project proponent can incorporate measures into the design stage and ensure mitigation of these identified impacts. See CEQA Guidelines, §15126.4(a)(1)(B) (formulation of mitigation measures should not be deferred). The MND improperly relies upon speculative mitigation measures which incredibly are found to mitigate all significant impacts, including those which have yet to be identified, all in violation of CEQA.

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E. Air Quality.

The MND purports to discuss air quality impacts resulting from the construction of the new 5,500-foot replacement pipeline segment and the operation of the Pipeline. The MND improperly omits analysis of the demolition of the Hercules Pumping Station and the construction and operation of the replacement pumping station which is required for the Pipeline to operate.

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1. Operation of “Existing” Pipeline.

The air quality impact analysis concludes that “Operation of the Pipeline with the same or similar products that it had been historically used for would not result in significant air emissions.” MND at p. 2.C-3. The MND does not actually state what air emissions are associated with the “historic” operations. The MND’s reliance upon an inaccurate baseline is misleading. The Pipeline’s “historic” use consisted of limited use for the transport of fuel oil, a very different product from those SPBPC now proposes to transport through the Pipeline. This limited use also has not occurred since 1982. Thus, the actual “baseline” or existing setting does not include the operation of the Pipeline in any capacity. The impacts associated with a conversion of the Pipeline to the expanded and never-permitted uses now proposed requires a full CEQA review. The traffic-related air emissions associated with the placement of product into and out of the Pipeline at various points along the corridor and at its termini must be considered as part of this Project.

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2. 5,500-foot Pipeline Segment.

Construction of the 5,500-foot pipeline segment will result in significant air quality impacts. The Project area is nonattainment for both PM-10 and ozone and the construction of the 5,500-foot pipeline segment will admittedly contribute to this current condition. MND at p. 2.C-1. The MND concedes that the “short-term ozone impacts would be significant, and PM-10 impacts would be significant at locations near the construction site unless mitigation measures are adopted to reduce exhaust emissions.” MND at p. 2.C-3. The MND also admits that “emissions from construction-related activities would result in a temporary cumulatively considerable increase in NOx and PM10-10 emissions, which are the principal contributors to ozone. These impacts are dismissed as insignificant, based upon a few measures which do not ensure that vehicle emissions are lessened near construction areas. MND at pp. 2.C-3 – 2.C-4.

To reduce vehicle emissions, Mitigation Measure 2.C-1 states that:

- A carpooling strategy shall be implemented for construction workers prior to commencing construction (during construction worker orientation and training);
- Vehicles used in construction shall be tuned per the manufacturer’s recommended maintenance schedule; and
- Vehicle idling time shall be minimized whenever possible.

MND at p. 2.C-4. There is no explanation of what a “carpooling strategy” consists of or how its success is to be measured. Nor is it evident that tuning a vehicle will reduce emissions. The final measure only requires vehicle idling time to be minimized when it is “possible.” These measures do not support a finding that the Project air quality impacts will be less than significant.

3. Demolition of Hercules Pump Station.

The MND defers potential air quality impacts resulting from the demolition and removal of the Pumping Station to a future CEQA document, even though the MND makes clear that the Application approval opens the door for demolition of the abandoned Pumping Station to make way for residential and/or commercial development. MND at pp. 2.2; 2.C-2. There is no reason why the potentially significant air quality impacts resulting from demolition of the Pumping Station cannot be assessed at this time and analyzed as required by CEQA.

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4. Construction and Operation of New Pumping Station.

The MND also improperly fails to include any air quality impacts resulting from the future construction and operation of the pumping station required to operate the Pipeline. Since operation of the Pipeline depends upon depends upon a new pumping station, the resulting air quality impacts cannot be omitted from this MND. MND at p. 2.C-5.

Construction of the pumping station would have the same above-referenced impacts that result from construction of the replacement pipeline. There is no reason why an analysis of potential air quality impacts from the construction of a pumping station of a size adequate to service the Pipeline cannot occur now.

Operational impacts of a new pumping station also can be quantified and analyzed prior to Commission action on the Application. Typically, pipeline pumps are powered by diesel internal combustion engines. The operation of diesel engines results in the emission of NOx and diesel particulates, neither of which are analyzed for their impacts on ambient ozone and ambient PM-10 concentrations. In addition, diesel particulate emissions have been listed by the Air Resources Board as a toxic air contaminant, and therefore a toxic risk analysis is required. Since the Pipeline currently sits idle, the MND cannot assume that the baseline includes any air emissions associated with the existing Hercules Pumping Station. Emissions from the new pumping station's operation must be analyzed from a "zero" baseline. The plan to defer "environmental review" of the pumping station construction and operational air emissions until the time when a BAAQMD permit is needed ensures that the project's air quality impacts will never be considered as a whole.

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5. CEQA Does Not Permit Deferred Review of Project Components and Impacts.

The Commission's approval of SPBPC's request to "own and operate" the Pipeline requires CEQA review of all reasonably foreseeable impacts of the *entire* project *at the outset*. Pub. Res. Code § 21065; CEQA Guidelines, §§ 15003, 15004, 15064, 15378; Azuza Land Reclamation Company v. Main San Gabriel Basin Watermaster, 52 Cal. App. 4th 1165, 1190 (1997); McQueen v. Board of Directors of the Midpeninsula Regional Open Space District, 202 Cal. App. 3d 1136, 1143 (1988). The MND's impermissibly narrow project description reflects a piecemeal approach to CEQA compliance, which gives cursory consideration to the construction of the missing 5,500 foot pipeline segment, and ignores other project components required to operate the Pipeline.

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The MND indicates that there is a larger project being approved, yet fails to describe it or analyze its impacts as required by CEQA. CEQA Guidelines, § 15124. The MND repeatedly describes the need for future tie-ins and pumping stations, but omits them from the Project description. The MND also references Applicant SPBPC's plans to dismantle and demolish the Pumping Station, remediate the property, and develop it for residential and commercial use, all of which the MND notes will be studied in a future "CEQA document" which is "likely" to be an EIR. MND at pp. 1-20, 1-21, 2-2, 2.A-5, 2.C-2 - 2.C-3.

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CEQA requires that the Commission complete an EIR for any project that gives rise to a fair argument that significant environmental impacts may result. An EIR must be prepared whenever substantial evidence in the record supports a fair argument that significant impacts may occur. CEQA, §21080; Laurel Heights Improvement Assoc. v. Regents of the Univ. of Calif., 6 Cal. 4th 1112, 1123 (1993). The "fair argument" standard creates a low threshold for requiring preparation of an EIR. Citizens Action to Serve All Students v. Thornley, 222 Cal. App. 3d 748 (1990). The Commission may issue a negative declaration only if "[there is no substantial evidence before the agency that the project may have a significant effect on the environment." CEQA, §21080(c)(1); Sierra Club v. County of Sonoma, 6 Cal. App. 4th 1307, 1318 (1992); No Oil, Inc. v. City of Los Angeles, 13 Cal. 3d 68, 75 (1975); Quail Botanical Gardens v. City of Encinitas, 29 Cal. App. 4th 1597 (1994). An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. Sierra Club v. County of Sonoma, 6 Cal. App. 4th 1307, 1318 (1992). As discussed above, the MND itself contains credible evidence of the potential impacts related to biological resources, aesthetics, geology, hazards and hazardous materials. Due to substantial evidence of the Project's potentially significant impacts, preparation of an EIR is required before the Commission can act upon the Application.

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In a relatively recent pipeline divestiture application,¹⁰ the Commission prepared an EIR, noting that, "When we have reviewed the final EIR, it will be possible to know if all of the potential adverse environmental effects of the transfer of the plants can be avoided or reduced to a non-significant level by imposing appropriate conditions on the transfer." Since the Commission had not yet completed CEQA review, it found that "it would be

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¹⁰ Application of Pacific Gas and Electric Company for Authorization to Sell Certain Generating Plants and Related Assets Pursuant to Public Utilities Code Section 851, Decision No. 98-07-092, 1998 Cal. PUC LEXIS 1105, at p. 81 (ruling that the determination of whether a proposed sale of certain PG&E plants was in the public interest should be deferred until an EIR was completed).



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inappropriate for PG&E to accept final bids until the specific environmental mitigation measures that may be required are known and approved by a decision of this Commission, because the resulting uncertainty would have a natural tendency to depress bid prices.” The “full CEQA analysis” the Commission required in that case included “analysis of changes in operation, potential alternatives and adoption of any mitigation measures.” Without that information, “the Commission [could not] conclude that the auction and divestiture of the San Francisco plants is in the public interest and allowed under *PU Code Section 851*.”

F-52 cont.

Rather than prepare an EIR now, the Applicants seek to rely upon a [286-page] negative declaration that expressly defers CEQA review of key project components and many impact areas to a later time, in violation of CEQA. See, e.g., Orinda Ass’n v. Board of Supervisors, 182 Cal. App. 3d 1145, 1171 (1986) (permit for one phase of project could not be issued until CEQA process was completed and overall project approved). CEQA does not permit deferral of environmental review or segmentation of a project so as to mask its environmental impacts. Environmental review must occur at the earliest possible stage in the process, rather than at a later stage when the agency may already be committed to a certain course of action. CEQA Guidelines, § 15004. CEQA does not permit deferral of the agency’s environmental evaluation where to do so will impair its ability to give meaningful consideration to environmental impacts, alternatives and mitigation measures. According to Section 15004:

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“[P]ublic agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, agencies shall not “. . . take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project. (Emphasis added). CEQA Guidelines, §15004(b)(2).

CEQA also requires analysis and public review of all of the foreseeable impacts of the project as a whole – not just those segments that the applicant and lead agency agree to study at the outset. CEQA Guidelines, §§ 15126, 15378. A lead agency’s review must extend to all reasonably foreseeable phases of the project. Laurel Heights Improvement Assoc. v. Regents of the Univ. of Calif., 47 Cal. 3d 376, 396-97 (1988) (EIR held inadequate for failure to assess reasonably foreseeable second phase of pharmacy school’s occupancy of a new medical research facility). The reason for this is that approval of the “first step” in a larger project such as this creates an irreversible

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momentum to continue approving segments of the project and shortchanging the analysis of project impacts and alternatives along the way. CEQA Guidelines, §15004; Kaufman and Broad-South Bay, Inc. v. Morgan Hill Unified School District, 9 Cal. App. 4th 464, 473 (1992); Azuza Land Reclamation Company v. Main San Gabriel Basin Watermaster, 52 Cal. App. 4th 1165, 1189-91 (1997) (rejecting narrow definition of the “project” in order to avoid CEQA review of the issuance of waste discharge requirements to an ongoing landfill).

F-54 cont.

This requirement ensures that “environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences.” City of Santee v. County of San Diego, 214 Cal. App. 3d 1438, 1452 (1989). CEQA prohibits such a “piecemeal” approach. Kings County Farm Bureau v. City of Hanford, 221 Cal. App. 3d 692, 720 (1990).¹¹ Only where preliminary agency actions do not lead to specific, known physical development projects can preparation of an EIR be deferred.¹² The Commission’s action on the Application does not fall into this category. See e.g., MND at pp. 1-3; 1-20 - 1-23.

¹¹ See, e.g., Bozung v. Local Agency Formation Commission of Ventura County, 13 Cal. 3d 263, 281 (1975) (“CEQA defines “project” so broadly that it covers activities having no conceivable effect on the environment.”); City of Carmel-By-the-Sea v. Board of Supervisors of Monterey County, 183 Cal. App. 3d 229, 251-52 (1986) (Rejecting claim that Section 15004 gives agencies “complete discretion in determining when to prepare the EIR,” and holding that property rezone indicated a commitment to an expanded use of property even though no development proposed; EIR rather than negative declaration required, and could not be deferred to development stage); Christward Ministry v. Superior Court of San Diego County, 184 Cal. App. 3d 180, 193-94 (1986) (amendment of land use designation required an EIR rather than a negative declaration, even though development of any new use would require a special use permit and an EIR); Burbank-Glendale-Pasadena Airport Authority v. Hensler, 83 Cal. App. 4th 556 (2000) (Agency may not adopt a resolution of necessity for a condemnation action without completing CEQA).

¹² See, e.g., Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District, 9 Cal. App. 4th 464, 474 (1992), (formation of assessment district is not a “project” because it neither impels growth nor creates a need for construction of new school); Schaeffer Land Trust v. San Jose City Council, 215 Cal. App. 3d 612, 624-626 (1989) (court upheld negative declaration for plan amendment because a specific development would have to adhere to the City’s traffic policy, and “the decision leads City not one step closer to an ecological point of no return.”).



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For the reasons set forth above, Chevron respectfully requests that the Commission defer action on the Application until it prepares an EIR that fully complies with CEQA, analyzing all of the project's environmental and public health and safety impacts, and proposing methods to reduce or eliminate those impacts.

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Respectfully submitted,

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cc: David Cohen, Esq.

LETTER F – PILLSBURY WINTHROP (FOR CHEVRON U.S.A., INC.)

Response F-1 This comment is a general statement and does not state a specific concern or question regarding a significant environmental impact or the adequacy of the MND. The commenter states that it is submitting comments on the MND on behalf of Chevron U.S.A., Inc.

Response F-2 While the commenter is correct that the Pipeline would be used to transport crude oil, black oils, and refined petroleum products, it is incorrect in its statement that the Pump Station site will be developed for residential and commercial purposes. While the MND states (on page 1-20) that it is “anticipated that SCVHG would apply for a zoning and general plan amendment to develop the Pump Station site with residential and/or commercial uses following remediation,” it also states that “...SCVHG has not sought authority from the City of Hercules for future development of the Pump Station property.” Therefore, while it is possible that the Pump station site would be developed with commercial and residential uses, it is not certain at this time that it will be developed for such uses. For a more detailed response to this comment, see Master Response for *Project Description*.

The commenter also states that the CPUC is required to prepare an EIR rather than an MND prior to approval of the proposed project. See Response A-1.

Response F-3 Please see Master Response for *Project Description* for a detailed response to issues raised by the commenter.

Response F-4 Please see Master Response for *Project Description* for a detailed response to issues raised by the commenter.

Response F-5 Prior to preparation of the MND, the CPUC determined that the appropriate baseline is PG&E’s historical use of the Pipeline for the transport of fuel oil and cutter stock. The commenter states that the baseline used in the CEQA analysis for the proposed project should not have been used.

An agency has discretion not to use an environmental baseline set as of the time of the notice of preparation as long as the agency’s exercise of discretion is supported by substantial evidence. *See, Save Our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal.App.4th 99, 125-126 (2001) (court acknowledges that by stating that existing physical conditions “normally” constitute the environmental baseline, the CEQA Guidelines recognize that lead agencies may elect to formulate a different baseline in appropriate situations).

When a project may change the operations of an existing facility, a discussion of past operational patterns is necessary in order to properly to assess project impacts. *See, County of Amador v. El Dorado County Water Agency, supra*, 76 Cal.App.4th at 953 (EIR for water supply project should have provided information on historical water release schedules from storage lakes to determine if project releases would alter historical baseline pattern of water releases). *See, also, Save Our Peninsula, supra* (court rejected water use baseline that was based on water usage for irrigation given lack of evidence that property had been in fact historically irrigated).

In the case of the proposed project, PG&E historically used the Pipeline for the transport of fuel oil and cutter stock as shown in **Table 5-3** below which contains information from the operating logs for the Pipeline between 1991 and 1998². Comparing the proposed project to the existing physical conditions of no use would overstate the impacts in light of this historical use.

**TABLE 5-3
HERCULES PUMP STATION AND PIPELINE OPERATIONS
LOG ENTRIES^a**

Date	Comments
12/6/91	Tested leak detection system by relieving pressure at the PPP end of pipeline. Total of 24 barrels ^b of cutter stock from Hercules to PPP for test.
11/16/92	CCPP received 1911 barrels of cutter stock from Hercules
11/18/92	Hercules received 8826 barrels of cutter stock purge 16 inch line for a hydro test from PPP.
11/19/92	Hercules receives 20,167 barrels of cutter stock from PPP
11/20/92	Hercules receives 29,566 barrels of cutter stock from PPP
11/23/92	Pressured up 16 inch line from Hercules to PPP for test
11/25/92	Bled off pressure (at PPP end?) Hercules to PPP hydro test ended – small amount
10/11/93	Hydro tested Richmond to Hercules pipeline, Hercules received 460 barrels of cutter stock
10/12/93	Hercules receives 1820 barrels of cutter stock from Richmond
10/13/93	Hercules receives 3,218 barrels of cutter stock displaced by city water at the Richmond end.
10/14/93	Hercules receives 2,555 barrels of cutter stock from Richmond displaced by water
6/21/94	Bled down pressure in pipe from Crockett to PPP at PPP end – small amount

² According to MDN page 1-2, the Pipeline was last used for moving oil in 1991. The information presented on Table 5-2 was only recently provided to the CPUC by PG&E and shows that the most recent movement of oil or cutter stock was in 1998.

TABLE 5-3 (Continued)
HERCULES PUMP STATION AND PIPELINE OPERATIONS
LOG ENTRIES

Date	Comments
9/16/94	Bled down pressure in pipe from Richmond to Hercules at Hercules end – small amount of oil
5/11/95	Ran pig from Hercules to PPP using water to push pig and in front of pig moving oil to PPP approximately 1335 barrels of cutter stock
5/23/95	Ran pig from Hercules to PPP using cutter stock to push pig 16,000 barrels of cutter stock moved and in line
5/24/95	Ran (2) pigs from Hercules to CCPP pumped 18,914 barrels of cutter stock
6/1/95	Pumped approximately 1,107 barrels to test pump system flow from Hercules to PPP
7/24/95	Bled down pressure in pipe from Richmond to Hercules at Hercules end – small amount – could be only water
9/19/95	Pumped 5905 barrels of cutter stock from CCPP to Hercules
9/25/95	Pumped 30,874 barrels of cutter stock from Hercules to PPP
9/27/95	Pumped 12,928 barrels of cutter stock from CCPP to Hercules
9/28/95	Pumped 29,850 barrels of cutter stock from Hercules to PPP
9/29/95	Pumped 8135 barrels from (not sure if from Richmond or PPP) to Hercules
10/2/95	Ran pig and pumped 8182 barrels of cutter stock from Richmond to Hercules
10/3/95	Ran pig and pumped 8494 barrels of cutter stock from Richmond to Hercules
1/30/96	Pressurized PPP to Hercules pipeline – unknown amount of cutter stock used
1/31/96	Pressurized PPP to Hercules pipeline – unknown amount of cutter stock used
4/26/96	Received Catfeed ^c oil from Wickland Oil to Hercules, total approximately 22,081 barrels
4/27/96	Received oil from Wickland Oil to Hercules, 29,749 barrels
4/28/96	Received oil from Wickland Oil to Hercules, 407,992 barrels
thru	
4/29/96	
5/7/96	Pumped oil from Hercules to Wickland Oil, 11,586 barrels
5/8/96	Pumped oil from Hercules to Wickland Oil, 58,700 barrels
5/9/96	Pumped oil from Hercules to Wickland Oil, 90,446 barrels
5/10/96	Pumped oil from Hercules to Wickland Oil, 31,228 barrels
5/15/96	Pumped oil from Hercules to Wickland Oil, 14,152 barrels
5/16/96	Received oil from Wickland Oil, 78,662 barrels
5/18/96	Pumped oil from Hercules to Wickland Oil, 44,446 barrels
5/19/96	Pumped oil from Hercules to Wickland Oil, 49,005 barrels
5/29/96	Received oil from Wickland Oil to Hercules, 7640 barrels
5/30/96	Received oil from Wickland Oil to Hercules, 38,265 barrels
5/31/96	Received oil from Wickland Oil to Hercules, 15,879 barrels
6/1/96	Received oil from Wickland Oil to Hercules, 45,606 barrels
6/2/96	Received oil from Wickland Oil to Hercules, 56,557 barrels
6/3/96	Received oil from Wickland Oil to Hercules, 13,103 barrels

TABLE 5-3 (Continued)
HERCULES PUMP STATION AND PIPELINE OPERATIONS
LOG ENTRIES

Date	Comments
7/23/96	Pumped oil from Hercules to Wickland Oil, 21,705 barrels
7/24/96	Pumped oil from Hercules to Wickland Oil, 58,799 barrels
7/25/96	Pumped oil from Hercules to Wickland Oil, 39,155 barrels
7/26/96	Pumped oil from Hercules to Wickland Oil, 14,875 barrels
7/27/96	Pumped oil from Hercules to Wickland Oil, 62,186 barrels
7/28/96	Pumped oil from Hercules to Wickland Oil, 59,474 barrels
7/29/96	Pumped oil from Hercules to Wickland Oil, 50,367 barrels
7/30/96	Pumped oil from Hercules to Wickland Oil, 50,886 barrels
7/31/96	Pumped oil from Hercules to Wickland Oil, 51,004 barrels
8/1/96	Pumped oil from Hercules to Wickland Oil, 24,517 barrels
5/27/98	Installed pigs and pushed oil (cutter stock) with Nitrogen from Hercules to CCPP, approximately 11390 barrels
5/28/98	Capped pipeline in two places in Martinez for AmTrack Station
12/15/98	Filled Hercules to Richmond pipeline with water for a hydro test
a	Not complete due to missing log books.
b	A barrel of oil is 42 U.S. gallons.
c	Partially-refined oil with viscosity characteristics similar to fuel oil. It was standard practice to follow each shipment of fuel or catfeed oil with cutter stock to clear the pipeline of the heavier oil.

SOURCE: Lambert (2005) (see Appendix D)

Based on the information provided in Table 5-3 the first sentence of the second full paragraph on MND page 1-2 is revised as follows:

Although some oil was moved through parts of the Pipeline as recently as ~~1998~~1991, PG&E ceased using the Assets for moving fuel oil to its Pittsburg Power Plant (currently the Mirant Pittsburg Power Plant) in 1982.

Response F-6 The commenter states that the MND does not adequately address and mitigate potentially significant environmental impacts of the proposed project. The CPUC prepared the MND to adequately identify and mitigate any potentially significant environmental impacts. The commenter also states that an EIR should be prepared for the proposed project rather than an MND. Please see Response A-1.

Response F-7 The commenter provides a background of the project. The comment is noted. However, while MND page 1-20 states that it is “anticipated that

SCVHG would apply for a zoning and general plan amendment to develop the Pump Station site with residential and/or commercial uses following remediation,” it also states that “...SCVHG has not sought authority from the City of Hercules for future development of the Pump Station property.” Therefore, while it is possible that the Pump Station site would be developed with commercial and residential uses, it is not certain at this time.

Response F-8 Please see Master Response for *Project Description* for a detailed response to issues raised by the commenter.

Response F-9 It is unclear if the commenter is addressing the adequacy of the MND or the adequacy of Applications A.00-05-029 and A.00-12-008. The MND provides an adequate description for CEQA purposes (as described in CEQA Guidelines Section 15071) of the proposed sale, the proposed 5,500-foot replacement pipeline segment, and consequences of the sale in MND Sections 1.5 and 1.6. These two sections also describe available and known information regarding these actions. CEQA Guidelines Section 15071 simply requires that the negative declaration contain a “brief description of the project.” See also, CEQA Guidelines Section 15124, which notes that a project description “should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.” The detailed project description in the MND exceeds the above standard. Please see Master Response for *Project Description* for additional responses to the issues raised by the commenter.

Response F-10 Please see Master Response for *Project Description* for a detailed response to these issues raised by the commenter.

The commenter discusses the text of Section 1.6.12 of the 2002 MND prepared for the earlier version of this project proposed by PG&E and Tosco. Specifically, the commenter cites the following text to support the notion that the location of tie-in points are known and thus, should be analyzed in the MND. The cited text is as follows:

“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.”

While it is true that tie-in points exist on the Pipeline, it is not clear if SPBPC would use these points or require others to be installed. It should also be noted that the conclusion of the 2002 MND is consistent with this MND, in that speculation about potential future tie-in points is beyond the scope of CEQA and thus this MND. Shell, as final owners of the SPBPC, would need to complete a detailed study of future uses of the Pipeline before the location of specific tie-in points can be identified.

- Response F-11 Please see Master Response for *Project Description* for a detailed response to these issues raised by the commenter.
- Response F-12 Please see Responses F-10 and F-11.
- Response F-13 Please see Master Response for *Project Description* for a detailed response to these issues raised by the commenter.
- Response F-14 This comment is simply a restatement of the *Laurel Heights Improvement Association v. Regents of the University of California* case and not a comment on the project described in the MND, per se.
- Response F-15 Please see Master Response for *Project Description* for a detailed response to these issues raised by the commenter.
- Response F-16 The range of petroleum-related products that are expected to be shipped through the Pipeline fall within the range that the Pipeline is designed to handle, which include a variety of petroleum related products with properties similar to fuel oil (i.e., liquid hydrocarbons that are not corrosive to the pipeline). Some petroleum related products, such as gasoline, are liquids that are more volatile and more susceptible to fire or explosion if accidentally released. This potential impact was addressed in the MND. However, such products are not more corrosive than fuel oil and would not require significant modification to the pipeline. In addition, before the Pipeline is activated, a written plan must be approved by the State Fire Marshal. The pipeline owner must submit a detailed plan that describes the process to be used and the product(s) to be shipped to the Pipeline Safety Division of the State Fire Marshal. The State Fire Marshal will then inspect the Pipeline and review pipeline records to determine compliance with State and Federal requirements. The Fire Marshal then determines if the Pipeline is chemically compatible to the products proposed to be shipped through the Pipeline. With this approval process and the safeguards that are included in the process, it can be assumed that the Pipeline would be able to safely ship the petroleum-related products associated with the proposed project.

Response F-17 The commenter asserts that the MND does not explain how SPBPC would gain access to conduct maintenance activities using the “smart pig” launcher or how water treatment would be furnished on water needed for pipeline maintenance.

SPBPC would have to obtain access to a “smart pig” launcher located on the property of the Chevron Refinery in Richmond. No environmental impacts would result from gaining access to the existing “smart pig” site in Richmond. PG&E has easement rights to this launcher site and proposes to transfer the easement to the launcher site to SPBPC in connection with the sale of the Pipeline. SPBPC could in the future determine the need for another “smart pig” launcher site as a result of its future evaluation process. However, as discussed in the Master Response for *Project Description*, future pipeline infrastructure, such as a “smart pig” launcher, would be the subject of future permitting and future environmental review. There is one other “smart pig” launcher located on the Hercules Pump Station property; however, as part of the project, this launcher would be abandoned.

The primary use of water in the Pipeline has been and would be for hydrostatic testing, which has been and would be performed as necessary to comply with applicable laws. During hydrostatic testing, the Pipeline, or segments thereof, is filled with water and the Pipeline is then pressurized to 125 percent of its maximum allowable operating pressure. The quantity of water required for testing is equal to the volume of the segment of pipeline being tested. Typically, a pipeline is tested in segments (between existing block valves) and after a segment is tested, the test water from that tested segment is then displaced to the next pipeline segment, and so forth until the entire pipeline is tested, thus reducing the overall water requirements. Water used for hydrostatic testing is normally purchased from a local water utility, but can also be purchased from refineries that are connected to the Pipeline. Once the testing is complete, the water is drained from the pipeline and disposed of in accordance with applicable laws. Often, the used water is treated by a refinery connected to the Pipeline and discharged in accordance with that refinery’s permits. Alternately, the water can be drained into vacuum trucks, transport trucks, or other suitable containers, then transported to a treatment facility and discharged in accordance with that treatment facility’s permits. As these maintenance activities are infrequent, adequate water supplies are available, and treatment would occur through existing permitted facilities, no significant impacts related to water use are anticipated in the future.

Response F-18 The commenter states its understanding of the proposed project. In general, this understanding contained in the comment is accurate. Furthermore, this comment is a general statement that does not state a specific concern or

question regarding a significant environmental impact or the adequacy of the MND.

- Response F-19 The commenter accurately states that SPBPC would decide how to use the Pipeline after it has obtained ownership and completed an evaluation. The commenter implies that this decision would be made without any public input or other regulatory oversight other than the State Fire Marshal. This is an incorrect representation of the process. SPBPC has requested approval from the CPUC to own and operate the Pipeline as a common carrier pipeline corporation, and to amend the Certificate of Public Convenience and Necessity (CPCN) governing use and operation of the Pipeline to restrict the products that could be transported in the Pipeline to crude oils, black oils, and refined petroleum products. The evaluation SPBPC proposes to conduct following transfer of ownership of the Pipeline is envisioned within the approval sought by SPBPC. This evaluation process would be used to determine which particular crude oil, black oils, and refined petroleum products SPBPC would transfer. The MND analyzes the potential impacts associated with transporting this larger group of products. As described in Section 1.5 of the MND, the State Fire Marshal must approve the return of the Pipeline to active status before SPBPC could begin using the Pipeline. In addition, SPBPC would likely need discretionary approvals from at least the following agencies in order to construct future tie-in points or pumping station(s): Contra Costa County, the Bay Area Air Quality Management District, and the State Fire Marshal. These permitting actions would provide sufficient regulatory oversight and public input as to the ultimate products to be transported in the Pipeline.
- Response F-20 The MND focuses on the impacts of the proposed project as defined in the MND (see also Master Response for *Project Description*). The commenter is correct that these impacts stem from construction of the replacement pipeline segment and from the reactivation of the Pipeline with a broader range of products than that typically used by PG&E. See Master Response for *Project Description*. The MND presents an adequate level of analysis of impacts and proposes mitigation measures to address these impacts. See also Response F-51.
- Response F-21 The commenter questions the use of the baseline used in the MND analysis. Please see Response F-5.
- Response F-22 This comment is a general statement of the commenter's opinion of the project and does not state a specific concern or question regarding the adequacy of the MND. Please see Master Response for *Project Description* for a detailed response to these issues raised by the commenter about future

pipeline tie-ins and pumping stations. Please also see Responses F-23, F-26, and F-27.

- Response F-23 The MND omits no necessary information, and included all necessary surveys. In a CEQA document, analysis of environmental effects need not be exhaustive, but is judged in the light of what is reasonably feasible (CEQA Guidelines Section 15151), i.e., sufficient to describe impacts. All necessary surveys were conducted for the MND to determine impacts and prescribe mitigations³. Furthermore, the MND contains a thorough discussion of the existing biological setting that may be impacted by the project based on biological reconnaissance surveys, literature reviews, and data reviews. See MND pages 2.D-1 through 2.D-7.
- The CEQA analysis does not defer the preparation of required studies as the commenter asserts. Pre-construction surveys followed by consultation with relevant state and/or federal resource agencies if a special status species is found as a result of the surveys are a standard practice that is fully consistent with CEQA when properly applied. The use of pre-construction surveys has recent been upheld by the Courts against a claim similar to that raised by the commenter here. See, e.g., *Defend the Bay v. City of Irvine*, 119 Cal. App. 4th 1261 (2004).
- Response F-24 Please see Response F-23.
- Response F-25 The issue raised by the commenter of why future tie-ins and pumping station(s) cannot be addressed in this MND is discussed in Master Response for *Project Description*.
- Response F-26 The MND adequately discusses substantial evidence leading to the conclusion that the operation of the Pipeline along the entire “pipeline corridor” would not result in significant impacts on biological resources due to an accidental pipelines spill. Please refer to MND page 2.D-10 and Section 2.G, *Hazards and Hazardous Materials*, for a full discussion of potential operational impacts to biological resources and practicable, widely-accepted mitigation measures that would reduce any potential impacts to a less than significant level.

³ As mentioned on MND page 2.D-1, biological reconnaissance surveys of the project area were conducted by ESA biologists in February 2001 and September 2004. The MND also incorporates the results of special-status species surveys conducted in the project area by Philip Williams Associates for the City of Martinez prior to restoration activities funded by Caltrans in 1999. Species surveys included special-status plants, anadromous fish, California clapper rail, California black rail, and salt marsh harvest mouse. These survey results were conveyed to ESA Biologist Christine O’Rourke Gaber by Brian Olson of the East Bay Regional Park District on September 22, 2004 and are cited as (Olson, 2004) in this MND.

Response F-27 The commenter asserts that the MND improperly relies on “block valves” to mitigate the risks of certain spills and that this proposed mitigation measure (2.G-3) is “vague,” “incomplete” and “untested.” The commenter ignores the fact that there are numerous block valves installed along the existing Pipeline. There are statutory requirements associated with the design of pipelines, which include the installation of block valves at certain intervals. In addition to those existing block valves (also known as shut-off valves), the CPUC has required that additional block valves be installed to further mitigate any potential significant impact in the 5,500-foot replacement pipeline segment located in the vicinity of the Martinez Regional Shoreline. See Mitigation Measure 2.G-3. In addition, Mitigation Measure 2.G-4 further requires that SPBPC develop a new spill prevention and containment plan covering the entire length of the Pipeline and submit this plan for approval to the CPUC and the Department of Fish and Game. Such measures are generally imposed on all similar pipelines to protect against potential pipeline spills. The commenter does not specify any alternative more effective measures for the potential impact. Mitigation Measure 2.G-3 was also applied at the specific request of the EBRPD, the trustee agency for the Martinez Shoreline resource.

Response F-28 The comment states that the Pipeline relies on a “30-year old” leak detection system and asserts that “... pipeline maintenance that occurs only once every five years cannot be deemed ‘frequent’.” As discussed on MND pages 2.G-2 and 2.G-3, when the Pipeline was still in routine use by PG&E, it was periodically tested in accordance with state law once every 5 years (PG&E, 2004). The Pipeline was hydrostatically tested (i.e., tested with water at pressures exceeding 125 percent of the operating pressures of the Pipeline) and checked with a smart pig device for possible leaks. A smart pig is an electric tool that measures the thickness of the pipe wall and detects deterioration of the strength of the pipe wall. The Pipeline was most recently tested with a smart pig device in 1995 (PG&E, 2004). Based on the results of the most recent smart pig test, the physical integrity of the Pipeline is judged to be sound.

When PG&E ceased routine use of the Pipeline in 1998, sections of the Pipeline were filled with an inert gas and water treated with corrosion inhibitors to maintain its structural viability. Since that time, PG&E has continued to routinely maintain the Pipeline. Cleaning plugs were run through the Pipeline in 1998 and 1999 to remove residual oil (PG&E, 2004). The Pipeline is also equipped with cathodic protection devices that protect against galvanic rust and corrosion. To ensure the cathodic protection devices remain effective, readings are taken weekly. Pipeline control and communications equipment as well as the entire length of the Pipeline are checked bimonthly. Isolation valves are currently inspected once every six

months, as required by the California Health and Safety Code to ensure proper function.

Based on the foregoing, the statement in the MND that the Pipeline has been subject to frequent maintenance and inspection is accurate.

Moreover, in regards to the relevant future Pipeline operations, as explained elsewhere in the MND, before the Pipeline can be returned to active status, the State Fire Marshal must find that the Pipeline material is chemically compatible with the products proposed to be transported within it by SPBPC. Mitigation Measure 2.H-1 specifically requires SPBPC to inspect the Pipeline with a smart pig device and provide the results to the State Fire Marshal and CPUC staff for approval before the Pipeline can be returned to active status. In addition, Mitigation Measures 2.F-1 and 2.F-2 require that seismic evaluation of the existing and replacement pipeline segment be performed and, if necessary, repairs or modifications be made to the Pipeline. Any such work would be monitored by the CPUC to ensure compliance of these measures and overall Pipeline safety. Further, as explained in Response B-4, Shell will incorporate and upgrade as necessary the Pipeline's existing leak detection system into its Supervisory Control and Data Acquisition (SCADA) system. The SCADA system is a modern, state-of-the-art system capable of identifying damage to the Pipeline in as little as 2-3 minutes and remotely activating shut off valves to stop the flow of oil or related products within 1-2 minutes after a leak is detected. Finally, once the Pipeline is returned to active status, it would be periodically maintained by SPBPC (see, e.g., MND pages 1-19 and 1-20) in accordance with state and federal law. The combination of the above mitigation measures and proposed maintenance activities and leak detection system support the MND finding of a less than significant impact in regards to the issues raised by the commenter.

Response F-29

The MND adequately describes the quality of habitat within Alhambra Creek and the unnamed drainage within and surrounding the 5,500-foot replacement pipeline segment corridor. See MND pages 2.D-6, 2.D-7, 2.D-10, and 2.D-11. In addition to the low potential for special-status species to be located within the construction disturbance zone of the 5,500-foot replacement pipeline segment, the MND includes implementation of mitigation measures, such as avoidance of work during critical life stages of potentially-affected species, replacement of valuable vegetation for habitat, or soil erosion and sediment transport avoidance. The conclusion that "the extent of the effect would not likely be substantial" on MND page 2.D-11 is an introductory statement later supported by specifics through MND page 2.D-13.

Mitigation Measure 2.D-1 includes a two-tiered strategy for mitigating potential impacts to biological resources. The first step is avoidance of sensitive habitat (i.e., Alhambra Creek, the unnamed drainage and associated wetlands) through trenchless construction techniques and/or other methods approved by the applicable governmental agencies. In accordance with law, avoidance will be implemented “to the extent feasible.” Should avoidance not be considered feasible, as determined by the CPUC, the second step of the strategy, mitigation and compensation under the Special-Status Species Protection Plan, will be implemented. As stated in Mitigation Measure 2.D-1, the Special-Status Species Protection Plan (SSSPP) will be submitted to the Commission as well as applicable regulatory agencies (i.e. USFWS, CDFG, Corps, RWQCB, etc.) for review and approval. Compensation ratios suggested in the MND are indicative of minimum ratios likely to be recommended by the regulatory agencies. However, different or additional mitigation measures would be implemented if required by the regulatory agencies, as part of their approval of the SSSPP.

- Response F-30 Please see Response F-29
- Response F-31 Please see Response F-29.
- Response F-32 The MND adequately discusses biological resources within the pipeline construction disturbance zone, potential project impacts to these resources, and mitigation measures to reduce potential impacts to a less than significant level. Again, Mitigation Measures 2.D-1 through 2.D-4 require avoidance, if feasible, followed by compensation and additional mitigation should avoidance be determined infeasible by the Commission. Changing the proposed pipeline alignment would not necessarily reduce potential impacts to a less than significant level nor would it necessarily result in avoidance of sensitive biological resources. In fact, since resources may change distribution from year to year, changing the alignment based on current data could actually increase impacts. However, as discussed in the MND, the appropriate regulatory agencies must review and approve the Special-Status Species Protection Plan and may require alignment changes or further specific mitigation, as warranted to ensure that impacts are avoided or mitigated to the extent feasible.
- Response F-33 The MND adequately describes the quality of habitat within Alhambra Creek and the unnamed drainage within and surrounding the 5,500-foot replacement pipeline segment corridor. See MND pages 2.D-6, 2.D-7, 2.D-10, and 2.D-11. In addition to the low potential for special-status species to be located within the construction disturbance zone of the 5,500-foot replacement pipeline segment, the MND includes implementation of mitigation measures, such as avoidance of work during critical life stages of

potentially-affected species, replacement of valuable vegetation for habitat, or soil erosion and sediment transport avoidance. The conclusion that “the extent of the effect would not likely be substantial” on MND page 2.D-11 is an introductory statement later supported by specifics through MND page 2.D-13.

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In response to this comment, the second bullet point under Botanical Resources in Mitigation Measure 2.D-1 on MND page 2.D-13 will be revised as follows:

- **If preconstruction surveys to map the project replacement pipeline easement determine that wetland vegetation cannot be avoided and will be disturbed or removed during construction, a qualified botanist shall conduct pre-construction species-specific surveys for special-status plant species (soft bird’s beak, Mason’s lilaopsis, Suisun marsh aster, Delta tule pea, Delta mudwort, California seablite, Point Reyes bird’s beak, rose-mallow, hairless popcorn-flower, and saline clover) in all areas that may provide suitable habitat during the period of identification for each species. Results of the survey shall be included in the project administrative record. If special-status plant species are found, then these species shall be avoided. In the event that it is infeasible to avoid, then SPBPC shall**

compensate for the loss of special-status plant species and their habitat at a 2:1 ratio (or potentially larger ratio as agreed to by the permitting agencies) within the project vicinity by creating, restoring, or enhancing special-status species habitat or by contributing in-lieu funds to an existing or new restoration project preserved in perpetuity. Compensation for both individual special-status plants and acreage of habitat lost is likely to be required. If the proposed project would result in potential impacts to listed plant species, consultation with USFWS and CDFG shall be initiated to determine whether further action is required.

- Response F-34 Mitigation Measure 2.D-2 requires wetland delineation and subsequent permits and agreements prior to disturbance to or fill of potential jurisdictional wetlands. The MND indicates that replacement pipeline construction activities have the potential to result in temporary disturbance and/or removal of small areas of potential jurisdictional wetlands, a conclusion sufficient to meet CEQA standards. The MND adequately analyzes the potential impacts of the project on jurisdictional wetlands and requires avoidance of potential jurisdictional wetlands to the extent feasible as determined by the Commission. If avoidance is infeasible, the MND requires the applicant to conduct wetland delineation followed by verification by the applicable regulatory agencies, and compensate for the loss of jurisdictional wetlands subject to additional mitigation required by applicable regulatory agencies. These actions would reduce potential impacts to jurisdictional wetlands to a less than significant level.
- Response F-35 As discussed in Response F-24, pre-construction surveys are a standard practice that is fully consistent with CEQA when properly applied. See Responses F-24 and F-34.
- Response F-36 The MND's findings that potential biological resource impacts will be reduced to less than significant through the specified mitigation measures in the MND are supported by substantial evidence. The commenter cites no evidence to the contrary in their comment. Please see Responses F-24 and F-34.
- Response F-37 The comment correctly states that the existing Pipeline crosses active faults and portions of the Pipeline are located within the Alquist-Priolo Earthquake Fault Zone. These faults also experience measurable tectonic creep regardless of whether an earthquake occurs on the fault. The analysis for the MND presents this information and discusses it on MND pages 2.F-6 and 2.F-7. As discussed on MND page 2.F-7, where the Pipeline crosses active faults, it is contained within an over-sized, reinforced concrete conduit to provide unrestrained movement for the pipe, thereby reducing overstress

caused by sudden offset. In addition, the Pipeline was designed to compensate for axial elongation or compression through flexibility provided by a U-shaped pipe configuration. The MND states that appropriate stress and strain evaluations were incorporated into the design of the Pipeline and the conduit to ensure that the pipe would withstand dynamic loads from lateral offset of the faults. The MND discussion of fault offset and its affect on the Pipeline also explains that remote control isolation valves located on either side of the Concord-Green Valley fault crossing, and immediately northwest of the Hayward fault crossing are designed to stop the flow of product through the Pipeline in the event that an earthquake causes the Pipeline to displace and rupture.

The active faults that the Pipeline crosses have not experienced a major seismic event since the Pipeline was constructed. Therefore, the design features installed to compensate for sudden fault offset, such as the conduit and U-shaped pipe configuration, have not been triggered or affected by sudden earthquake offset. However, because the Pipeline crosses faults that exhibit gradual tectonic creep not associated with earthquake events, there is a potential that the Pipeline has experienced some degree of displacement since its construction. The amount of gradual tectonic creep that has occurred may have been enough to reduce the effectiveness of the seismic design features. Consequently, this reduced effectiveness could leave the Pipeline unable to withstand either a single displacement characteristic of a future large earthquake or the expected displacement from long-term tectonic creep. As stated on MND page 2.F-7, PG&E found no documents that provide a record of past tectonic creep monitoring nor has PG&E reported problems attributable to tectonic creep. However, that does not necessarily mean no measurable fault creep has occurred. In any case, the affect of historical tectonic creep on the Pipeline is unknown (refer to MND page 2.F-7). Because of this uncertainty, the MND provided Mitigation Measure 2.F-1, which would require SPBPC to determine what affect, if any, tectonic creep has had on the existing pipeline. As stated in the comment, there is “no information regarding the Pipeline’s current seismic fitness” and “no geological evaluation to determine the Pipeline’s condition and the extent to which it has been affected by previous seismic events.” Mitigation Measure 2.F-1 will accomplish the analysis requested by the commenter, as it requires that a civil or geotechnical engineer with expertise in seismic design and structural seismic response evaluate the effect of tectonic creep on the Pipeline prior to the start of Pipeline operations by SPBPC. Should this evaluation determine that creep displacement across the fault has rendered the Pipeline unable to withstand a future major seismic event on the active faults, or unable to accommodate expected tectonic creep during the operating lifetime of the Pipeline, SPBPC would be required to undertake

necessary repairs or modifications required for seismic retrofit. The evaluation must be submitted to CPUC staff for review of the analysis and recommended actions and the results of this evaluation must be reported to the State Fire Marshal.

It is not necessary to complete the seismic evaluation, as required under Mitigation Measure 2.F-1, prior to CPUC approval. Seismic evaluations aimed at determining the current structural condition, recommending an appropriate retrofit strategy, and installing required seismic retrofits for these types of facilities involve issues of standard engineering design practices, e.g., strengthening segments of the existing Pipeline. Current seismic and geotechnical engineering methods of earthquake design and retrofit are proven and reliable and can ensure the future seismic competence of a structure. The MMRP identifies a monitoring program to ensure mitigation measures are implemented. Notably, a recent Court of Appeals decision, recognizing the practical realities of the planning process, stated that “[m]itigation measures...need not specify precise details of design.” Thus, an environmental document, in proposing mitigation, may permissibly “leave the details to engineers.” (*Ocean View Estates Homeowners Association, Inc. v. Montecito Water District* (2004) 116 Cal.App.4th 396, 400-401; see also *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20,27-36).

In addition, the MND requires that, before the Pipeline is operated, its condition is assessed and that SPBPC must demonstrate that any necessary repairs or modifications are complete. Mitigation Measure 2.F-1 also requires SPBPC to comply with federal regulations (Title 49, Section 195) regarding regular pipeline inspection and inspection immediately following a seismic event or any other event that may affect the safety of the Pipeline.

With implementation of Mitigation Measure 2.F-1, the impacts associated with seismic events, would be reduced to a less than significant level.

Response F-38

The MND adequately describes the geologic and seismic setting of the region and the area of the proposed project. MND page 2.F-2 states that the 5,500-foot replacement pipeline segment is located on alluvial deposits. Of course, these alluvial deposits are not described in detail because that is not necessary to assess the potential geologic and seismic impacts for this MND. Rather, published geologic information provided from the California Geological Survey and the U.S. Geological Survey, which described the proposed 5,500-foot replacement pipeline segment area and an understanding of the seismic conditions of the region, was sufficient to identify an impact (Impact 2.F-2) that would be significant unless mitigation was incorporated. As stated in Mitigation Measure 2.F-2, a geotechnical analysis would be

conducted prior to commencing construction. The comment reiterates this by stating that the engineering analysis would “occur in the future.” This is correct, the geotechnical analysis necessary to determine potential design parameters of the project would occur after project approval and before the project is constructed, as is commonly the case. Geotechnical evaluations are usually completed at a particular time during the design phase of a project (usually only after the project is approved) to ensure that critical seismic and soils data can be provided to the engineering design team so they can incorporate this data into the overall structural design. This is typical for engineering projects because data from the geotechnical analysis is a crucial element to design a facility that will withstand seismic loads.

It is not necessary to complete the geotechnical evaluation that is required under Mitigation Measure 2.F-2, prior to CPUC approval. Field studies, data analysis, calculation of seismic response, and presenting recommendations to a structural engineer, as completed in a standard geotechnical analysis, involve standard engineering methods that will not involve any further or greater impacts than those already disclosed throughout the MND for the replacement pipeline segment. Current geotechnical engineering methods of analysis are proven and reliable and can ensure that any geotechnical problem areas underlying a project site can be identified and remedied. Recommended actions to correct geotechnical deficiencies of a project are standard engineering procedures that when applied, can ensure the future competence of the structural foundation. See also, Response F-38 regarding mitigation deferral. With implementation of Mitigation Measure 2.F-2, geologic impacts associated with the replacement pipeline segment would be less than significant.

Response F-39

The MND recognizes that construction activities associated with the 5,500 foot replacement pipeline segment could encounter contaminated soil and/or groundwater. With the implementation of Mitigation Measures 2.G-5a and 2.G-5b, these impacts would be reduced to a less than significant level.

Not only does Mitigation Measure 2.G-5a require a Phase I Environmental Site Assessment prior to construction of the replacement pipeline segment, but it also requires a Phase II assessment if the Phase I assessment concludes that there is contamination along the route. Mitigation Measure 2.G-5a states that the Phase II assessment must be designed to quantify levels of contamination along the route and must define appropriate measures for protecting construction workers and the general public from exposure to impacted materials. The mitigation measure also states that the Phase II assessment must be submitted to the CPUC for review and approval. Construction of the replacement pipeline segment would not go forward until adoption of appropriate measures to protect construction workers and the

general public from exposure to hazardous materials. The Phase I and/or Phase II site assessments will address all areas that would be subject to disturbance from the replacement pipeline segment. If the Phase I or II assessments indicate a potential for trenching or tunneling through impacted areas, SPBPC would prepare an environmental site health and safety plan (in accordance with OSHA standards) to address worker safety hazards. If a route is altered and extends beyond the area covered by the Phase I or Phase II assessments, additional Phase I and/or Phase II assessments would be required before construction could occur along that sector. In addition, Mitigation Measure 2.G-5b requires that impacted soil generated by construction activities be contained on-site and sampled prior to disposal at an appropriate facility or potential re-use at the project site. The measure also states that the CPUC mitigation monitor shall monitor compliance with this measure. Therefore, the mitigation measures identified in the MND ensure that construction of the replacement pipeline segment would have less than significant impacts to hazards.

- Response F-40 The issue raised by the commenter of why future pumping station(s) cannot be addressed in this MND is discussed in Master Response for *Project Description*.
- Response F-41 According to CEQA Guidelines 15126.4(a)(1)(B), formulation of mitigation measures should not be deferred until some future time. It is well settled, however, that an environmental document may specify performance standards that would mitigate the significant effect of the project and that such measures do not constitute an improper deferral of mitigation. See, e.g., *Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011.
- The mitigation articulated in the MND either details specific measures or identifies mandatory performance standards. Mitigation Measure 2.A-1a, requiring preparation of submittal of an aesthetic resources plan, sets forth specific measures that must be included in the Plan including details of methods of shielding and placement of new above-ground valve stations and details of measure to be taken to restore the replacement pipeline segment area to pre-project conditions. These measures are also set forth in the Mitigation Monitoring and Reporting Program (MMRP) that is included with this Final MND document (Appendix C of this MND). The MMRP identifies a monitoring program to ensure mitigation measures are implemented. See also, Response F-37 regarding mitigation deferral.
- Response F-42 Please see Response F-41.

- Response F-43 Please see Responses F-37 and F-41. Details associated with the valves stations are not yet known; however, the aesthetics resources plan that is required by Mitigation Measure 2.A-1a is required to include details of the methods of shielding and placement of new above-ground valve stations that would be viewable where no such facilities currently exist and also must include specific measures to ensure that the above-ground valve stations are appropriately shielded from view.
- Response F-44 As stated on MND pages 1-20 and 1-21, potential environmental effects from future demolition of the Hercules Pump Station by SCVHG will be the subject of a future CEQA document prepared by the City of Hercules as part of SCVHG's application to demolish and develop the Pump Station property. See also, Master Response for *Project Description* regarding possible future pumping station(s). While demolition of the Pump Station is likely, SCVHG has submitted no application to do this and CPUC approval of the proposed pipeline transfer carries no implied approval of this future action by SCVHG. For the MND to evaluate the effects of demolition of the Pump Station, substantial information about SCVHG's proposed methods of demolition, location of sensitive receptors, types of mitigation proposed as well as consultation with the City of Hercules, the Bay Area Air Quality Management District (BAAQMD), and DTSC would be necessary. No such information is available and it would be clearly speculative to make assumptions of this future process. Furthermore, once ownership of the Pump Station property has been transferred to SCVHG, the CPUC would have no jurisdictional ability to ensure that any necessary mitigation measures be enforced. This responsibility rests with the City of Hercules, which will properly review SCVHG's future application for demolition and future development of the Hercules Pump Station property.
- Please see Master Response for *Project Description* for additional related information.
- Response F-45 The commenter is correct that the MND does not present historical operational air emission levels from the Pipeline. The only sources of routine air emissions from the existing Pipeline were the product heaters at the Hercules Pump Station. These heaters would be abandoned along with the Pump Station property. As a result of this abandonment, the Pipeline's potential operational air emissions would decrease. SPBPC may in the future, seek to add similar emission sources as part of a future pumping station, there is no certainty of SPBPC's need for such a facility as discussed in Master Response for *Project Description*. Such additions of air emission sources would be subject to new permitting and review by the BAAQMD. The commenter's assertions about the adequacy of the project baseline are addressed in Response F-5. Please see Master Response for *Project*

Description for a full discussion of future pipeline uses and future permitting processes as considered in this document. The commenter also asserts that traffic-related air emission should be estimated from future pipeline operation. For the same reasons discussed in Master Response for *Project Description*, such air emissions cannot be estimated because it is unknown whether such emissions would occur and if so, the location amount and the type of such emissions. Furthermore, such traffic-related air emissions would be related with future tie-in points and/or future pumping station(s).

Response F-46 The commenter correctly presents the conclusion of the MND Air Quality analysis that construction of the 5,500-foot replacement pipeline segment would result in a significant air quality impact. This finding of significant air quality impact by the MND follows the BAAQMD’s CEQA Guidelines approach to air quality construction impacts, i.e., most construction impacts although short term in nature are significant. Because of this, the BAAQMD CEQA Guidelines provide a list of recommended mitigation measures (much longer than those cited by the commenter) to apply to construction-related air quality impacts that reduce such impacts to a less than significant level. This BAAQMD methodology was followed and applied to the MND and are presented in Mitigation Measure 2.C-1. These measures are industry standard measures for construction dust control and construction equipment exhaust reduction; when applied as a whole have been historically effective in reducing air quality impacts from construction emissions.

“SPBPC shall submit documentation to the CPUC that SPBPC has made a binding commitment to participate in BAAQMD prescribed measures and has given notice of such participation to the Planning Director of the BAAQMD. The CPUC’s mitigation monitor shall verify compliance.”

This required action provides the CPUC with a means to insure SPBPC’s commitment to these measures (as specified in Mitigation Measure 2.C-1) and a requirement for the CPUC to monitor SPBPC’s compliance during construction. For example, in the case of establishing a carpooling strategy for construction workers cited by the commenter, SPBPC would have to provide their strategy for their workers and contractors to the CPUC for review and approval prior to the start of construction. Such a plan would depend on the labor force necessary and the location of the construction workers.

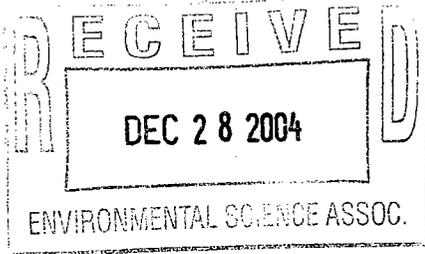
Response F-47 Please see Response F-44.

Response F-48 Please see Master Response for *Project Description* for a detailed response to these issues raised by the commenter.

- Response F-49 Please see Master Response for *Project Description* for a detailed response to these issues raised by the commenter.
- Response F-50 Please see Master Response for *Project Description* for a detailed response to these issues raised by the commenter.
- Response F-51 Please see Response A-1.
- Response F-52 The commenter refers to the EIR prepared for the 1998 second round of divestiture of PG&E power plants. While it is true that one aspect of both the projects mentioned by the commenter (the 1998 power plant divestiture and the proposed sale of the Pipeline) is the same, i.e., both result in a transfer of ownership, the 1998 divestiture was different in another important aspect. In 1998, with the sale of PG&E's power plant, the CPUC had no further jurisdiction over those assets under the sale agreement. Thus, there could be no assurance of the implementation of any mitigation measure on unknown future owners. This was one of the main reasons that an EIR was prepared; however, it was not the only reason. For this proposed project (sale of the Pipeline), the sale of the Pipeline is to a known future owner (SPBPC), SPBPC's future intents for the Pipeline are part of their application, and SPBPC will be a regulated utility subject to future environmental review and jurisdiction of the CPUC. These facts makes the two cases substantially different in that the CPUC's has the authority to insure that the proposed mitigation measures presented in this MND will be implemented to ensure that all potential environmental impacts will be less than significant.
- Response F-53 Please see Master Response for *Project Description* for a detailed response to these issues raised by the commenter.
- Response F-54 Please see Master Response for *Project Description* for a detailed response to these issues raised by the commenter.
- Response F-55 The commenter requests that the CPUC prepare an EIR prior to approval or denial of the proposed project. Please see Response A-1.



Making San Francisco Bay Better



December 27, 2004

Ms. Heidi Vonblum
Environmental Science Associates
225 Bush Street, Suite 1700
San Francisco, CA 94104

SUBJECT: Draft Negative Declaration (Revised) for Pacific Gas & Electric
Company's Richmond-to-Pittsburg Pipeline Divestiture
BCDC Permit File: 2-74; SCH#: 2001102139

Dear Ms. Vonblum:

Thank you for the opportunity to comment on the Draft Negative Declaration for Pacific Gas and Electric Company's proposed Richmond-to-Pittsburg Pipeline Divestiture (MND). Although the San Francisco Bay Conservation and Development Commission (Commission) has not reviewed the document, the following are staff comments based on our review of the Negative Declaration in the context of the Commission's authority under the McAteer-Petris Act (California Government Code Sections 66600 et seq.) and the federal Coastal Zone Management Act. The Commission exercises authority over San Francisco Bay to the line of mean high tide, including all sloughs and marshlands lying between mean high tide and five feet above mean sea level. The Commission also has jurisdiction within a shoreline band between the edge of the Bay and a line 100 feet landward and parallel to the shoreline. Any person or government agency wishing to place fill, extract materials, or to make any substantial change in use to any land, water or structure within the Commission's jurisdiction requires a permit from the Commission. The Commission can issue a permit if the proposed project is consistent with the McAteer-Petris Act and the provisions of the San Francisco Bay Plan (Bay Plan).

G-1

We understand from the MND that Pacific Gas and Electric proposes to sell its Richmond-to-Pittsburg fuel oil pipeline. The sale would include PG&E's Hercules Pump Station, with 44 acres of property, as well as the pipeline from its point of origin in Richmond to the Mirant Pittsburg Power Plant in Pittsburg. The pump station and surrounding property is proposed to be removed from public utility service and the soil treated for residential or commercial use. This action would require separate environmental review by the City of Hercules, and is not covered by the MND.

G-2

The MND studies potential environmental impacts related to the transfer and to the future operation of the pipeline, as well as the reconstruction of a 5,500 foot replacement pipeline segment to replace a 4,000 foot pipeline section in the City of Martinez. The pipeline, though currently not in operation, was originally approved by the Commission in 1975 (Permit 2-74). As stated in the MND, the new owner of the pipeline would be responsible for construction of the new pipeline segment and future operation of the pipeline and any associated mitigation measures.

G-3

We understand that the original 4,000 foot section of pipeline was decommissioned to allow placement of two additional railroad tracks and the relocation of the Martinez rail station. Consequently, a greater length of pipeline is required to circumvent this area. This section is proposed to leave the rail right of way and run northward along Ferry Street, then westerly along an easement granted by the city and the East Bay Regional Park District that demarks the southern boundary of the Martinez Regional Shoreline at this point, continue southerly along the easement as it parallels Berrellesa Street until Embarcadero Street, then continue westerly along Embarcadero until it meets the existing pipeline.

G-4

The MND describes the proposed pipeline replacement section as crossing two creeks, tidally influenced Alhambra Creek and an unnamed tributary to the creek near Ferry Street. The document correctly states that a permit would be needed from a number of public agencies, including the Commission, to cross below the grade of the creek bed. The MND states that the depth to which the pipeline would be placed would prevent hydrologic impacts to Alhambra Creek. Were there to be even a minor leak along the pipeline, it could adversely affect Bay resources, particularly at points where the line crosses a watercourse that leads to the Bay. The MND proposes remotely-operated valves that, in the event of a suspected leak, could be closed where the new pipeline section would cross Alhambra Creek and the unnamed drainage; the document asserts that this measure would provide optimum protection against spills in this area.

G-5

According to the MND, at this time there are no known sections along the existing pipeline beyond the section to be replaced in need of repair. The MND describes how, even though the 4,000 foot portion of the pipeline was capped and taken out of service in 1998, the company has continued to maintain and periodically test the remaining 35 miles of pipeline. The MND states that the pipeline incorporates a leak detection system and that prior to any future operation, the new owner would review all inspection records as well as conduct its own inspections, submitting its findings to the State Fire Marshall for approval. A new spill and containment plan would be submitted to the Fire Marshall as well as the Department of Fish and Game Office of Oil Spill Prevention and Response prior to restoring operation. All required maintenance and reporting would continue once the repaired pipeline was approved for operation, with safety oversight and regulation by the State Fire Marshall.

G-6

The MND correctly states that the Commission would require a permit for construction of the replacement section, to include conditions to protect sensitive habitat, a site restoration and monitoring plan and adequate safety measures. The Commission also would want to be assured that all precautions would be in place to avoid potential oil spills during construction as well as during future operation of the pipeline.

G-7

If you should have any questions, please do not hesitate to contact me at 415.352-3644 or lindas@bcd.c.ca.gov. At such time a permit application is to be prepared, the applicant should contact our chief of permits, Bob Batha. Thank you again for the opportunity to review the Negative Declaration for PG&E's Richmond-to-Pittsburg Pipeline Divestiture.

G-8

Sincerely,



LINDA SCOURTIS
Coastal Planner

LETTER G – SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

- Response G-1 The commenter summarizes its regulatory authority and responsibilities. This comment is a general statement and does not state a specific concern or question regarding a significant environmental impact or the adequacy of the MND.
- Response G-2 The commenter describes the proposed project. In general, this understanding contained in the comment is accurate. While it is correct that removal of the Pump Station from public utility service is part of the project, remediation and development of the Pump Station property is not. Please refer to Master Response for *Project Description*.
- Response G-3 The commenter describes the proposed project. In general, this understanding contained in the comment is accurate.
- Response G-4 The commenter describes the proposed project. In general, this understanding contained in the comment is accurate.
- Response G-5 The commenter describes the proposed project. In general, this understanding contained in the comment is accurate.
- Response G-6 The commenter describes the proposed project. In general, this understanding contained in the comment is accurate.
- Response G-7 The comment notes that the MND accurately describes the permits needed for construction of the 5,500-foot replacement pipeline segment. Regarding avoidance of potential oil spills during construction activities, see Mitigation Measure 2.G-1 on MND page 2.G-8. Mitigation Measure 2.G-1 requires SPBPC and/or its contractors to implement construction best management practices to avoid the improper use or inadvertent release of hazardous materials such as fuels, oils, solvents, and glues into the environment. Regarding avoidance of oil spills during operation of the Pipeline, safety oversight and regulation by the State Fire Marshall would help to ensure the avoidance of potential hazards to the public caused by any future operation of the Pipeline.
- Response G-8 This comment is a general statement and does not state a specific concern or question regarding a significant environmental impact or the adequacy of the MND.



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Be energy efficient!

DEPARTMENT OF TRANSPORTATION

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January 6, 2005

CC000191
SCH2001102139

Mr. Billie Blanchard
California Public Utilities Commission
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102-3298

Dear Mr. Blanchard:

Pacific Gas and Electric Company's Richmond-To-Pittsburg Pipeline Divestiture – Draft Mitigated Negative Declaration (Revised)

Thank you for continuing to include the California Department of Transportation (Department) in the environmental review process for the proposed project. We have reviewed the Draft Mitigated Negative Declaration (Revised) for the Pacific Gas and Electric Company's Richmond-To-Pittsburg Pipeline Divestiture and have the following comments to offer:

H-1

Encroachment in State Right of Way

Any work or traffic control within the State right-of-way (ROW) will require an encroachment permit from the Department. To apply for an encroachment permit, submit a completed encroachment permit application, environmental documentation, and five (5) sets of plans (in metric units) which clearly indicate State ROW to the following address:

H-2

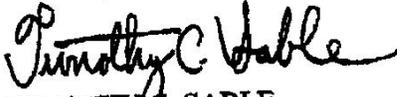
Mr. Sean Nozzari, District Office Chief
Office of Permits
California Department of Transportation, District 04
P. O. Box 23660
Oakland, Ca 94623-0660

Mr. Billic Blanchard
January 6, 2005
Page 2

Letter H continued

Should you require further information or have any questions regarding this letter, please call
Lisa Carboni of my staff at (510) 622-5491.

Sincerely,



TIMOTHY C. SABLE
District Branch Chief
IGR/CEQA

c: State Clearinghouse

LETTER H – STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Response H-1 This comment is a general statement and does not state a specific concern or question regarding a significant environmental impact or the adequacy of the MND. The comment states that the commenter has reviewed the MND and has comments, as discussed below.

Response H-2 The commenter states that any work or traffic control within the State right-of-way will require an encroachment permit from the Department and gives direction regarding the application process for an encroachment permit. The comment is noted and the text of MND page 1-27 will be revised as follows:

Other Permits for Resumption of Pipeline Operations by SPBPC

...

- Encroachment permits from the State of California Department of Transportation, East Bay Regional Park District, City of Richmond, City of San Pablo, City of Pinole, City of Martinez, City of Pittsburg, and Contra Costa County; and

...

REFERENCES

Lambert, Jo Lynn, Best Best & Krieger LLP, written communication, January 12, 2005.

Lacourciere, Paul C., Response to PG&E Richmond to Pittsburg Fuel Oil Pipeline Divestiture Application Nos. A.00-05-035 and A.00-12-008 – Data Request #3, January 6, 2005.

Pacific Gas and Electric Company (PG&E), *Supplement to Proponents Environmental Assessment to Establish Market Value for and Sell its Richmond-to-Pittsburg Fuel Oil Pipeline and Hercules Pump Station Pursuant to Public Utilities code Section 367 (B) and 851. Application Number 00-05-035*, May 2004.

Smith, Nanci, Public Land Management Specialist, California State Lands Commission, written communication, October 13, 2004.

Wenninger, Nancy, Land Acquisition Manager, East Bay Regional Park District, written communication, January 19, 2005.