



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Ave  
Fresno, California 93710  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Dec 06 2021**

**STATE CLEARINGHOUSE**

December 6, 2021

Susan Strachan  
Diablo Canyon Power Plant Decommissioning Project Manager  
County of San Luis Obispo, Department of Planning and Building  
976 Osos Street #300  
San Luis Obispo, California 93408

**Subject: Diablo Canyon Nuclear Power Plant Decommissioning Project - ED2021-174 / DRC2021-00092 (PROJECT)  
Notice of Preparation (NOP)  
SCH No.: 2021100559**

Dear Ms. Strachan:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) from County of San Luis Obispo for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

### **CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, §§ 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

**Water Pollution:** Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, activities associated with the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize these watercourses include the following: increased sediment input from road or structure runoff; toxic runoff associated with development activities and implementation; and/or impairment of wildlife movement along riparian corridors. The Regional Water Quality Control Board and United States Army Corps of Engineers also has jurisdiction regarding discharge and pollution to Waters of the State.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. CDFW prohibits and cannot authorize take of any fully protected species.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Pacific Gas and Electric Company (PG&E)

**Objective:** The objective of the Project is to decommission Diablo Canyon Nuclear Power Plant (DCPP). The DCPP facility is 750-acre property owned by PG&E and is

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surrounded by 12,000-acres of mixed grazed annual grasslands, coastal live oak and riparian woodland, chaparral, and scrub habitats. Diablo Creek flows west along the northern edge of the DCPD with a half mile of the creek culverted and has switchyard pads. The Pismo Beach facility is an approximately 25.5-acre property. The site is surrounded by developed land, a Union Pacific Railroad line, undeveloped land, and Pismo Creek.

Primary Project activities includes two different phases. Phase one will install electrical infrastructure for the decommission, construct of a new security building, remove the nuclear reactors, remove the discharge structure, construct of waste storage facilities, construct of a new firing range, and conduct initial site restoration, soil remediation, and final status surveys. Modification of the rail yards to transfer non-radioactive waste via rail cars and transported out of state will also occur. Phase two consists of continuation of the soil remediation and final status surveys, removal of infrastructure that does not support the retained facilities, and site restoration monitoring.

Primary marine-related Project activities will occur in Phase one and includes discharge structure removal and restoration, which will involve installation of a circular cell steel sheet pile cofferdam and dewatering of the work area prior to demolition. Before installation, the footprint of the cofferdam will be scraped/dredged by a barge-mounted excavator to remove large objects or debris that could interfere with the structure. Sheet piles will be installed from shore using a crane-mounted vibratory hammer and filled with granular soils. Once the work area is dewatered, the discharge structure will be removed completely back to the water tunnels, which will be sealed with a concrete bulkhead. After demolition, the shoreline will be restored while the cofferdam is still in place. The void left by removal of the structure will be filled with quarry rock. After site restoration, the area behind the cofferdam will be flooded, and then the cofferdam will be removed.

The NOP/Application Package also presents two alternatives to the Project that would involve a considerable amount of construction in the marine environment. The Intake Structure Removal Alternative would occur in Phase one and would result in complete removal of the intake structure back to the water tunnels. The removal and restoration process and methods would be similar to that of the discharge structure; however, the cofferdam would likely be installed and removed using a barge. The Removal of Breakwaters Alternative would occur in Phase two and include full removal of both breakwaters that enclose the Intake Cove using either a marine or land-based approach. The seafloor under the existing breakwater footprint would then be restored.

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**Location:** The Project has two established sites and two potential sites:

1. Diablo Canyon Power Plant, 3890 Diablo Canyon Road, Avila Beach, CA 93424.
  - a. All marine components of the Project will be located here.
2. Pismo Beach Railyard, 800 Price Canyon Road, City of Pismo Beach, CA 93449
3. Two potential sites, only one of which will be used:
  - a. Santa Maria Valley Railyard Facility, 1599 A Street, Santa Maria, CA 93455  
Betteravia Industrial Park, 2820 W. Betteravia Road, Santa Maria CA 93455

**Timeframe:** Phase 1 (2024-2031): Pre-planning and decommissioning Project activities

Phase 2 (2031-2039): Completion of soil remediation, final status surveys, and final site restoration.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Luis Obispo County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

There are many special-status resources present in and adjacent to the Project area. These resources need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. The NOP indicates there is potentially significant impact unless mitigation measures are taken but no measures are listed to reduce impacts to less than significant. CDFW is concerned regarding potential impacts to special-status species including, but not limited to: the federally endangered black abalone (*Haliotis cracherodii*), the federally threatened Steelhead (*Oncorhynchus mykiss irideus*), the federally threatened and State fully protected Southern sea otters (*Enhydra lutris nereis*), the federally and State threatened California tiger salamander (*Ambystoma californiense*), the federally threatened and State species of special concern California red-legged frog (*Rana draytonii*), the federally candidate species monarch Butterfly (*Danaus plexippus*), the State fully protected peregrine falcon (*Falco peregrinus anatum*), white-tailed kite (*Elanus leucurus*), and golden eagle (*Aquila chrysaetos*), and the State species of special concern American badger (*Taxidea taxus*), burrowing owl (*Athene cunicularia*), California legless lizard (*Anniella pulchra*), coastal range newt (*Taricha torosa*), coast horned lizard (*Phrynosoma blainvillii*), San Diego desert woodrat (*Neotoma lepida intermedia*), two-striped garter snake (*Thamnophis hammondi*), western pond turtle (*Emys marmorata*), special-status bats, and special-status plants. In order to adequately assess any potential impacts to

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biological resources, focused biological surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture, and to identify any Project-related impacts under CESA and other species of concern.

Additionally, when an EIR is prepared, mitigation measures must be specific and clearly defined and cannot be deferred to a future time. The specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation, when an EIR is prepared. The Final CEQA document must provide quantifiable and enforceable measures as needed that will reduce impacts to less than significant levels. CDFW recommends the EIR include the mitigation measures found in the Terrestrial Biological Resource Assessment and Marine Biological Resources Assessment (collectively, Biological Assessments) prepared by Terra Verde Environmental Consulting for all the proposed Project sites in addition to our comments below.

## **I. Environmental Setting and Related Impact**

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW, United States Fish and Wildlife Service (USFWS), or National Oceanic and Atmospheric Administration (NOAA) Fisheries?**

### **COMMENT 1: Black Abalone**

**Issue:** Black abalone and their habitat occur in the marine environment at the Project site (PG&E 2020), and Project activities have the potential to impact black abalone. CDFW recommends that the Final CEQA document include an impact analysis for black abalone as well as mitigation measures to avoid or minimize impacts to this protected species. These measures may also be used to reduce impacts to other important marine species, such as fish, red abalone (*Haliotis rufescens*), and other sensitive invertebrates.

**Specific impact:** In-water Project activities, such as scraping/dredging, cofferdam installation, and dewatering, may directly impact black abalone (and other marine species) by entraining, crushing, or desiccating them. These activities may also impact black abalone indirectly via habitat exclusion, destruction, and/or degradation.

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**Evidence impact is potentially significant:** The black abalone is listed as an endangered species under the Federal Endangered Species Act (FESA). According to the Project's Marine Biological Resources Assessment (Appendix J; PG&E 2020b), an established population of black abalone occurs at the Project site. As stated in this assessment, limited larval dispersal and low population density make black abalone particularly vulnerable to extinction. Adverse effects to even a small proportion of the DCPD black abalone population may significantly impact this species.

**Recommended Potentially Feasible Mitigation Measure(s):**

To avoid and minimize potential impacts of the Project to black abalone, CDFW recommends including the following mitigation measures and requiring them as conditions of approval in the Project's Final EIR. CDFW recommends consulting with NOAA Fisheries on the Draft EIR's impact analysis and all proposed mitigation measures for black abalone.

**Recommended Mitigation Measure 1:** CDFW agrees with the recommendations made in Appendix J and the Project's Conceptual Intake & Discharge Structure Demolition Plan (Appendix C; PG&E 2020a) to complete biological and bathymetric surveys of the discharge plume area after discharge stops and before dredging and cofferdam installation. Cofferdam installation should avoid sensitive habitats, such as rocky reef habitat, to the greatest extent feasible.

**Recommended Mitigation Measure 2:** For all marine areas that will be dewatered, installed with a cofferdam, or have structure removed (i.e., riprap removal, Removal of Breakwaters Alternative), CDFW recommends the salvage/relocation of all black abalone and as many other marine organisms as possible by marine biologists. Of particular concern for CDFW are fish, red abalone, and sea stars. A CDFW-issued Scientific Collecting Permit will be needed for relocation of species (see 'Scientific Collecting Permit' section below). CDFW recommends that a marine biologist perform biological inspections prior to dewatering of cofferdam(s) to ensure no salvageable animals remain in the dry work area.

**Recommended Mitigation Measure 3:** If the Intake Structure Removal Alternative is incorporated into the Project, CDFW recommends that the Project avoid dewatering the area adjacent to the natural rock face to the west of the intake structure if possible. While no black abalone were documented here, this natural structure provides habitat for red abalone, other invertebrates, and multiple algal species. Sedentary species in this area would perish as a result of dewatering. If the Project must dewater this portion of the Intake Cove, the Draft EIR should fully explain why this is the preferred alternative.

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## **COMMENT 2: California Tiger Salamander (CTS)**

**Issue:** The Biological Assessments did not consider CTS in their impact analysis. CTS have the potential to occur in the following Project sites: Diablo Canyon Power Plant, Pismo Beach Railyard, Santa Maria Valley Railyard Facility, and Betteravia Industrial Park. Aerial imagery shows that the Project sites are near uplands which may provide suitable refugia and breeding habitat features for CTS.

**Specific Impacts:** Potential ground- and vegetation-disturbing activities associated with Project activities include: collapse of small mammal burrows, inadvertent entrapment, loss of upland refugia, water quality impacts to breeding sites, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

**Evidence impact would be significant:** Up to 75% of historic CTS habitat has been lost to urban and agricultural development (Searcy et al. 2013). The Project sites are within the range of CTS and has suitable habitat (i.e., grasslands interspersed with burrows and vernal pools). CTS have been determined to be physiologically capable of dispersing up to approximately 1.5 miles from seasonally flooded wetlands (Searcy and Shaffer 2011) and have been documented to occur near the Project sites (CDFW 2021). Given the presence of suitable habitat near the Santa Maria Valley Railyard Facility and Betteravia Industrial Park Project sites, ground-disturbing activities have the potential to significantly impact local populations of CTS.

### **Recommended Potentially Feasible Mitigation Measure(s)**

Because suitable habitat features for CTS are present throughout the Project area, CDFW recommends conducting the following evaluation of the Project area, incorporating the following mitigation measures into the Final CEQA document prepared for this Project, and that these measures be made conditions of approval for the Project.

### **Recommended Mitigation Measure 4: Focused CTS Protocol-level Surveys**

CDFW recommends that a qualified biologist evaluate the Project sites to determine if suitable habitat for CTS is present. If suitable habitat is present, CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the USFWS “Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation with CDFW and the USFWS is recommended well in advance of beginning the surveys and prior to any planned vegetation- or

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ground-disturbing activities. CDFW advises that the protocol-level survey include a 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

**Recommended Mitigation Measure 5: CTS Avoidance**

If recommended surveys are not feasible and an Incidental Take Permit (ITP) is not acquired, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project sites. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project sites be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals.

**Recommended Mitigation Measure 6: CTS Take Authorization**

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project sites, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of take authorization would be warranted prior to initiating ground-disturbing activities to comply with CESA. Take authorization would occur through issuance of an incidental take permit (ITP) by CDFW, pursuant to Fish and Game Code section 2081(b). In the absence of protocol surveys, the applicant can assume presence of CTS within the Project sites and obtain an ITP from CDFW.

**COMMENT 3: Special-Status Plant Species**

**Issue:** The Project area may contain habitat suitable to support special-status plant species that are listed pursuant to CESA or the Native Plant Protection Act and/or meet the definition of rare or endangered under CEQA Guidelines section 15380, including, but not limited to, the federally and State endangered California Rare Plant Ranked (CRPR) 1B.1 Marsh sandwort (*Arenaria paludicola*), federally endangered and State designated rare and CRPR 1B.1 Pismo clarkia (*Clarkia speciosa subsp. immaculata*), and CRPR 1B.2 Miles' milkvetch (*Astragalus didymocarpus var. milesianus*). These special-status plants have been observed throughout the San Luis Obispo County, and within the vicinity of the Project Area (CDFW 2021). Therefore, the Project has the potential to impact special-status plants.

**Specific impact:** Without appropriate avoidance and minimization measures for special-status plants, potential significant impacts resulting from ground- and vegetation-disturbing activities associated with Project construction include inability to reproduce and direct mortality.

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**Evidence impact would be significant:** Special-status plant species known to occur in the vicinity of the Project Area are threatened by development activities and associated impacts including introduction of non-native plant species (CNPS 2021).

**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to special-status plant species associated with the Project, CDFW recommends conducting the following evaluation of the Project Area, incorporating the following mitigation measures into the Final EIR , and that these measures be made conditions of approval for the Project.

**Recommended Mitigation Measure 7: Special-Status Plant Surveys**

CDFW recommends that a qualified botanist assess if habitat suitable to support these special-status plants listed above or other special-status plant species is present within or adjacent to the Project area. If suitable habitat is present, CDFW recommends that the Project Area be surveyed for special-status plants by a qualified botanist following the “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities” (CDFW 2018). This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

**Recommended Mitigation Measure 8: Special-Status Plant Avoidance**

CDFW recommends that special-status, non-State listed plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

**Recommended Mitigation Measure 9: State-listed Plant Take Authorization**

If a plant species listed pursuant to CESA or State designated as rare is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081, subdivision (b) for State-listed threatened or endangered plants or pursuant to the Native Plant Protection Act and Fish and Game Code section 1900 et seq. for State designated rare plants.

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**II. Would the Project have a substantial adverse effect on any riparian habitat or other sensitive national community identified in local or regional plans, policies, regulations, or by CDFW, USFWS, or NOAA Fisheries?**

**COMMENT 4: Habitat Areas of Particular Concern**

**Issue:** Several types of Habitat Areas of Particular Concern (HAPC) occur at the Project site, including canopy kelp, rocky reefs, and seagrass (PG&E 2020b). Project activities have the potential to impact HAPC. CDFW recommends that the Final CEQA document include an impact analysis for HAPC as well as mitigation measures to avoid or minimize impacts to these important habitats.

**Why impact would occur:** Dredging, cofferdam installation, and dewatering would directly impact HAPC if these habitats exist within the cofferdam/dry work area footprint. These and other in-water activities could also impact HAPC by generating turbidity and blocking sunlight.

**Evidence impact is potentially significant:** HAPC, a subset of Essential Fish Habitat, are habitats of special importance to fish populations due to their rarity, vulnerability to development and anthropogenic degradation, and/or ability to provide key ecological functions. Canopy kelp (e.g., giant kelp, bull kelp), rocky reefs, and seagrass (e.g., eelgrass) have been designated as groundfish HAPC by the Pacific Fisheries Management Council under the Magnuson-Stevens Fishery Conservation and Management Act. Eelgrass (*Zostera* spp.) is further protected under State and federal “no-net-loss” policies for wetland habitats. Additionally, the importance of eelgrass protection and restoration as well as the ecological benefits of eelgrass are identified in the California Public Resources Code (PRC Section 35630).

**Recommended Potentially Feasible Mitigation Measure(s):** To avoid and minimize potential impacts of the Project to HAPC, CDFW recommends including the following mitigation measures and requiring them as conditions of approval in the Project’s Final CEQA document. CDFW recommends consulting with CDFW and NOAA Fisheries on the Final CEQA document’s impact analysis and all proposed mitigation measures for HAPC prior to release of the Final CEQA document.

**Recommended Mitigation Measure 10:** CDFW recommends that dredging, cofferdam installation, dewatering, and anchoring avoid HAPC to the greatest extent feasible. If impacts cannot be avoided, compensatory mitigation may be required. The Draft EIR should quantify the amount of canopy kelp, rocky reef, and seagrass that could be lost due to the Project and potential alternatives. To minimize turbidity impacts, CDFW recommends installing a turbidity curtain around in-water Project activities whenever possible, especially activities occurring in the Intake Cove.

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**Recommended Mitigation Measure 11:** CDFW appreciates the Project's inclusion of Marine Measure 3 (Seagrass Mitigation Plan [SMP]) in the Alternatives section of the NOP/Application Package. CDFW agrees that this is a necessary mitigation measure if the Intake Structure Removal Alternative and/or Removal of Breakwaters Alternative are incorporated into the Project. CDFW recommends that a Seagrass Mitigation Plan be developed if any in-water work or modifications are planned to occur in the Intake Cove (e.g., riprap removal, barge anchoring). In addition to what is listed in the Application Package (pages 8 and 18 of the Alternatives section), the SMP should also include what mitigation actions (e.g., eelgrass transplanting) will be required in the event that eelgrass impacts do occur. We recommend that the SMP adhere to all protocols outlined in the California Eelgrass Mitigation Policy (NMFS 2014). CDFW recommends that PG&E consult CDFW, NOAA Fisheries, and the other resource agencies during the development of the SMP.

### III. Editorial Comments and/or Suggestions

**Lake and Streambed Alteration:** The Project contains activities that may result in the Project sites being subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent, as well as those that are perennial in nature.

For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov). It is important to note, CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement (LSAA). If inadequate, or no environmental review, has occurred, for the Project activities that are subject to notification under Fish and Game Code section 1602, CDFW will not be able to issue the Final LSAA until CEQA analysis for the project is complete.

**Nesting birds:** CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10

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days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project sites to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

**Federally Listed Species:** CDFW recommends consulting with the USFWS and NOAA Fisheries on potential impacts to federally listed species including, but not limited to, CTS, black abalone, steelhead, Southern sea otters, CRLF, and Monarch Butterfly. Take under FESA is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

**Scientific Collecting Permit:** Fish and Game Code sections 1002, 1002.5 and 1003 authorize the CDFW to issue permits for the take or possession of wildlife and certain plants. CDFW currently implements this authority through Section 650, Title 14, California Code of Regulations, by issuing Scientific Collecting Permits (SCP). In order to relocate/transplant any marine species, including fish, kelp, and eelgrass, the Project must first obtain an SCP from CDFW. More information can be found on CDFW's SCP webpage: <https://wildlife.ca.gov/Licensing/Scientific-Collecting>.

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**Underwater Explosives:** The use of underwater explosives in State waters inhabited by fish is prohibited except under a CDFW-issued permit consistent with terms and conditions set by the Fish and Game Commission (Fish and Game Code, Section 5500). If the Removal of Breakwaters Alternative is included in the Project and underwater explosives are needed, PG&E must contact CDFW and obtain a permit before this activity can occur.

**Water Circulation Study:** According to Appendix J, water exchange within the Intake Cove will decrease once the intake ceases operation. Regardless of whether the Intake Structure Removal Alternative is incorporated into the Project, water circulation changes in the Intake Cove could impact the habitats and species currently there. CDFW recommends that PG&E conduct a water circulation study of the Intake Cove to better understand what changes will occur and include this analysis in the final CEQA document. CDFW suggests that data could be collected on water circulation within the Intake Cove during an outage to better understand the potential future water conditions in the cove for the Draft EIR.

**Marine Habitat Restoration Scientific Technical Advisory Team:** CDFW agrees with the recommendation made in the Project's Marine Habitat Restoration and Monitoring Plan (Appendix J-2; PG&E 2020c) for a scientific technical advisory team (STAT) to guide and evaluate marine habitat restoration and monitoring activities. CDFW should be included on the STAT.

**Oil Spill Response:** CDFW's Office of Spill Prevention and Response has reviewed the Project's Oil Spill Response Plan (OSRP; Appendix G) and offers the following comments and recommendations:

- The OSRP only describes response procedures for a spill in the nearshore marine environment. Since substantial Project activities will occur inland, the OSRP should also include spill response procedures for inland tributaries/waterways at the Project site. The geographic response area (Section 2.1) should include all waterways onsite. Similarly, the spill scenarios (Section 3) should include inland scenarios, for instance, a worker vehicle/truck accident that spills fuel into an intermittent creek. Additional equipment may be needed for inland response (e.g., shovels, hay bales, short-skirted containment boom) and should be listed in the OSRP.
- Senate Bill 861 (2014) expanded California's oil spill prevention and response program to cover all statewide surface waters at risk of oil spills. CDFW recommends including Senate Bill 861 in Table 1.3-1 (Laws Applicable to the OSRP) since a spill could impact tributaries to coastal waters.
- California Assembly Bill 1197 would require an oil spill contingency plan to identify at least one certified Spill Management Team. Though the bill is still

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under review, Spill Management Team certification may be a requirement at some point during the Project.

- High wave energy may negate any ability to deploy oil spill response equipment in the discharge cove. CDFW recommends addressing this possibility in the OSRP.
- To assist in modeling of oil releases in the ocean, CDFW recommends referring to the Southern California Coastal Ocean Observing System (SCOOS), a surface current mapping system.

CDFW recommends listing Pacific Wildlife Care (PWC), a member of the Oiled Wildlife Care Organization, in the OSRP in the event they are needed to assist with oiled wildlife. The PWC phone number is 805-543-WILD.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

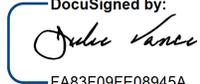
## **CONCLUSION**

CDFW appreciates the opportunity to comment on the NOP to assist the County of San Luis Obispo in identifying and mitigating Project impacts on biological resources. More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which

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corresponds with recommended mitigation measures in this comment letter. Questions regarding terrestrial species in this letter or further coordination should be directed to [R4CEQA@wildlife.ca.gov](mailto:R4CEQA@wildlife.ca.gov), and for marine species Amanda Canepa, Environmental Scientist at (831) 277-9740 or [Amanda.Canepa@wildlife.ca.gov](mailto:Amanda.Canepa@wildlife.ca.gov)

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

#### Attachments

A. MMMRP for CDFW Recommended Mitigation Measures

cc: Office of Planning and Research, State Clearinghouse, Sacramento

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## REFERENCES

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- California Native Plant Society (CNPS), Rare Plant Program. 2021. Inventory of Rare and Endangered Plants of California (online edition, v9-01 1.0). Website <http://www.rareplants.cnps.org>
- National Marine Fisheries Service (NMFS). 2014. California Eelgrass Mitigation Policy and Implementing Guidelines. NOAA Fisheries West Coast Region (October 2014)
- Pacific Gas and Electric (PG&E). 2020a. Conceptual Intake & Discharge Structure Demolition Plan – Diablo Canyon Power Plant Rev 0. Report prepared for PG&E Diablo Canyon Nuclear Power Plant.
- PG&E. 2020b. Marine Biological Resources Assessment Report – Diablo Canyon Power Plant Rev 0. Report prepared for PG&E Diablo Canyon Nuclear Power Plant.
- PG&E. 2020c. Marine Habitat Restoration and Monitoring Plan – Diablo Canyon Power Plant Rev 0. Report prepared for PG&E Diablo Canyon Nuclear Power Plant.
- PG&E. 2020d. Marine Wildlife Contingency Plan – Diablo Canyon Power Plant Rev 0. Report prepared for PG&E Diablo Canyon Nuclear Power Plant.
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- Searcy, C.A., and Shaffer, H.B., 2011. Determining the migration distance of a vagile vernal pool specialist: How much land is required for conservation of California tiger salamanders? In Research and Recovery in Vernal Pool Landscapes, D. G. Alexander and R. A. Schlising, Eds. California State University, Chico, California.

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Searcy, C.A., E. Gabbai-Saldate, and H.B. Shaffer. 2013. Microhabitat use and migration distance of an endangered grassland amphibian. *Biological Conservation* 158: 80-87.

USFWS. 2003. Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander, October 2003.

**Attachment 1****CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM  
(MMRP)****PROJECT: Diablo Canyon Nuclear Power Plant Decommissioning Project -  
ED2021-174 / DRC2021-00092 (PROJECT)****SCH No.: 2021100559**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1	
Mitigation Measure 2	
Mitigation Measure 3	
Mitigation Measure 4: Focused CTS Protocol-level Surveys	
Mitigation Measure 6: CTS Take Authorization	
Mitigation Measure 7: Special-Status Plant Surveys	
Mitigation Measure 9: State-listed Plant Take Authorization	
Mitigation Measure 10	
Mitigation Measure 11	
<i>During Construction</i>	
Mitigation Measure 5: CTS Avoidance	
Mitigation Measure 8: Special-Status Plant Avoidance	