

**STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission**

In the Matter of:)	Docket No. 99-AFC-4
)	
)	ERRATA TO THE PRESIDING MEMBER S
Application for Certification)	PROPOSED DECISION
for the Moss Landing Power)	-and-
Plant Project)	RESPONSE TO COMMENTS
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The following list of Errata identifies edits and clarifications related to the evidence of record described in the Presiding Member s Proposed Decision (PMPD). These edits are generally based on comments on the PMPD submitted by parties and members of the public, either in writing or at the Committee Conference held in Moss Landing on September 21, 2000.

RESPONSE TO COMMENTS

- Insert on page 9 following the Procedural History

Duke Energy

Applicant requested minor revisions to Soil & Water, Transportation, Biology, and Air Quality where, in lieu of a requirement to temporarily install Diesel particulate filters (DPF), Applicant will be required to deposit sufficient funds to cover the cost of more effective, permanent DPF retrofit installations within the air district. These revisions have been made in the Errata.

Commission Staff

Staff requests minor corrections due to inadvertent omissions and the shifting of time-frame requirements from conditions to verifications. The revisions are in the Errata.

Agency Comments

To the extent the Committee found support in the evidentiary record for incorporating agency recommendations, we have done so. The primary adjustment in response to agency comments has been to add more specificity to the mitigation/enhancement requirements contained in Condition of Certification **BIO-7**. While the final language of this condition could not possibly reflect all the suggestions of every agency and conservation group that submitted suggestions, the Committee appreciates the constructive and thoughtful contributions offered in response to the Committee s specific request for comments.

In response to comments from the California Coastal Commission and others, the language of **BIO-7** requires the permitting agencies to consult with interested governmental agencies and other local stakeholders. Implementation of the mitigation measures by Elkhorn Slough Foundation will be done

pursuant to a collaborative Elkhorn Slough Enhancement Project Plan and with a memorandum of agreement (MOA) providing the continuing oversight by the permitting agencies.

In addition, the Committee has adopted the recommendation from the Monterey Bay National Marine Sanctuary that the Commission Decision contain the terms of the Applicant's agreement to fund a Coastal Waters Evaluation Program in the amount of \$425,000. Condition of Certification **BIO-9** contains the agreement.

Conservation Groups

The Center for Marine Conservation, the Sierra Club-Ventana Chapter, Friends of the Otter, Save Our Shores, and the Otter Project recommend that, in addition to the required \$7 million mitigation program, Applicant also be required to fund a monitoring program for 5 years at the cost of \$3,750,000. However, expert testimony in the evidentiary record established that monitoring impacts of the Project upon Elkhorn Slough is not a good use of money and that available funds are best spent on enhancing the Elkhorn Slough system. Since the scientific evidence in the case does not support the monitoring request, we have not included it.

David Dilworth of H.O.P.E. stated in his comments that pursuant to the draft NPDES permit, the Project will discharge significant amounts of heavy metal and toxic substances into the environment. It appears that Mr. Dilworth has made a calculation which does not reflect actual Project operation. With few exceptions, the water discharged by the Project will contain the same elements as the seawater taken in at the cooling-water intake. The only elements released by the Project are those allowed under the NPDES permit and carefully monitored under permit conditions. The discharge limits set by the RWQCB will ensure that the Project will not pose a threat to public health or the environment.

Comments from Individuals

The Committee received comments from various individuals both through the mail and at the Committee Conference held in Moss Landing on September 21, 2000. Of the two dozen communications received, the majority opposed the Project. They expressed concerns about the potential impacts from cooling water intake entrainment of marine species and from the Project's thermal discharge of warm water into Monterey Bay. Many expressed fears of severe impacts which are not supported by the evidentiary record. Several letters voiced a preference for the alternative of air-cooling to avoid marine impacts. The record includes an analysis of several air cooling alternatives. While these alternatives would essentially eliminate Project impacts to the marine environment, they each involve other impacts to the environment, such as to air quality. Furthermore, the sworn testimony of marine biology experts established that the mitigation plan proposed for enhancing the Elkhorn Slough will mitigate the Project's significant impact to an insignificant level.

While the evidence shows that the Project will not significantly harm commercial fishing in the area, we recognize the fishing industry as a stakeholder of the Elkhorn Slough and have added a representative of the Moss Landing commercial fishing industry to the Advisory Team for the Elkhorn Slough Enhancement Project Plan.

LIST OF ERRATA

The Errata will be considered and incorporated by reference in the PMPD, which is scheduled for hearing by the full Commission at its October 25, 2000, Business Meeting. Typographical errors and

minor grammatical errors not specifically identified in the Errata will be corrected to the extent possible in due course.

GENERAL CORRECTIONS

All time-frame requirements contained in Conditions of Certification shall be transferred to the Verification which follows the Condition.

INTRODUCTION

Page 1, following the last complete sentence, insert the following:

"Note that this nominal rating is based upon preliminary design information and generating equipment manufacturers' guarantees. The Project's actual maximum generating capacity will differ from, and likely exceed, this figure. If the Project's actual daily generating capacity should exceed this nominal rating, the Project would still be held to all Conditions of Certifications contained in this Decision. "

AIR QUALITY

- Beginning on page 97, change all references to Duke Energy Moss Landing LLC or to project owner to owner/operator in all applicable Air Quality conditions and verifications.
- Page 98, **AQ-1, Verification**: Prior to the first firing of the gas turbine, the owner/operator shall
- Page 98, **AQ-4,**

AQ-4 Prior to the first firing of the gas turbines, the owner/operator shall submit a Commissioning Plan to the APCO and the CEC CPM for review and approval. Duke Energy Moss Landing LLC shall submit a plan to the District at least 30 days prior to the first firing of the gas turbines. This plan shall describe the procedures to be followed during the commissioning of the gas turbines, the HRSGs, and the Steam Turbines. The plan shall include a description of each commissioning activity, the anticipated duration of each activity in hours, and the purpose of the activity. The activities described shall include, but not be limited to, the tuning of the dry-low-NOx combustors, the installation and operation of the SCR systems, and the installation, calibration, and testing of the CO and NOx continuous emission monitors, and any activities requiring the firing of the gas turbines without abatement by the SCR Systems. The plan shall include a quantification of emissions during commissioning ~~and use of a HRSG chemical cleaning boiler.~~

Verification: Within 30 days of first fuel firing of the gas turbine, the owner/operator shall provide a Commissioning Plan for approval to the CEC CPM and the District. The project owner shall provide a Commissioning Plan for approval to the CEC CPM and the District at least 60 days prior to first firing of the combustion turbines.

- **AQ-5,** Remove time frame from condition and place in verification.

AQ-5 Prior to combusting fuel in the gas turbines, the owner/operator shall notify the District and arrange for an inspection of the equipment. No later than seven (7) days prior to combusting fuel in the Gas Turbines, Duke Energy Moss Landing LLC shall notify the District and arrange for an inspection of the equipment.

Verification: The owner/operator shall notify the APCD at least seven (7) days prior to ~~combusting fuel in the gas turbines. Copies of the notification shall be provided to the CEC CPM. The project owner shall provide copies of the notification to the CEC CPM.~~

- Change the verification for **AQ-7** through **AQ-11** to read the same as the verification for **AQ-4** instead of **AQ-3**.
- **AQ-6**, Identify the required emission reduction credits by name and quantity.
- **AQ-8 & AQ-9**, The second r is left out of the word manufacturer in both conditions.
- **AQ-12**, Remove time frames from condition.

AQ-12 At the end of the commission period, ~~the owner/operator Duke Energy Moss Landing shall conduct a District and CEC approved source test to determine compliance with Condition 15 (for shutdown limits), and Condition 17 (start-up limits), and the. The written test results of the performance tests shall be provided to the District and the CEC CPM following the testing within thirty (30) days after the testing.~~ A complete test protocol shall be submitted to the District prior to the testing. ~~no later than thirty (30) days prior to testing and notification to the District at least ten (10) days prior to the actual date of the testing so that a District observer may be present. Changes to the test date made subsequent to the initial ten day notification may be communicated by telephone or other acceptable means no less than forty eight (48) hours prior to the new test date. The owner/operator shall also provide notification to the District prior to the actual date of testing so that a District observer may be present.~~

- **AQ-14**, The sulfur dioxide limit should be 124.8 lbs/day, instead of 124.0 lbs/day, to be consistent with the FDOC.
- **AQ-18**, correct the second paragraph of the condition, a direct result of a pre-mix mode switchover, not to exceed
- Correct the verifications for **AQ-13** through **AQ-17**, **AQ-19**, **AQ-21** through **AQ-37**, **AQ-40**, **AQ-42**, and **AQ-44** through **AQ-46** should refer to **AQ-38** and **AQ-39**, not **AQ-37** and **AQ-38**. The verification should read See **AQ-38** and **AQ-39**.
- **AQ-18**, Add verification for **AQ-18**. found on page 63 of the FSA.

Verification: See **AQ-38** and **AQ-39**.

- **AQ-20**, Remove time frames from condition and place in verification. Correct the verification.

AQ-20 ~~Within sixty (60) days after the commissioning of the Gas Turbines, Following the commissioning of the gas turbines, a Relative Accuracy Test Audit (RATA) must be performed on the CEMS in accordance with 40 CFR Part 60 Appendix B Performance Specifications and a performance test shall be performed, and the written test results of the performance tests shall be provided to the District. within thirty (30) days after testing. A complete test protocol shall be submitted to the District later than thirty (30) days prior to testing. Notification shall be given to the District prior to the actual date of the testing so that a District observer may be present. and notification to the District at least ten (10) days prior to the actual date of testing~~

~~shall be provided so that a District observer may be present. Changes to the test date made subsequent to the initial ten day notification may be communicated by telephone or other acceptable means no less than forty-eight (48) hours prior to the new test date.~~

Verification: See **AQ-41**.

- **AQ-29**, Described the equipment referred to in the condition.
- **AQ-29** ~~Units 6-1 and 7-1-This equipment~~ shall be abated by a ..
- **AQ-33**, Correct the verification.

Verification: The owner/operator shall submit monthly reports to the APCO within 10 working days following the end of the month. Monthly reports shall be submitted to the CEC CPM within 30 days following the end of the calendar quarter in an electronic format. See **AQ-37** and **38**.

- **AQ-37**, Revise the verification for **AQ-37**.

Verification: The owner/operator shall provide the written Quality Assurance Program to the District. ~~See AQ-37 and 38~~

- **AQ-41**, Remove time frames from the condition.

AQ-41 Annual performance tests shall be conducted in accordance with the ~~Monterey Bay Unified Air Pollution Control~~ District test procedures during the third quarter of each year, and the written results of the performance tests shall be provided to the District ~~within thirty (30) days~~ after testing. A testing protocol shall be submitted to the District ~~no later than thirty (30) days~~ prior to the testing, and notification to the District ~~at least ten (10) days~~ prior to the actual date of testing shall be provided so that a District observer may be present. ~~Changes to the test date made subsequent to the initial ten day notification may be communicated by telephone or other acceptable means no less than forty eight (48) hours prior to the new test date.~~

If the testing cannot be completed during the third quarter of the year due to the equipment being nonoperational or due to the power generation requirements of the grid being such that a unit would be unable to operate at greater than 50% load, the testing can be delayed, such that the testing be completed during the fourth quarter provided that Duke Energy Moss Landing LLC notify the District that they will be unable to meet the third quarter testing requirement as soon as it becomes known, but in no event later than September 15

- **SC-AQ-50**, Change the first verification to Protocol . Change **AQ-47** to **AQ-51** in number three of the protocol section. Change commencement of construction to **start of rough grading**.

~~**Verification:**~~ Protocol: The plan shall include

- **SC-AQ-53, Verification:** Not later than 30 days prior to the commencement of construction .
- **SC-AQ-54** The project owner shall ensure that all heavy earthmoving equipment including, but not limited to, bulldozers, backhoes, compactors, loaders, motor graders and trenchers, and cranes, dump trucks and other heavy duty construction related trucks, have been properly maintained and the engines tuned to the engine manufacturer s specifications The project owner

shall place into the Carl Moyer Diesel particulate mitigation account of the District, sufficient funds (not to exceed \$100,000) to cover the cost of permanent Diesel particulate filter (DPF) retrofit installations to be determined by the California CEC CPM, in consultation with the District, to cover the estimated cost of mitigation for Diesel combustion particulates emitted during project construction. ~~also install oxidizing soot filters on all suitable construction equipment used either on the power plant construction site or associated linear construction sites. Additionally, the project owner shall employ high pressure fuel injection, timing retardation, and reduced idle time on all suitable construction equipment. Suitability is to be determined by an independent California Licensed Mechanical Engineer or a Qualified Environmental Professional who will stamp and submit or approval an initial and all subsequent Suitability Reports as necessary containing at a minimum the following:~~

Initial Suitability Report:

- ~~• The initial suitability report shall be submitted to the CPM or approval 60 days prior to the relevant equipment being used at the project site.~~
- ~~• A list of all fuel burning, construction related equipment used,~~
- ~~• a determination of the suitability of each piece of equipment to work appropriately with an oxidizing soot filter,~~
- ~~• if a piece of equipment is determined to be suitable, a statement by the equipment manufacturers, the independent California Licensed Mechanical Engineer, or a Qualified Environmental Professional that the oxidizing soot filter has been installed and is functioning properly,~~
- ~~• if a piece of equipment is determined to be unsuitable, an explanation by the equipment manufacturers, the independent California Licensed Mechanical Engineer, or a Qualified Environmental Professional as to the cause of this determination, and~~
- ~~• a statement by the equipment manufacturers, the California Licensed Mechanical Engineer, or a Qualified Environmental Professional as to the suitability of using high pressure fuel injectors, timing retardation and/or reduced idle time on all construction equipment after the installation of oxidizing soot filters.~~

Subsequent Suitability Reports

- ~~• If a piece of construction equipment is subsequently determined to be unsuitable or an oxidizing soot filter after such installation has occurred, the filter may be removed immediately. However notification must be sent to the CPM or approval containing an explanation or the change in suitability within 10 days.~~
- ~~• Changes in suitability are restricted to three explanations which must be identified in any subsequent suitability report. Changes in suitability may not be based on the use of high-pressure fuel injectors, timing retardation and/or reduced idle time.~~
 - ~~1 The oxidizing soot filter is reducing normal availability of the construction equipment due to increased downtime, and/or power output due to increased back pressure by 20% or more.~~
 - ~~2 The oxidizing soot filter is causing or reasonably expected to cause significant damage to the construction equipment engine.~~
 - ~~3 The oxidizing soot filter is causing or reasonably expected to cause a significant risk to nearby workers or the public.~~

Verification: The project owner shall submit to the CPM, via the Monthly Compliance Report, documentation, which demonstrates that the contractor's heavy earthmoving equipment is properly maintained and the engines are tuned to the manufacturer's specifications. The project owner shall maintain all records on the site for six months following the start of commercial

operation. Owner/operator shall request that funds deposited with the District be earmarked for use within Monterey County. The deposit shall be made to the District within 30 days of notification by the CEC CPM to do so. Owner/operator shall provide evidence of the deposit in its next regular report to the CEC CPM. ~~The project owner will submit to the CPM or approval, the initial suitability report stamped by an independent California Licensed Mechanical Engineer, or a Qualified Environmental Professional, 60 days prior to breaking ground on the project site. The project owner will submit to the CPM or approval, subsequent suitability reports as required, stamped by an independent California Licensed Mechanical Engineer, or a Qualified Environmental Professional, no later than 10 working day following a change in the suitability status of any construction equipment.~~

BIOLOGICAL RESOURCES

- Page 135, following the first sentence add: However, portions of the 239-acre MLPP site contain additional wetlands not directly related to the Project before the Commission. The Waters and Wetlands Report, contained in Exhibit 59, identifies a total of 19.47 acres of wetlands within the 239 acre site.
- Page 138, footnote 45, following the existing sentence add the following: While the historical operation of PG&E Units 1-5 provides evidence of impacts from 45 years of operation, the CEQA analysis performed by the Commission staff and the Committee assumes an environmental baseline with only Units 6 and 7 in operation. Decommissioned since 1995, Units 1-5 are not part of the baseline.
- Page 141, last paragraph, fourth line: of the Thermal Plan, if the objectives are more stringent than necessary to assure the protection of a balanced indigenous community (BIC) of fish and shellfish in and on the receiving water body. If a variance is granted, alternative effluent limitations for heat are included in the NPDES permit which are less stringent than the water quality objectives in the Thermal Plan but which are stringent enough to protect the BIC. ~~to a thermal discharge. To do so, the standards of the variance must be more stringent than necessary to assure protection of a balanced indigenous community of fish and shellfish in and on the receiving water body.~~ [33U.S.C.,/1326(a), 40 C.F.R.,/125.70-125.73.] The Regional Board
- Page 143, add paragraph entitled, d. Monterey Bay National Marine Sanctuary followed by the legal authority cited in **Appendix A**, page 6.
- Page 149, first paragraph, line 2, These organisms are invertebrates, fish larvae and eggs
- Page 149, footnote 59, after the sentence add, However, California Department of Fish and Game comments that studies at Moss Landing Power Plant carried out in 1985 by PG&E documented 100 percent mortality as a more accurate scenario. (comments on PMPD dated Sept. 27, 2000)
- Page 150, second full paragraph, line 2, ..reduce impingement , the changes will not
- Page 150, first full paragraph line 4, 25.) The 8 species made up 95 percent of the total number of species entrained. * As noted above, the Elkhorn Slough *Some species, such as bleniadae, experienced entrainment rates up to 18 percent. Entrainment rates for other species, such as clams, are unknown.

- Page 157, following first partial paragraph add new paragraph, The 316(b) Study found that a cooling tower alternative would add \$12 million to capital costs and diminish power output by approximately 25 MW, resulting in annual revenue losses of \$2 million, or \$60 million over the Project life. Cooling tower salt water drift would significantly increase PM10 emissions, harm nearby agriculture, and be a significant source of increased noise. For these reasons the t316 (b) study preferred the proposed once-through cooling system (Ex. 57 pp. 7-6 to 7-7, 7-23 to 7-30.) Since the evidence establishes that significant impacts from entrainment can be mitigated, the cooling tower alternative is not preferred.
- Page 157, delete footnote 63.
- Page 158, first full paragraph, line three, impingement at ~~entrainment into~~ the water intakes.
- Page 163, last paragraph, line 6, To gain an exception, Applicant must demonstrate to the RWQCB that the Thermal Plan water quality objective an alternative effluent limitation for heat is more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in the body of water (BIC). The exemption provides an alternative heat limitation that is sufficiently stringent to protect a BIC. (Ex. 77, p. 9, par. 38.)
- Page 164, Second full paragraph, second sentence, In addition, the majority of experts from the Technical Working Group, Commission staff, and Applicant s biologist agreed ~~were unanimous in determining~~ that effects
- Page 164, footnote 65, add a second sentence, Comments of the California Department of Fish and Game point out that heated water is deleterious to larval organisms at the temperatures proposed for discharge.
- Page 170, first full paragraph, second sentence: The letter acknowledges that the record shows thermal discharges will cause not significant adverse impacts on the environment. Nevertheless, it states concerns about the uncertainty of modeling carried out to reach these conclusions of no significant impacts from thermal discharges.
- Page 170, footnote 73, The discharge facility may not be ~~is not~~ within boundaries of the Sanctuary.
- Page 171, first full paragraph, last sentence. The RWQCB will consider ~~considered~~ adoption of the permit at its September 26-15, 2000 meeting. However, the matter was continued to the October 27, 2000, meeting. (Ex.77.)
- Page 175, second full paragraph, first sentence, The evidentiary record before us establishes that between 1950 and 1995 since 1950 Units 1-5 of the Moss Landing Power Plant operated ~~have been operating~~ adjacent to Elkhorn Slough.
- Pages 177-178, delete the second full paragraph on page 177 and text on page 178 and replace with the following:

Based upon comments submitted by the California Coastal Commission staff, the Energy Commission has revised its finding regarding Coastal Commission recommendations.¹ First, the

¹ Coastal Commission comments raised a dispute as to whether the RWQCB's NPDES is a federal permit. It is not necessary to resolve the dispute in order to assess the environmental impacts from the Project or to

Coastal Commission is no longer recommending that it be granted decision-making authority, along with the permitting agencies, over the mitigation funds. However, as specified in Condition BIO-7, the Commission and the RWQCB will continue to seek the advice of the Coastal Commission as part of the Advisory Team. Second, the Coastal Commission staff points out correctly that including the term research among the items eligible for mitigation funds originated in a draft from the CEC staff and is not a preferred Coastal Commission recommendation. Thus, these two sources of disagreement have been resolved.

In response to comments from the Coastal Commission staff and others, the Commission has increased the specificity of BIO-7, adding more detail to the overall goal and listing specific objectives, procedures, and monitoring guidance to meet the goal. We believe that the thrust of the Coastal Commission's recommendations have now been incorporated in the mitigation condition. To the extent that the exact language of the Coastal Commission staff is not reflected in the revised BIO-7, the Commission has determined that (1) increased specificity in the substantive provisions of the condition is not feasible because the evidentiary record shows that additional specificity is not scientifically supportable, and (2) further revising the procedures for implementing the mitigation would result in delay and thus in environmental damage. Therefore, additional changes to BIO-7 are infeasible."

- Page 180, first full paragraph, second sentence: Because it is not possible to quantify the increase in productivity that will result from environmental enhancement projects, these details will include ways to monitor whether individual enhancement projects were implemented and maintained as planned so as to support the objective of increased slough productivity. These details will include ways to monitor the success of individual measures taken toward the objective.—Should monitoring reveal the need for remediation of enhancement projects, it can be addressed at that time by those closest to the Elkhorn Slough environment, and with the funds available.
- Page 181, first full paragraph, third line from the bottom, only 8 species of fish account for 95 percent of entrained larvae which are directly impacted by the Project. Impacts to 6 species of crabs were also shown to be insignificant. (Ex. 57, pp. ES-3, 6-43. Finally
- Page 184, delete Finding 9 and substitute the following:
 9. The recommendations of the California Coastal Commission staff made to this Commission pursuant to Public Resources Code, section 30413(d) have been incorporated into this Decision to the extent the recommendations are supported by substantial evidence in the record. Where the Commission has not adopted exact language contained in Coastal Commission staff recommendations, we find the language at odds with the substantial evidence in the record and therefore not feasible.
- Page 184, Finding 12, The professional judgment expressed in expert testimony established that project impacts from thermal discharge
- Page 190, Verification, first sentence: At least 60-30 days prior at the project site ~~and/or at ancillary facilities~~, the project owner

determine the appropriate mitigation for the impacts. Therefore, the Commission does not address the matter here. This Decision's reference to the RWQCB as a 'permitting agency' is not intended to be, and should not be interpreted as, a statement regarding the federal or non-federal quality of the NPDES permit.

- Pages 191-193, replace Condition **BIO-7** with the following:

BIO-7: Following the certification of the Moss Landing Power Plant project, the project owner will provide seven million dollars (\$7,000,000) to fund an Elkhorn Slough watershed acquisition and enhancement project (Elkhorn Slough Enhancement Project). The project owner shall deposit the above sum to a dedicated account, established jointly with the Commission and the Central Coast Regional Water Quality Control Board [hereafter the permitting agencies], or to the Elkhorn Slough Foundation (if the Foundation can establish a suitable account). The total enhancement project funding will be \$7 million paid as follows: the first payment of \$1.5 million will occur within 120 days after the start of construction for the new power generation units; the second and third payments of \$750,000 each will occur at the date of Commercial Operation of Units 1 and 2 respectively; four remaining payments of \$1 million each will follow; the first two payments of \$1 million each will be due one year from the Commercial Operation dates of Units 1 and 2 (\$1 million each); the second two payments of \$1 million each will be due two years from the Commercial Operation dates of Units 1 and 2 (\$1 million each).

The Elkhorn Slough Enhancement Project will be implemented by the Elkhorn Slough Foundation subject to oversight by the permitting agencies. The Elkhorn Slough Foundation will implement the project in accordance with the Elkhorn Slough Enhancement Plan and Memorandum of Agreement (MOA), described below.

A. Goal

The goal of the Elkhorn Slough Enhancement Project is to mitigate significant effects of larvae entrainment due to the project's cooling water intake system. Mitigation shall occur by using the most direct means feasible to increase the biological health and productivity of the Elkhorn Slough watershed aquatic habitat through acquisition, creation, permanent preservation, and restoration of habitat including wetland and upland areas in the Elkhorn Slough watershed and can include other improvements and enhancements to increase the health and productivity of the slough's aquatic habitat.

B. Objectives

The objectives to achieve this goal are:

- Implementing an aggressive conservation acquisition program for the Elkhorn Slough that includes acquiring fee interests, conservation easements or management agreements on lands that either directly impinge on the slough or that contribute damaging inputs to the slough. Damaging inputs can refer to debris or sediment coming from eroding uplands in the slough, nutrients or chemicals running off into the slough or other components that tend to degrade the productivity, species diversity or the long-term health of the slough ecosystem.
- Priority for lands with damaging impacts to slough will be based on analyses by the NRCS and other local partners. Those lands that contribute the greatest quantities of negative input (sediment, chemicals, nutrients and debris) will be targeted first.
- The priority for transactions is to:

- Purchase fee interest or easements on the best remaining wetlands that are currently unprotected or in jeopardy.
 - Purchase fee interest or easements on wetland areas that are in need of restoration or enhancement.
 - Restore degraded wetlands and former wetlands that have been diked or impacted by other uses.
 - Purchase fee interest or easements on lands immediately adjoining the slough that are currently impacting aquatic resources in negative ways to reduce or eliminate the damaging practices.
 - Develop vegetated buffers between waterways and upland areas that are contributing runoff to the slough.
- Where appropriate and feasible, restore wetlands in the slough. The priority for this objective is to restore those areas, particularly degraded wetlands, that will contribute to the improvement of water quality entering the Elkhorn Slough system by trapping sediments, filtering and transforming nutrients, and increasing wetland habitats for aquatic species.
 - Establish from a portion of the \$7 million (approximately \$2 million) a fund to be invested to provide a permanent endowment to accomplish short-term and long-term stewardship (management and maintenance) of the selected mitigation projects in perpetuity.
 - The Elkhorn Slough Foundation may implement these projects in cooperation and coordination with other conservation organizations and agencies and may use funds in the dedicated account to secure matching grants for the benefit of the Elkhorn Slough watershed. This objective is included to clarify that leveraging of the dedicated account is permitted to obtain additional benefits for the Elkhorn Slough watershed without additional expenditures from the dedicated account.
 - The location of the Elkhorn Slough Enhancement Project will be in the immediate Elkhorn Slough watershed area. Those lands that directly impinge on the health and productivity of the slough aquatic habitat and/or that have strategic importance for restoring and managing the slough s aquatic habitat over the long run will be targeted.²

C. Procedures

The Plan will be implemented through the following procedures:

- The permitting agencies will prescribe final project requirements to assure funds are spent appropriately. As a part of this process a series of *Advisory Team* meetings will be held to

² It is generally not advisable to identify specific parcels of property for acquisition before contact has been made with landowners. The acquisition process is contingent on willing sellers or landowners willing to grant or sell easements on their property. Therefore, the general criteria for acquisition are outlined. It would be premature and counterproductive to identify specific parcels, but all acquisitions would meet the goals outlined here and the due diligence standards for conservation real estate transactions.

obtain advice from representatives of the California Coastal Commission, California Department of Fish and Game, Monterey Bay National Marine Sanctuary, Elkhorn Slough National Estuarine Research Reserve, Monterey County, Elkhorn Slough Foundation, the local commercial fishing industry, and Environmental organizations designated by the permitting agencies (the Advisory Team). Within 60 days of Project certification, one or more Advisory Team meetings will be held to identify categories of projects that could be funded with Elkhorn Slough Enhancement Project funds, and for each category of project, identify specific goals, objectives, performance standards, fund management protocols, and stewardship activities that may be needed to maintain goals and objectives over time. The permitting agencies will produce and circulate a written Elkhorn Slough Enhancement Project Plan for review and comment by the Advisory Team and other interested stakeholders. The permitting agencies shall hold meeting(s) and complete the written Plan in a timely manner to ensure prompt mitigation efforts. It is expected that the first Advisory Committee meeting will be in November.

- Elkhorn Slough Foundation and the permitting agencies will enter into a Memorandum of Agreement (MOA) governing the process for the Foundation to submit specific project proposals to the permitting agencies for approval. The MOA will require the permitting agency staff to review the proposed project for conformity to the Elkhorn Slough Enhancement Project plan and to approve the project as consistent with the plan and approve the level of funding for the project. Before such approvals the permitting agencies will consult with the Advisory Team. The MOA will also provide for project monitoring and invoice approval by the permitting agencies. The MOA will require progress and final reports for specific projects. If the Enhancement Program fund is in the custody of the Elkhorn Slough Foundation, the MOA shall provide that no funds may be released without written approval of the permitting agencies and shall provide for fiscal reports and auditing.
- The Elkhorn Slough Foundation will apply all due diligence, as outlined in the Land Trust Alliance Standards and Practices, to the evaluation, negotiation and purchase of fee or easement interests in targeted properties. All transactions are predicated on meeting the following due diligence standards:
 - Clear title,
 - Phase I environmental review
 - Phase II environmental review if necessary
 - Fair market-appraisals
- Fee Acquisition of appropriate properties — for those lands and waters that can be protected only by permanent ownership, we propose to acquire fee interest. Some of these lands may be annexed to the Elkhorn Slough National Estuarine Research Reserve, some to The Nature Conservancy Preserve, and some permanently managed by the Elkhorn Slough Foundation.
- Purchase of Conservation Easements — easements can protect the fundamental natural resources of many of the areas of concern. Where possible, easements are the preferred tool as they tend to reduce long-term management costs for the conserving entity.
- Restoration activities will follow existing plans which provide guidance for restoration activities in the slough that will improve water quality. The Moro Cojo Slough Wetlands

Management and Enhancement Plan, the Elkhorn Slough Wetland Plan, and the Elkhorn Slough National Estuarine Research Reserve Vegetation Management Plan.

- The Project Owner (after consultation with the Elkhorn Slough Foundation) will provide an annual report including a description of projects implemented, a schedule and description of future projects, an analysis of how implemented projects have provided increased health and biological productivity of aquatic habitat in the Elkhorn Slough watershed, and a summary of financial account activity.
- To maximize the benefits of the environmental enhancement program, the permitting agencies are to approve projects for funding and implementation as soon as possible after funds are deposited in the dedicated account and the Elkhorn Slough Enhancement Plan is approved by the permitting agencies.
- The approved Elkhorn Slough Enhancement Project Plan will be included in the BRMIMP when available.
- Over the course of three to five years, the projects funded by the mitigation money should be complete except for any necessary stewardship activities.

D. Guidance

The Elkhorn Slough Enhancement Program will follow the following guidance for monitoring mitigation:

- Performance standards will include measures that gauge progress toward the goals of the Plan will include:
 - (a) Numbers of acres acquired and protected.
 - (b) Numbers of acres restored.
 - (c) Number of acres of vegetated buffers created.
 - (d) Estimated quantities of sediment prevented from entering the system due to acquisition and restoration of targeted lands.
 - (e) Reduction of chemical and nutrient inputs to slough based on calculations provided by NRCS and partner agencies.

Integrating monitoring with CEC compliance program

- The Elkhorn Slough National Estuarine Research Reserve, Elkhorn Slough Foundation, National Oceanic and Atmospheric Administration, Department of Fish and Game, and the Monterey County Water Resources Agency cooperatively monitor 24 stations throughout the Elkhorn Slough and lower Salinas River system. This program, established in 1988, monitors nitrate, phosphate, ammonia, temperature, salinity, turbidity, pH, dissolved oxygen, and conductivity on a monthly basis. It is the longest running surface water quality monitoring program in the central Monterey Bay area. This data collection program will run in parallel with the acquisition and restoration associated with the mitigation and may provide a measure of nutrient reduction associated with implementation of the Plan.
- The Reserve and Foundation fly regular series of aerial surveys collecting photographs for tracking land use changes and vegetative cover in the slough watershed. This will

continue through the period of acquisition and restoration and be used, in combination with GIS to provide another measure of performance.

Verification: The project owner will provide written verification to the CEC CPM, the Central Coast Regional Water Quality Control Board, and members of the Advisory Team, that the Elkhorn Slough Enhancement Project payments (seven payments in total) have been paid. Notice shall be made within 15 days of each payment. A copy of the check provided to the dedicated account or the Elkhorn Slough Foundation dedicated account, shall be included with the written verification.

The CPM will review the draft Elkhorn Slough Enhancement Project Plan in order to ensure the wording is clear, meets the terms of the Commission decision, and is enforceable.

The CPM will ensure the Elkhorn Slough Enhancement Plan is completed and approved within 180 days of certification. The CPM will ensure the Elkhorn Slough Foundation accomplishes the goals and objectives of the approved final plan. The project owner will submit an annual report to the CEC CPM, the Regional Board, and any Advisory Team members as desired, within 60 days of the end of the calendar year reported. This report will include: a description of Elkhorn Slough Enhancement Plan projects implemented, a schedule and description of future projects, an analysis of how implemented projects have met the goal of increasing the health and productivity of the Elkhorn Slough watershed aquatic habitat, and a summary of financial account activity. If the project owner has not complied with any aspect of this condition, the CPM will notify the project owner of making this determination. For any necessary corrective action taken by the project owner, a determination of success or failure of such action will be made by the CPM after receipt of notice that corrective action is completed, or the project owner will be notified by the CPM that coordination with other agencies will require additional time before a determination can be made.

- Page 194, add Condition **BIO-9**.

BIO-9: The project owner shall:

- Provide total funding in the amount of \$425,000 to the Monterey Bay Sanctuary Foundation to fund the Coastal Waters Evaluation Program. Funding shall be made in increments, with \$150,000 for the first two years of the program due within 90 days of the California Energy Commission Certification of the Moss Landing Power Plant, and the second and final payment of \$275,000 due within 90 days of commercial operation of the first new unit.
- The objective of the program is for the Sanctuary to use those funds to evaluate the effects of the thermal discharge with respect to the Sanctuary's permit standard that the discharge have only negligible, short term adverse effects. The Sanctuary will evaluate biological effects both within and near the thermal plume and at control sites substantially distant from the thermal plume.
- The Sanctuary will commence the Coastal Waters Evaluation Program immediately so as to conduct measurements and monitoring for up to two years prior to Duke Energy's MLPP becoming fully operational. The Sanctuary and the Sanctuary Foundation are responsible for administration of these funds and will provide a report to the CEC of the findings of the Coastal Waters Evaluation Program within 6 years of Duke Energy's initial payment.

- [Duke Energy need not wait for any measurements of monitoring from the Sanctuary to commence operations.](#)

[Verification: The project owner shall provide confirmation of payments to the Monterey Bay Sanctuary Foundation in an annual report to the CPM.](#)

CULTURAL RESOURCES

- Page 196, following the first partial paragraph add:

The proposed Project is a portion of Duke Energy s ongoing Modernization Plan designed to make the entire MLPP site a competitive energy facility. Necessary improvements to Dolan Road and Highway 1 are being conducted as part of the Modernization Plan, but not as part of the Project. The road and highway improvements are permitted by Caltrans and Monterey County. Prior to beginning road improvements, preliminary cultural resource surveys were conducted and cultural resources were identified that were likely to be impacted by the road improvements. This constitutes an indirect impact that can be mitigated by data recovery. At present, data recovery is underway in compliance with the requirements of Caltrans and Monterey County.

GEOLOGY AND PALEONTOLOGY

- Page 210, revise the title to Geology and Paleontology .
- Page 211, change the last sentence as follows: While the MLPP site probably experienced peak ground acceleration of close to 0.39g during the 1989 Loma Prieta earthquake, modern code requirements and conditions of Certification **GEO-1** and **-2 Gen-5, Civil-1 through Civil-4, and Struct-1 through Struct-4** will mitigate seismic hazards at the site to a level currently practiced by the electric power generation industry in California ~~will ensure a safe facility.~~

SOIL AND WATER RESOURCES

- Page 222, third full paragraph, line 6, will reduce impingement ~~and entrainment~~ of marine organisms.
- Page 238, **SOIL&WATER-4**: transfer time-frame references from the Condition to the verification.
- Page 239, change condition **SOIL&WATER-5** as follows:
SOIL&WATER—5 No earth disturbing activities for construction of the proposed project shall occur until the site has been successfully remediated by PG&E- or until the Phase I & II Plans, listed below, are reviewed and approved by the California Energy Commission CPM. ~~If the site has not been remediated, no earth moving activities shall occur until the Energy Commission has approved a plan submitted by the project owner.~~

Protocol: ~~This~~ Each plan shall identify measures that will be undertaken to ensure that contaminated soil and/or surface or groundwater disturbed during construction activities will not degrade adjacent water resources and associated aquatic habitats:-

1. Phase I Final Soil and Groundwater Management Plan. The Phase I Plan shall include soil and groundwater remediation measures for all areas within the building footprint of the new units and/or demolition activity in the fuel tanks 1-10 area.

2. Phase II: Soils and Groundwater Management Plan for Cooling Water System Construction and Ancillary Facilities. The Phase II Plan shall include the area affected by cooling water system and ancillary facility construction.

The project owner shall implement the measures identified in the Energy Commission approved plan.

Verification: ~~The project owner shall submit a letter,~~ At least 30 days prior to the start of construction, the project owner shall submit a letter from the Department of Toxic Substances Control indicating that the site has been successfully remediated by PG&E. If the site has not been remediated, the project owner shall submit a plan for each of the phases for review and approval to the CEC CPM. This plan will identify measures that will be undertaken to ensure that contaminated soil and/or surface or groundwater disturbed during construction activities will not degrade adjacent water resources and associated aquatic habitats. The CEC CPM shall coordinate review of this plan with the Department of Toxic Substances Control, Regional Water Quality Control Board, Monterey County Environmental Health Department, the Department of Fish & Game and the Coastal Commission. No earth moving activities associated with construction of the proposed project will occur until the proposed project has been successfully remediated by PG&E or until the Phase I & II Plans have proposed project ~~has~~ been approved by the CEC CPM.

NOISE

- Page 259, third paragraph, line four, after the number 1,855 insert the word feet .

TRAFFIC AND TRANSPORTATION

- Page 284, revise condition **TRANS-6** as follows:

TRANS-6 Prior to reaching a construction staffing level of ~~400~~ 400-day shift workers for the project, the project owner shall implement the following physical improvements at the State Route 1/Dolan Road intersection, to the satisfaction of Caltrans:

- Construct a northbound right-turn lane on State Route 1 with shoulder;
- Create a right-turn paved area on westbound Dolan Road to facilitate right turns to State Route 1;
- Improve the shoulder on the east side of State Route 1, north of Dolan Road;
- Lengthen the southbound left-turn pocket on State Route 1 and modify the existing two-way left turn lane in the median of State Route 1 to a southbound merge lane.

Should a construction staffing level of ~~400~~ 400-day shift workers not be reached for the project, these physical improvements shall be completed by the project owner to the satisfaction of Caltrans prior to the start of commercial operation.

Verification: ~~Within At least 30 days prior to~~ of reaching the 400-day shift staffing level for the construction of the project, but in no case later than commercial operation, the owner shall notify the CPM that the roadway improvements have been completed and are ready for inspection. As each physical improvement is completed, the project owner shall notify the CPM in the next Monthly Compliance Report.

- Page 284, shift 60-day timeframe contained in Condition **TRANS-7** to the verification.
- Page 285, modify condition **TRANS-8** to include traffic management strategies referenced on pages 93-94 of the FSA:

TRANS-8 The project owner shall implement the following travel demand management strategies:

- Work hours during construction will be scheduled to avoid peak travel periods with the morning shift starting no later than 7:00 a.m., the afternoon shift not ending between 3:30 — 5:30 p.m., and the evening shift not starting between 4:00 — 6:00 p.m.;
- All overweight shipments will be made by rail;
- Truck traffic related to the project will be prohibited from using State Route 1 at Dolan Road between the hours of 6:30 a.m. — 8:30 a.m. and 3:30 p.m. — 5:30 p.m.;
- Truck traffic related to the project will be prohibited from making the westbound left-turn from Dolan Road to State Route 1 during all hours;
- Workers will be required to obtain a special permit, by demonstrating the need to travel northbound on State Route 1, to exit the Dolan Road gate and travel westbound;
- On-site meal services will be provided to discourage off-site trips for food; and
- Employee carpooling will be encouraged by designating a travel demand management coordinator, providing preferred parking for carpools/vanpools, and by providing free vanpool service.

The project owner shall report on the status of each strategy in the monthly or annual compliance report as appropriate.

Verification: The project owner shall report on the status of each strategy in the monthly or annual compliance report as appropriate. The CPM will periodically review project compliance with these strategy elements with Monterey County.

VISUAL RESOURCES

- Page 297, add the following condition:

VIS-4 Prior to the start of commercial operation, the project owner shall implement a landscape plan that meets the requirements of the Monterey County Zoning Code.

a. The project owner shall submit the final planting plan to Monterey County for review and comment and to the CPM for review and approval. The project owner shall request confirmation from the County that the planting plan conforms to Monterey County s Zoning Code. The project owner shall submit this conformation to the CPM. The plan shall include, but not be limited to:

- a detailed landscape plan, at a reasonable scale, which includes a list of proposed tree and shrub species and sizes and a discussion of the suitability of the plants for the site conditions and mitigation objectives.
- maintenance procedures, including any needed irrigation; and
- a procedure for replacing unsuccessful plantings.

b. The trees and shrubs shall not be planted before the plan is approved. The project owner shall notify the CPM and the County when the trees and shrubs have been planted and are ready for inspection.

Verification: At least ninety (90) days prior to the start of commercial operation, the project owner shall submit the proposed landscape plan to Monterey County for review and comment and to the CPM for review and approval. The CPM will respond to the project owner within 15 days of receipt of the landscaping plan.

The project owner shall notify the CPM in the next Monthly Compliance Report following completion of the proposed planting that the planting is ready for inspection.

LAND USE

- Page 253, Finding 4, ~~4,500~~ 1,600 feet to the north
- Page 253, Finding 5, General Plan and zoning ~~designations of the site ordinances~~
- Page 253, Finding 6, With mitigation, t~~he~~ proposed Project Local Coastal Program (North County Land Use Plan).
- Page 255, **LAND-1**, paragraph 2, second line from the bottom: CEC ~~staff~~ CPM, in consultation with the Coastal Commission staff will review said alternative
- Page 257, **LAND-2** Verification, third paragraph, line three, receive the \$250,000 endowment, the project owner shall deliver the \$250,000 endowment as well as interest
- Page 258, **LAND-5**, Verification, installation of any ~~permanent~~ temporary signage,

By Order of the Committee

Dated: October 12, 2000

**ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION**

WILLIAM J. KEESE, Chairman
Presiding Member
Moss Landing AFC Committee

MICHAL C. MOORE, Ph.D., Commissioner
Associate Member
Moss Landing AFC Committee