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VIA EMAIL: CEQA.comments@CSLC.ca.gov

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**RE: Comments on the Draft Environmental Impact Report
for the San Onofre Generating Station (SONGS) Units 2
and 3 Decommissioning Project**

Ms. Herzog:

This law firm has been retained by the Samuel Lawrence Foundation,¹ a citizens' group promoting human interaction in communities by encouraging broader access to science and education, and dedicated to supporting innovative science and critical projects that advance the wellbeing of our planet and population.

The Foundation submits the following comments on the Draft Environmental Impact Report ("EIR" or "DEIR") for the San Onofre Generating Station (SONGS) Units 2 and 3 Decommissioning Project ("Project") proposed by Southern California Edison ("SCE" or "Applicant"). As explained herein, the Project cannot be lawfully approved by the California State Lands

¹ Please ensure that this firm promptly receives all notices related to the Project, including but not limited to, the potential filing/recording of a Notice of Determination should the California State Lands Commission ("CSLC") approve the Project and certify the EIR for the Project.

Commission (“CSLC”) because the EIR is defective and fails to meet the requirements of the California Environmental Quality Act (“CEQA”).²

The CSLC as “administrator of the ‘public trust’ (Pub. Resources Code, § 6301),” must exercise its authority in a manner which will not contradict CEQA’s stated purpose to maintain “a quality environment for the people of this state now and in the future....” (*Meridian Ocean Systems, Inc. v. State Lands Commn.* (1990) 222 Cal.App.3d 153, 165; Pub. Resources Code, § 21000, subd. (a).) As stated by one court, “Inherent in the Commission’s power to issue permits is the ability to...evaluate the conditions surrounding their issuance... ‘By its very nature the protection of the environment to some degree, to a large degree, if not entirely, is a function of the technology that allows us to measure the deleterious effects of any activity or chemical or whatever it is has.” (*Meridian Ocean Systems, supra*, 222 Cal.App.3d 153, at 165.)

In the present EIR, the CSLC fails to live up to that promise and this failure not only puts lives in danger but jeopardizes an important California coastline and natural resources of the state. As one whistleblower recently stated in the context of the Applicant’s activities and attitude, “Public safety should be put first...It is not.”³ The EIR sidesteps the hard questions despite the clear evidence that the Project cannot be implemented in a manner that protects the health and safety of citizens and the environment.

I. The EIR Ignores Issues of Major Environmental Concern.

A. The EIR fails to address long-term consequences and environmental impacts of permanent or near-permanent waste storage at SONGS.

The EIR avoids addressing the long-term waste storage impacts by mischaracterizing the likelihood of permanent waste storage. This is unacceptable. The EIR states:

Permanent (indefinite) on-site storage of spent nuclear fuel is not part of the Proposed Project or a feasible alternative; the ISFSI⁴ is approved and part of the Proposed Project baseline...Transport of spent nuclear fuel is also not part of the Proposed Project and is

² Pub. Res. Code §§ 21000 et seq.; see also Cal. Code Regs., tit. 14, ch. 3, § 15000 et seq. (“Guidelines”).

³ Exhibit (“Exh.”) 1, [Transcript of David Fritch Statement (video link <https://youtu.be/fnM9rfhWmic>; SCE video of full Edison San Onofre CEP August 9, 2018 meeting; whistleblower at 2:20:00. <https://www.songscommunity.com/community-engagement/meetings/community-engagement-panel-meeting-20180629>).]

⁴ The expanded and modified Independent Spent Fuel Storage Installation is abbreviated as “ISFSI”.

anticipated to occur during Future Activities (2035) and to be evaluated as part of the Applicant's Coastal Commission permit... Under the terms of a Settlement Agreement...the Applicant **must develop a Transportation Plan⁵ and Strategic Plan to transport spent nuclear fuel.**

(DEIR, at p. C-9 [emphasis added].)

Furthermore, the EIR states that, "SCE will complete transfer of SNF (spent nuclear fuel) from the pools to dry-cask storage by the end of 2019...**If SNF has not been transferred off site by 2035, as a condition of CDP No. 9-15-0228, the CCC will evaluate the ISFSI location in 2035 based on an analysis of future coastal hazards.**" (DEIR, at p. 1-10 (emphasis added).) Regarding off-site location of SNF, the EIR states: "[The Settlement Agreement in *Citizens Oversight, Inc., et al. v. the California Coastal Commission, Southern California Edison Company, et al., Superior Court for County of San Diego*] **could** result in the transfer of the SNF to a federal or privately-owned consolidated interim storage facility before a permanent federal repository is established. However, **the location of a site or repository and timeline for off-site relocation of SNF are unknown and speculative.** As a condition of CDP 5 No. 9-15-0228, the CCC will evaluate the ISFSI location **in 2035** (if the SNF has not already been transferred) based on an analysis of future coastal hazards **to determine if the ISFSI must be relocated or retained at its current site for a specified time.** The **uncertain duration** of the ISFSI's presence at SONGS impedes the Participants' ability to define the SONGS Decommissioning Plan beyond the Proposed Project." (DEIR, at p. 1-17 [emphasis added].)

Taken together these passages demonstrate that the EIR sets up a perfect shell game to avoid CEQA review of significant impacts related to storage of radioactive spent fuel waste: it presumes the CSLC's hands are tied regarding analyzing radioactive hazards due to federal preemption (see Section II., below), ensures those hazards and their risks will not be addressed by narrowly defining the "project" as not including long term storage, relies on an unenforceable settlement agreement that purports to address transport and storage impacts in the future, and treats the ISFSI as the "baseline" for measuring impacts. In so doing, the EIR utterly and completely fails as an informational document, avoiding a major area of environmental impact: radioactive waste storage, handling, and transit.

The EIR is internally inconsistent because it assumes the SNF will be transferred and thus the spent fuel pools will not be necessary, and yet claims the relocation of SNF is uncertain. (DEIR, at p. 1-17.) The EIR admits that the duration of the ISFSI's presence at SONGS is "uncertain," yet fails to address

⁵ Curiously, the EIR describes this transportation plan as "conceptual," which begs the question of its enforceability. (DEIR, at p. 1-10.)

long-term waste storage impacts. The EIR is required to address these long-term waste storage impacts because the ISFSI, along with the Project, are all part of the decommissioning process.

The EIR is misleading regarding the need for long-term waste storage. It states:

The plan to store SNF at SONGS until 2035 and the lack of an off-site repository for long-term storage of SNF are concerns both for SONGS and for nuclear power facilities across the nation and await resolution by the federal government. As part of a lawsuit settlement (Citizens Oversight, Inc., et al. v. the California Coastal Commission, Southern California Edison Company, et al., Superior Court for County of San Diego), SCE entered into a Settlement Agreement that requires SCE to use “commercially reasonable efforts” to relocate SONGS SNF to an off-site storage facility. Implementation of the Settlement Agreement could result in the transfer of the SNF to a federally or privately-owned consolidated interim storage (CIS) facility prior to the establishment of a federal repository. **Until a viable and reasonable location is identified, it is unknown where the SNF will ultimately be stored and what the associated timeline would be for the off-site relocation of SNF.**

The bolded section is a misleading statement because it is clear that until a solution to the siting and transport of this waste is found, the SNF will be stored at the SONGS site indefinitely. As such, impacts relating to the long-term storage of the spent nuclear fuel must be addressed in the EIR and the failure to do so renders the EIR invalid.

B. The EIR omits critical information about the thin-walled spent fuel storage canisters and is devoid of necessary contingency planning.

The EIR states that one Project objective “is to reduce radioactivity on the SONGS site in accordance with NRC regulations.” However, there is substantial evidence that the spent nuclear fuel storage canisters may leak or explode. Any leak or explosion would have serious consequences for the environment and human health; it would also impact the ability of the Coastal Commission to ultimately move the waste in the canisters to another location in time to avoid coastal impacts due to rising sea level, a major assumption relied on in the EIR. The EIR fails to address the environmental risk of contamination and hazardous accidents due to canister deterioration and fails to address the likely scenario that if the spent fuel waste remains indefinitely (because the canisters are not in adequate condition for transport), there is no contingency plan for their maintenance and storage at the SONGS site.

A coastal marine environment such as the one at SONGS can initiate corrosion and cracking in spent fuel storage canisters.⁶ The NRC states that once a crack starts, it can grow through the canister wall in sixteen (16) years.⁷ The EIR fails to acknowledge that aging thin-wall canisters, up to fifteen (15) years old, may already be cracking. Given that a two-year-old canister showed signs of the circumstances giving rise to cracks, there is a likelihood that the SONGS spent fuel canisters are in the process of cracking or have already cracked.⁸ These canisters have not been inspected because technology does not exist today to perform inspections for cracking, to know the depth of the cracks if they exist, or to repair any such cracks should they even be detected.⁹ NRC's regulation, NUREG-1927 (Rev. 1), requires canisters with 75% through-wall cracks be taken out of service. The Applicant has no approved NRC plan to take these canisters out of service, other than the spent fuel pools.¹⁰ Yet, the EIR ignores this issue and assumes that SCE will complete transfer of SNF from the spent fuel pools to dry-cask storage by the end of 2019 with no problems. (DEIR, at p. 1-10.) Until the Applicant can comply with its NRC license and come up with a method to take the canisters out of service, the spent fuel pools must remain functional, including with the once-through cooling system as backup to the short-term approved "fish aquarium" chiller system.¹¹

Moreover, the EIR fails to address any contingency plan for the Project related to the potential failure of the storage canisters due to corrosion cracking.¹² (See Guidelines § 15063(a)(1).) The EIR fails to disclose and address the age of these canisters (with risks of partial and through-wall cracks) and the lack of a maintenance plan, with no plan for remediation without a pool or hot cell. The Project would need a pool or hot cell to repackage fuel due to a defective canister

⁶ Exh. 2 ["Diablo Canyon: conditions for stress corrosion cracking in 2 years."]

⁷ Exh. 3, page 4 [September 9, 2014 Memorandum re: SUMMARY OF AUGUST 5, 2014, PUBLIC MEETING WITH THE NUCLEAR ENERGY INSTITUTE ON CHLORIDE INDUCED STRESS CORROSION CRACKING REGULATORY ISSUE RESOLUTION PROTOCOL]

⁸ Exh. 2

⁹ Exh. 3

¹⁰ Edison admitted that it cannot currently unload hot canisters back into the pool, even though this is a requirement of Edison's NRC license. (Palmisano video: <https://youtu.be/mjgna2atn7Y>; Exh. 4, [Certificate of Compliance for Spent Fuel Storage Casks, Cert. no. 1040].)

¹¹ Currently the "fish aquarium" chiller cooling system is approved for temporary cooling of the pools. Conduit pipes may be needed for the cooling system as a backup.

¹² All dry storage systems must provide storage in a manner and location that is as safe as possible to prevent radioactive leaks in both short and long-term storage and transport. This requires a system that provides defense in depth, is fully open to inspection, maintainable, repairable and not subject to critical degradation (such as corrosion and cracking). It must also provide a continuous early warning monitoring system that warns prior to a radiation release and have a plan in place for safety retrieving and monitoring spent fuel without destroying the containers. Emergency Planning should be provided and funded. The Project and the EIR does not meet or address any of these requirements.

or to meet transport requirements. Yet, the Project description does not include a remediation plan because the EIR improperly assumes nothing could go wrong with the canisters. No provision in the EIR nor a budget or plan for addressing cracked canisters was provided, even though remediation due to leaking canisters would be costly. As such, the EIR fails to present the entire picture of the Project and avoids the most important environmental issues and risks.

The EIR's assumption that the spent fuel will be transported away from the site is seriously undermined by the potential inability of storage canisters to be transported. One of the Coastal Commission's special conditions ensures that the fuel storage casks will remain in a physical condition sufficient to allow both on-site transfer and off-site transport.¹³ If a canister is cracked, it cannot be transported.¹⁴ Instead of addressing this issue head-on, the EIR relies on an unenforceable and non-specific settlement agreement between two private parties, one of whom is the Applicant. (DEIR, at pp. 1-11, 1-17, 4.1-45, 6-6.) The EIR relies on the enforcement of this private Settlement Agreement despite the fact that the Coastal Commission is not a party to the Settlement Agreement and therefore cannot enforce its terms, nor is it bound by its terms.¹⁵

The EIR mischaracterizes the Settlement Agreement as requiring "a written plan that addresses contingencies for damaged or cracked canisters consistent with NRC regulations and requirements." (DEIR, at p. 1-11.) Even if this hypothetical plan could be enforced by the parties to the Settlement Agreement, the Commission cannot rely on the plan to avoid addressing damaged or cracked canisters because the Settlement Agreement is not binding on any government agency. Furthermore, the Settlement Agreement is not enforceable mitigation because it is not a required mitigation measure in the EIR.

Additionally, the Applicant has very little credibility when it comes to ensuring safety and disclosing design failures relating to spent fuel storage. For example, the EIR discloses a recent canister failure but fails to disclose the circumstances pertaining to the failure, relying instead on the Applicant's own self-serving statements, which read as follows:

The vendor, Holtec International, revised a storage cask internal component called the basket shim in 2016. The shims help center the basket, which houses used fuel and fosters the flow of helium to

¹³ See Exh. 5, [California Coastal Commission Special Conditions to CDP # 9-15-0228]; Exh. 9 [CCC ISFSI Addendum, Staff Report]

¹⁴ Exh. 6, p. 17, [NRC Certificate of Compliance NUHOMS-MP197HB, Certificate 9302, April 23, 2014 (ML14114A099), "For any DSC [Dry Storage thin-wall Canister] that has been used in storage, the condition of the DSC must be evaluated, prior to transportation, to verify that the integrity of the canister is maintained."]

¹⁵ Exh. 7, p. 6-23, ["Stipulation for Dismissal of Action and Request for Court to Retain Jurisdiction to Enforce Settlement Agreement" in *Citizens Oversight Inc. v. California Coastal Commission*, San Diego County Superior Court Case no. 37-2015-00037137-CU-WM-CTL.]

transfer heat from the fuel. As of January 2018, SCE has placed four loaded canisters with the newer basket shim in the concrete storage facility at SONGS. In March 2018, SCE discovered a loose piece of a shim (4 inches by 1/2 inch) while preparing to load a canister. SCE temporarily paused work transferring the used fuel to the dry storage canisters to evaluate the vendor's fabrication modifications. **SCE validated the canisters' integrity for on-site storage safety purposes. SCE asked Holtec and an independent engineering firm to review the original shim basket design to ensure it remains consistent with the NRC requirements, and it was determined that it does.** SCE has therefore resumed fuel transfer work, loading the 30 canisters with the original basket shim design. The remaining canisters with the new design are on hold until Holtec completes an internal root cause evaluation.

(DEIR, at p. ES-12 to ES13 [emphasis added].)

The "independent engineering firm" used to review the shim basket design is actually MPR Associates, Inc., the same firm that concluded that SCE could transport waste to a large dry fuel handling facility (the Test Area North hot cell) in Idaho, that does not exist.¹⁶ Thus, the "independent engineering firm" has no credibility and cannot be relied upon. In addition, the NRC is still investigating the above-described March 2018 incident and has not approved the basket design.¹⁷ The DEIR needs to disclose this information.

Moreover, the EIR relies on NRC monitoring, but these monitoring requirements may soon be waived by the NRC in response to an application submitted to the NRC by Edison. (See DEIR, at p. 1-5 [discussing purported on-going monitoring].)¹⁸ Edison is requesting that it exclude reporting radiation levels from the canisters' outlet air vents. Yet, this is where the highest levels of radiation would be detected should the canisters have through-wall cracks. Thus, peak radiation levels may not be reported by Edison. Additionally, Edison is under investigation for a recent failure of the Holtec system, which was disclosed by a subcontractor company worker and whistleblower.¹⁹ The EIR fails to disclose this important information, and address this significant environmental issue.

¹⁶ Exh. 8, [*SONGS Used Fuel Management – Defense in Depth, White paper for SONGS CEP*]

¹⁷ Exh. 9, [Email from NRC confirming investigation]

¹⁸ Exh. 10, Slide 6, [Areva Slideshow, CoC 1029 Amendment 4 NRC Pre-Application Meeting]

¹⁹ See video of full Edison San Onofre CEP August 9, 2018 meeting. Whistleblower at 2:20:00 <https://www.songscommunity.com/community-engagement/meetings/community-engagement-panel-meeting-20180629>

The CSLC must provide full disclosure according to CEQA and give the “apprehensive citizenry” a chance to comment on an EIR that properly addresses the environmental impacts of a project proposed in an environmentally sensitive area, such as this one. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.)

C. The EIR fails to fully address seismic and tsunami risks.

Evidence demonstrates that the seismic and tsunami risks are greater than the EIR discloses. A recent report presented by Mark Legg at 11th National Conference on Earthquake Engineering (June 2018) describes the off-shore and on-shore fault risk and tsunami risk that may be far more serious than the assumptions contained in the EIR.²⁰ A 2004 report by Gerald Kuhn, titled *Paleoseismic Features as Indicators of Earthquake Hazards in North Coastal San Diego County, USA*, describes tsunami evidence along the coast of N. County San Diego that indicates a tsunami flood risk far more serious than assumptions contained in the EIR. Furthermore, in a June 2015 staff report, the Coastal Commission noted that "Though SCE seeks temporary development authorization until 2051, there is no assurance that SCE will be able to transfer the spent fuel to DOE custody and decommission the proposed facility as planned by 2051, complicating the analysis of the project's *exposure to geologic hazards* and its potential to adversely affect coastal resources. The uncertain duration of the ISFSI's presence at the proposed location also has implications for SCE's alternatives analysis " (CCC ISFSI Addendum, Staff Report, p. 20 [emphasis added].)²¹

Even more unsettling is the fact that SCE acknowledges that its canisters are not seismic rated with partial cracks and none of the canisters have been inspected for cracks.²² The NRC's more recent Generic EIS for Continued Storage of Spent Nuclear Fuel acknowledged that prior studies did not consider seismic risks at western nuclear reactors including San Onofre.²³ The EIR must contain a full discussion of the true extent of these risks, especially given evidence that waste will potentially be stored indefinitely at the SONGS site.

D. The EIR fails to fully address impacts due to sea level rise.

²⁰ Exh. 11, [Report: *Potential for Large Complex Multi-Fault Earthquakes Offshore Southern California*.] Dr. Legg's report describes seismic and tsunami conditions at the SONGS site that are more severe than the report by Dr. Neal Driscoll used by SCE to license the ISFSI.

²¹ Exh. 12, [Addendum to 9-15-0228 – Southern California Edison SONGS ISFSI Project]

²² See video: “SoCal Edison Admits - No seismic rating for San Onofre cracked canisters” <https://youtu.be/33FwTTMZLNI>

²³ Exh. 13, [NRC Generic EIS for Continued Storage of Spent Nuclear Fuel (NUREG-2157)], pp. xlii, F-10, fn. 5.

The EIR states that “[c]ompared to year 2000 levels, the Southern California region could see up to 1 foot of sea-level rise by 2030, 2 feet by 2050, and possibly over 5 feet [66”] by 2100.” (DEIR, at p. 8-3.) Given these statistics, the EIR should have addressed the impacts sea level rise would have in a scenario where the SNF would not be transported and the ISFSI could not be moved. The EIR failed to do so, citing the ISFSI as the baseline and deferring to a future analysis by the Coastal Commission. This is a major area of impact that is required to be disclosed and discussed in the Draft EIR.

Additionally, sea level rise impacts are not addressed in relation to the Holtec design, which is a subterranean system with openings to the environment.²⁴ The NRC only addresses sea level rise risks for the 20-year term of the ISFSI license. And the proposed changes and alterations to the SONGS facility's design associated with decommissioning, including destruction of the spent fuel pool systems, require a license amendment because these changes were never addressed in the SONGS Final Safety Analysis Report ("FSAR") or any of the updates to the FSAR. See 10 C.F.R. §§ 50.56, 50.59(c).

The EIR also improperly defers analysis of sea level rise. The EIR states:

Section 8.1, *Climate Change and Sea-Level Rise Considerations*, addresses sea-level rise, which will be discussed further at the time of Commission action on the lease associated with the Proposed Project.

(DEIR, Appendix C, at p. C-11.)

The analysis of sea level rise impacts must be included in the EIR prior to project approval, not deferred until a later date. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-08 [denouncing deferral of environmental assessment until after project approval because it violated CEQA’s policy that impacts must be identified before project momentum reduces or eliminates the agency’s flexibility to subsequently change its course of action].)

Sea level rise and its relationship to the Project resulting in contamination of the beaches and coastline must be fully addressed; and not just those relating to radiological hazards, but also to other impacts relating to public access, aesthetics, views, water quality and marine environment, coastal erosion and public services.

II. The EIR Relies on An Illegal Project Description and Impermissibly “Piecemeals” the Project.

²⁴ In addition, the Updated FSAR also does not consider the effects of sea level rise caused by climate change at SONGS. See Exh. 14, [SONGS FSAR, Hydrologic Engineering Chapter]

The EIR’s failure to accurately describe the Project as including the “whole of the action” demonstrates an inadequate and illegal project description for CEQA purposes. “[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1448.) Such an accurate description “is necessary for an intelligent evaluation of the potential environmental impact of the agency’s action.” (*City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406.) Here, the EIR fails to include in the project description the entirety of the action required to decommission the units.

A project is defined as “... the whole of an action, which has a potential for resulting in a physical change in the environment” and includes [¶] “An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.” (Guidelines, § 15378, subd. (a)(3).) Specifically, “[a]ll phases of project planning, implementation, and operation must be considered.” (Guidelines § 15063(a)(1) [emphasis added].)

A fundamental tenet of CEQA is that the entirety of a project must be analyzed together, in order that CEQA’s environmental disclosure and protection purposes are not “avoided by chopping up proposed projects into bite-size pieces which individually considered, might be found to have no significant effect on the environment or to be only ministerial.” (*Lincoln Place Tenants Ass’n v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1507 (internal quotations omitted.) See also, Guidelines § 15378(a). “[T]he requirements of CEQA ‘cannot be avoided by chopping up proposed projects into ‘bite-size pieces’ which, when taken individually, may have no significant adverse effect on the environment . . .” (*Lake County Energy Council v. County of Lake* (1977) 70 Cal.App.3d 851, 854.)

Improper piecemealing occurs “when the purpose of the reviewed project is to be the first step toward future development” or “when the reviewed project legally compels or practically presumes completion of another action.” (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223.)

Here, “the whole” of the project is the entire SONGS decommissioning process. Yet the project is split up in separate phases and the EIR fails to address radioactive waste handling and storage despite the fact that it is inextricably linked with the activities at issue in the “project.” The EIR thus illegally “piece meals” the project in a way that avoids addressing the issue of radiological hazards due to storage and maintenance of waste, among other things.

EIR Sections 1.0, Introduction, and 2.0, Project Description, identify the Proposed Project (2019 through 2028) as the “project” and distinguish the Proposed Project from the Independent Spent Fuel Storage Installation (ISFSI)

Expansion, Operation, and Maintenance (2015 through 2035) and “Future Activities” (estimated from 2035 to anticipated completion in 2051).²⁵ Despite the fact that one of the stated Project objectives is to reduce radioactivity at the site, the EIR avoids a full discussion of radiological impacts and instead includes Appendices D1 and D3, which it describes as merely “**background information** on radioactive material storage and transportation.” (DEIR, Appendix C, at p. C-12 [emphasis added].) In addition, in Section 1.5.2, entitled, “Uncertainty Regarding Future Decommissioning Plan Activities,” the EIR further avoids disclosing and analyzing the important issue of radioactivity, storage and maintenance.

Further, the EIR avoids disclosure of the perils of transporting the spent fuel by further whittling down the project definition, stating that, “Transport of spent nuclear fuel is not part of the Proposed Project and is anticipated to occur during Future Activities (2035). Under the terms of a Settlement Agreement, the Applicant must develop a Transportation Plan and Strategic Plan to transport spent nuclear fuel.” This statement is misleading. First, the Settlement Agreement does not bind the Coastal Commission to require this type of transportation plan. Second, the Settlement Agreement contains no clear mandatory terms or directives for providing an adequate and complete transportation plan.

The need for separate approvals by the CSLC, the federal government and the Coastal Commission for the SONGS decommissioning does not sever the connections between the activities necessary to decommission SONGS. (CEQA Guidelines, § 15378 (c) and (s).) Moreover, “under CEQA’s definition of a project, although a project may go through several approval stages, the environmental review accompanying the first discretionary approval must evaluate the impacts of the ultimate development authorized by that approval.” (*California Unions for Reliable Energy v. Mojave Desert Air Quality Mgmt. Dist.* (2009) 178 Cal.App.4th 1225, 1242.) The federal and Coastal Commission approvals are closely related to the approval by the CSLC, yet by bifurcating the project into three parts, full CEQA review is avoided. In 2015, the Coastal Commission approved the spent fuel pool island (SFPI) and several months later approved the ISFSI for SONGS. These components of the overall decommissioning project

²⁵ Baseline conditions are defined as the existing physical environmental setting by which a lead agency determines whether an impact is significant. (Guidelines, § 15125, subd. (a)). The EIR mischaracterizes the Coastal Commission’s previous approval and activities as the baseline, which does not constitute the existing physical environmental setting and thus cannot constitute the baseline for purposes of CEQA. (*Id.*) Section 1.2.1.3 of the EIR entitled, “Federal Preemption,” discusses purported federal preemption of radiological decontamination and release requirements and spent nuclear fuel and high-level radioactive waste handling, storage, transport, disposal, and monitoring. Sections 1.2.2.2, California Coastal Commission, 1.2.2.3, Settlement Agreement, and 1.5.1, Baseline and Future Conditions, identify the ISFSI and its expansion, which include dry cask storage, **as approved projects and part of Proposed Project baseline conditions.**

should have been analyzed together in a single EIR along with the Project at issue. Instead, their individual effects have been falsely minimized by chopping up the larger project into smaller pieces.

The result of the bifurcation of environmental analysis is that site-specific impacts related to radiological hazards of storing and transporting waste are deferred to a later, post-approval time, if ever.²⁶ The EIR fails to address these waste storage and transportation issues, claiming that the NRC Generic EIS²⁷ addresses some of these impacts, and claiming that the Coastal Commission approvals of the ISFSI and its expansion are in essence the baseline for measuring the instant Project's impacts. Yet, the 2002 Supplement to NRC's Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG-0586 Supplement 1) (the "Supplement") does not address storing spent fuel in a seismically active marine environment such as that characterizing the Project site.²⁸ Moreover, when recently approving the ISFSI, the California Coastal Commission did not analyze the "radiological safety" impacts of spent fuel storage casks.²⁹

The EIR relies heavily on the NRC's determination that the Post Shutdown Decommissioning Activities Report (PSDAR) falls within the NRC's Generic Environmental Impact Statement "GEIS." (See DEIR, at p. 1-6.) Guidelines Section 15090 requires that the CSLC certify that the Final EIR reflects the CSLC's **independent judgment and analysis**. It is clear that relying unquestioningly on the Applicant's self-serving statements in an unenforceable settlement agreement and a PSDAR backed solely by the Applicant's environmental reports does not satisfy this CEQA Guideline. A GEIS is not site-specific and CEQA requires a site-specific analysis of environmental impacts.

Using a claim of purported federal preemption as an excuse for failing to address the radiological safety risks prevents the public from gaining a full understanding of the impacts of decommissioning SONGS. **Despite the inference in the EIR to the contrary, nothing in CEQA or federal preemption prevents the CSLC from addressing these concerns, or analyzing these impacts.** The California Supreme Court has considered how to interpret the word "project" and concluded that CEQA is "to be interpreted in such manner as to afford the fullest possible protection to the environment

²⁶ See e.g. DEIR, at p. 1-10: "If SNF has not been transferred off site by 2035, as a condition of CDP No. 9-15-0228, the CCC will evaluate the ISFSI location in 2035 based on an analysis of future coastal hazards."

²⁷ Exh. 13, [NRC Generic EIS for Continued Storage of Spent Nuclear Fuel (NUREG-2157), pp. xlii, F-10, fn. 5; full document also available at: <http://www.nrc.gov/docs/ML1419/ML14196Alo5.pdf>.]

²⁸ See Exh. 16, Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, Supplement 1

²⁹ See Exh. 12, Addendum to CCC Staff Report, dated Oct. 5, 2015 (CCC ISFSI Addendum), pp. 10-11

within the reasonable scope of the statutory language.” (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.)

Moreover, the CSLC’s claim that it is constrained by federal preemption from addressing these radiological safety risk concerns is essentially an admission that it should have prepared a joint Draft EIR/Environmental Impact Statement (“DEIR/S”) with the NRC for this project. (See Guidelines, §§ 15006G, 15170, 15220, 15222.)³⁰ If the CSLC concludes that identification and implementation of mitigation measures are within the responsibility and jurisdiction of another agency, such as the NRC, then it must recommend that those measures can and should be adopted by that agency. Instead, the EIR claims no feasible mitigation measures could be imposed. This is an error.

III. The EIR Violates CEQA’s Mandate to Analyze and Adopt Feasible Alternatives.

CEQA provides a “*substantive mandate* that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures” that can lessen the environmental impact of proposed projects. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134, citing Pub. Resources Code, § 21081 emphasis added.) It “compels government... to mitigate... adverse effects through... the selection of feasible alternatives.” (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233, see also Pub. Resources Code, § 21002.)

An EIR must provide a reasonable range of alternatives that could “feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.” (Guidelines, § 15126.6(a).) These alternatives must be substantive in nature, not just cursory, and must “avoid or substantially lessen any of the significant effects of the project.” (*Id.* at 15126.6(f).) The agency must articulate its analysis and how it reached its determination. (See *Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App. 4th 173, 203.) The EIR’s conclusions regarding the feasibility of alternatives are not supported by substantial evidence. (*California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 997.)

One of the alternatives that must be analyzed is the “no project” alternative. The “no project” analysis must discuss the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if

³⁰ The DEIR concludes: “The CSLC is preparing a CEQA document for the Proposed Project, not a joint NEPA/CEQA document with the NRC or DoN. As discussed in Section 1.2, Legal and 30 Governmental Authority, the NRC prepared a Final GEIS Supplement (NUREG-0586) in 2002 that analyzed environmental impacts associated with the decommissioning of nuclear power plants throughout the country, while additional NEPA review by the DoN would occur in the future at the time of federal lease termination.” (DEIR, at p. 1-13.)

the project were not approved and development continued to occur in accordance with existing plans and consistent with available infrastructure and community services. (Guidelines, § 15126.6(e)(3)(C)). As addressed above, dysfunctional canisters would cause significant environmental impacts. This existing condition (of the canisters) is not addressed in the EIR and as such, the no project alternative analysis is flawed. Until the above-described storage issues are addressed with Edison, approved by the NRC, and fully disclosed in the EIR, the project cannot move forward. Edison should not be allowed to make the conduits for the pools non-functional.

In addition, the EIR fails to properly address the alternative providing for retention of the pools and pool cooling systems. Such an alternative would satisfy a majority of the project objectives, particularly, to reduce radiological waste and decommission a majority of the SONGS site in a more economical manner once the SNF is removed from the site. Yet, the EIR outright and summarily rejects this alternative without providing any support for its conclusions, stating:

This alternative is **not consistent with the Proposed Project objectives**, and **could interfere with the decommissioning** and removal of the on-site facilities. The spent fuel pools are an integral part of the containment buildings, such that it **may not be feasible** to retain the existing spent fuel pools while also dismantling the containment buildings. The need to retain the spent fuel pools is based on **speculation** that they will be needed in the future because dry storage casks will be damaged and unsuitable for transport. This alternative also would not reduce any identified significant impacts of the Proposed Project. Any potential hazards associated with the storage of SNF in the ISFSI would not be exacerbated by the Proposed Project. Furthermore, **the feasibility of this alternative is not clear. As such, retention of spent fuel pools is eliminated from further analysis.**

(DEIR, at p. 5-12 [emphasis added].)

The conclusory nature of the EIR's discussion of this alternative violates CEQA. (*Cal. Clean Energy Comm, supra*, 225 Cal.App. 4th 173, 203.) Moreover, the EIR fails to make a finding of infeasibility, claiming the alternative "may not be feasible" and "the feasibility of this alternative is not clear." The EIR also does not, but should, explain why the casks' unsuitability for transport is "based on speculation."³¹ Finally, the EIR's statements that the alternative "would not reduce any identified significant impacts" of the project and the project would not

³¹ Exh. 15, [SAN ONOFRE NUCLEAR GENERATING STATION – NRC INSPECTION REPORT 05000206/2017-003, 05000361/2017-003, 05000362/2017-003, AND 07200041/2017-001] This report details SONGS' storage system and requirements. It also explains in more detail the Condition #8 that requires unloading canisters.

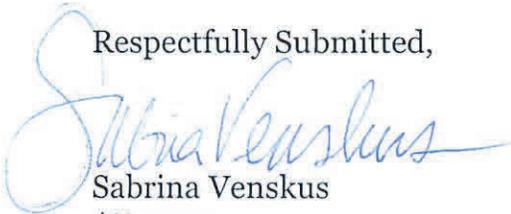
exacerbate hazards associated with the storage of SNF, are not supported by substantial evidence. (*California Native Plant Soc, supra*, 177 Cal.App.4th 957, 997.) In fact, as addressed above, the evidence demonstrates that the functionality of the pools is integral to the decommissioning process. Implementing the Project without the pools functioning exacerbates hazards associated with the storage of SNF.

The EIR fails to properly address alternatives that reduce potentially significant environmental impacts and thus violates CEQA. (See Pub. Resources Code sections § 21081, 21002.1(b) and Guidelines §§ 15091 and 15092.)

IV. Conclusion

For all these reasons, the CSLC cannot rely on the defective EIR and therefore must deny the lease application. CSLC has not “engaged in a good faith, reasonable effort towards full public disclosure of the potential effects of the Proposed Project.” (DEIR, at p. 1-12.) “The public has a right to insist on the adequacy of the environmental document upon which the agency makes its decision.” (*Deltakeeper v. Oakdale Irrigation Dist.* (2001) 94 Cal.App.4th 1092, 1109.)

Respectfully Submitted,



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