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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF LOS ANGELES**

17 THE SAMUEL LAWRENCE FOUNDATION, a
California Non-Profit Public Benefit Corporation,

18
19 Petitioner/Plaintiff,

20 v.

21 CALIFORNIA COASTAL COMMISSION, and
agency of the State of California and DOES 1
through 20, inclusive,

22
23 Defendant/Respondent.

24 SOUTHERN CALIFORNIA EDISON
COMPANY, SAN DIEGO GAS & ELECTRIC
COMPANY, CITY OF RIVERSIDE, CITY OF
25 ANAHEIM, and ROES 1 through 20, inclusive

26
27 Real Parties in Interest
28

Case No. 19STCP05431
[Related with Case No. 20STCP02957]

[Assigned for all purposes to the Honorable
Judge Hon. Mitchell L. Beckloff]

**RESPONDENT CALIFORNIA
COASTAL COMMISSION AND REAL
PARTIES IN INTEREST'S JOINT
BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF MANDATE**

**[Filed concurrently with Request for
Judicial Notice]**

Action Filed: December 16, 2019
Trial Date: June 16, 2021

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1 **I. INTRODUCTION**

2 The operation of nuclear power facilities, including the decommissioning of such facilities,
3 is one of the most regulated activities in this country. On the federal side, the U.S. Nuclear Regulatory
4 Commission (“NRC”) has exclusive jurisdiction over all radiological issues attendant to nuclear
5 power facilities, including the handling of spent nuclear fuel. On the state level, a number of
6 regulatory agencies may have jurisdiction over non-radiological issues depending on the location of
7 the facility. With respect to the San Onofre facility (“SONGS”¹) at issue in the instant action, the
8 California State Lands Commission (“SLC”) exercised jurisdiction over the offshore elements of the
9 facility, and respondent California Coastal Commission (“Coastal Commission” or “Commission”)
10 exercised authority over the onshore elements of the facility. Since 2015, the NRC, SLC and the
11 Coastal Commission have approved every aspect of the fuel storage and decommissioning activities
12 at the facility, including the construction of new facilities on site that will store the spent fuel until
13 the federal government approves a facility elsewhere in the country that can permanently or even
14 temporarily store spent fuel from all nuclear power facilities in the country. These on-site storage
15 facilities built at SONGS are called “dry” storage facilities.

16 Before granting approvals for the decommissioning of SONGS, SLC and the Commission
17 each engaged in extensive environmental review of that project. SLC, acting as the lead agency,
18 prepared a full Environmental Impact Report (“EIR”). The Commission, as a responsible agency,
19 undertook its own comprehensive analysis (while also relying on SLC’s EIR) and imposed numerous
20 special conditions to ensure the Project’s compliance with the Coastal Act.

21 Petitioner Samuel Lawrence Foundation (“Petitioner”) advances three arguments: (1) the
22 Commission failed to analyze the impact associated with the decommissioning of “wet pools” inside
23 SONGS, which, according to Petitioner’s flawed claim, must be retained to repair or replace canisters
24 that house spent fuel, (2) the Commission somehow nullified a condition in a 2015 coastal
25 development permit by shortening the time for real party Southern California Edison (SCE) to
26 comply with it and requiring independent oversight; and (3) the Commission failed to evaluate

27 ¹ SCE, San Diego Gas & Electric Co., and the City of Riverside jointly own SONGS. (AR 35.) The
28 City of Anaheim is a prior owner and co-participant with the current owners in the decommissioning
Project. (*Id.*) Collectively, the co-participants are referred to as “co-participants” or “SCE.”

1 potential on-site locations to move the dry storage facility once SONGS has been decommissioned
2 and above grade structures are removed (which may take until the year 2035).

3 Petitioner’s arguments run contrary to a wealth of evidence supporting the Commission’s
4 decision to approve the permit for the decommissioning project. There was overwhelming evidence,
5 including expert opinion from the NRC, presented to the Commission, that the wet pools are not
6 needed to repair or replace canisters in the dry storage facility. (Indeed, no other decommissioned
7 nuclear facility in the country has retained spent fuel pools.) Retaining the wet pools would be
8 inconsistent with the project’s objectives because it would substantially impede (if not prevent) the
9 decommissioning of SONGS. As to the 2015 permit condition, the Commission did not nullify the
10 it; it imposed requirements that effectively strengthened it by shortening the time for SCE to comply
11 and requiring third-party review of SCE’s compliance. As to the potential need to relocate the dry
12 storage facility 15 to 20 years from now, the fuel may be transported to a federally-approved
13 repository by that time. If not, the evidence before the Commission demonstrated that it is unknown
14 the extent to which certain structures will remain on site because the owner of the land—the U.S.
15 Navy—has not made a decision on that subject and may not do so for many years. Therefore, it is
16 speculative as to whether a preferred on-site location for the storage facility may exist post
17 decommissioning or even be needed.

18 Petitioner’s arguments are also untimely and barred. The Commission addressed a range of
19 alternative on-site locations for the dry storage facility six years ago when it issued the permit for the
20 dry storage facility. The time to challenge that permit has long passed. The issue concerning the
21 storage of spent fuel at SONGS and the NRC’s authority over that matter was addressed by the Ninth
22 Circuit Court of Appeals in a ruling issued in December 2020, which upheld the NRC’s exclusive
23 authority. Retention of the pools was also addressed in SLC’s EIR, which was certified in 2019.
24 Litigation challenging that EIR has already been dismissed by the trial and appellate courts.

25 For all of these reasons, Respondent and Real Parties respectfully request that this Court deny
26 the Petition and uphold the Commission’s decision.

27 ///

28 ///

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. SONGS Background and Location**

3 SONGS occupies approximately 100 acres on U.S. Marine Corps Base Camp Pendleton in
4 San Diego County, approximately 50 miles northwest of San Diego (AR 35-37, 1470, 1525²).
5 Pursuant to federal approvals, SONGS generated nuclear power beginning in the 1960s (AR 35,
6 1505-06). SONGS previously consisted of three nuclear power reactors (Units 1, 2, and 3) (AR 35).
7 Unit 1 was shut down in 1992, and has since been dismantled and decommissioned (AR 35, 1505-
8 06). Units 2 and 3 began commercial operation in 1983 and 1984, and permanently ceased all power
9 generation in 2012 (*Id.*). Since all power generation stopped, SCE proceeded to seek the required
10 approvals to decommission Units 2 and 3 and to dismantle and remove SONGS structures (AR 35-
11 36).

12 Several federal and state agencies have jurisdiction over various aspects of SONGS’
13 decommissioning. As the landowner of the site, the U.S. Navy previously issued easements and
14 leases for the construction, operation, and decommissioning of SONGS, which remain in effect (AR
15 36, 1501-02). The Navy also has authority over the site’s final disposition and restoration (AR 26,
16 37, 1473, 1585-87). The SLC has jurisdiction over SONGS’ offshore structures, including the
17 discharge conduits and associated appurtenances (AR 37, 46, 1472). The Commission has
18 jurisdiction over SONGS’ offshore and onshore structures in the coastal zone (AR 35, 1897-98).
19 Other agencies with jurisdiction over Project elements include the California Department of Toxic
20 Substances Control, the State Water Sources Control Board, and the San Diego Regional Water
21 Quality Control Board (AR 46; see also AR 1517-18).

22 In addition, the NRC has exclusive jurisdiction over the radiological aspects of SONGS’
23 operation and decommissioning, including the storage of spent nuclear fuel (AR 44, 375-76, 799-
24 803, 1502-04; see also *Pacific Gas and Electric Co. v. State Energy Com.* (1983) 461 U.S. 190, 212).
25 As discussed in greater detail below (at pp.10-11, 15-16), the NRC regulates all aspects of the
26 handling and storage of the spent fuel generated by a nuclear power facility. For example, the NRC
27 regulates the storage of fuel in wet pools, the construction and operation of dry storage facilities, the

28 ² Citations to the Administrative Record will be referred to herein as “AR [___].”

1 canisters used to store the fuel, and the transportation of canisters containing the fuel. (See 10 C.F.R.
2 Parts 71, 72). Further, the NRC regulates the decommissioning of nuclear power facilities, including
3 wet storage pools inside such facilities. (See 10 C.F.R. Parts 50, 51).

4 Finally, the U.S. Department of Energy (“DOE”) is responsible for developing repositories
5 suitable for storage of all spent nuclear fuel in the U.S. (AR 44, 1504; see also the Nuclear Waste
6 Policy Act of 1982, 42 U.S.C. § 10101 et seq). To date, the DOE has not approved an interim or
7 permanent off-site storage facility for spent nuclear fuel anywhere in the country (AR 44, 1504).

8 **B. Storage of Spent Nuclear Fuel in Facilities at SONGS**

9 The spent fuel generated by SONGS is stored in accordance with NRC requirements (AR
10 371-76). The NRC permits spent fuel to be stored in enclosed steel-lined pools (wet storage) or in
11 dry, passively cooled storage facilities known as Independent Spent Fuel Storage Installations
12 (“ISFSIs”) (AR 35, 1538). Storage in ISFSIs provides advantages as compared to wet storage
13 because it requires less infrastructure and no electric power (AR 378-79, 8051, 1538). Dry storage
14 can also withstand higher seismic activity and provide greater security against “hostile” acts. (*Id.*)
15 Placing the fuel in canisters in ISFSIs also facilitates future transportation because the fuel is already
16 packaged for offsite shipment. (*Id.*)

17 SCE sought and obtained the necessary federal and state approvals to construct two on-site
18 ISFSIs to store spent fuel. The ISFSIs operate pursuant to a license from the NRC (See AR 375-76,
19 398-99). The Commission approved Coastal Development Permits (“CDPs”) for the first ISFSI in
20 2000 and 2001 (AR 35-36, 1507, 5359-400). Fuel has been safely stored in this ISFSI since the early
21 2000s (AR 371, 8050). In order to store spent fuel generated by Units 2 and 3, SCE sought the
22 necessary approvals to construct a second ISFSI on site.³ The Commission approved the CDP for the
23 construction and operation of the Holtec ISFSI in 2015 (“2015 CDP”) for a 20-year term (AR 35-36,
24 362-434, 1531-32). The 2015 CDP included several special conditions, including a requirement for
25 SCE to apply for an amendment by 2035 to retain, remove, or relocate the ISFSI and to provide an
26 update on potential alternative off-site and on-site locations to relocate the ISFSI (AR 36, 367
27 [Special Condition 2]). Another special condition required SCE to develop an Inspection and

28 ³ Referred to as the “Holtec” ISFSI, the manufacturer of its canisters and systems (AR 372).

1 Maintenance Program (“IMP”) to ensure that the fuel storage casks will remain in a physical
2 condition sufficient to allow on-site transfer and off-site transport of the stored nuclear fuel for the
3 term of the CDP (AR 35, 369 [Special Condition 7]; see also AR 10096).

4 The 2015 CDP was challenged in San Diego Superior Court and was resolved by a settlement
5 agreement approved by that court in 2017 (AR 36, 1507-08, 3928-45). The settlement agreement
6 included requirements for SCE to develop strategic plans to relocate the SONGS spent fuel to an off-
7 site location. (*Id.*) That settlement also advanced the deadline to develop the IMP by two years. (*Id.*)
8 The 2015 CDP and the Commission’s supporting analysis are now beyond legal challenge.

9 After approval of the 2015 CDP, SCE constructed the Holtec ISFSI and began moving spent
10 fuel from storage pools in Units 2 and 3 fuel handling buildings into the Holtec ISFSI (AR 4995).
11 Transfer of the fuel to the Holtec ISFSI was completed in August 2020.⁴

12 **C. The Decommissioning Project and the State Land Commission’s CEQA Review**

13 The SONGS decommissioning project (“Project”) includes the activities associated with the
14 decontamination, dismantlement, and removal of certain offshore and onshore above- and below-
15 grade structures at SONGS, including the dismantling of the fuel handling buildings and spent fuel
16 pools (AR 39, 88-153, 1469-71, 8030-47). Decontamination work will remove all structures to a
17 minimum of approximately 3 feet below existing local grade (AR 1546). The NRC sets standards for
18 radioactive contamination clean-up, and the Project will meet those requirements (AR 37).

19 The Project includes many long-term benefits, including beneficial impacts to the coastal
20 viewshed by removing most of the prominent above-ground structures that block views of the Pacific
21 Ocean (AR 69, 80, 116, 10104 [before and after schematic view of coast]). Other public benefits
22 include a wide array of long-term end uses post-decommissioning, improvements in marine
23 navigation, preservation of incidental marine habitat, recreation opportunities and improved public
24 access, and economic benefits to the region (AR 1363-65, 1682, 1938, 2059, 2152).

25 Additional activities may occur at the SONGS site after completion of the Project—such as
26 additional substructure removal and final site restoration (AR 41, 772-73). The amount and location

27 _____
28 ⁴ See Respondent and Real Parties’ Request for Judicial Notice (“RJN”) filed concurrently,
Exh. F.

1 of below-grade structures that remain on site will be based on NRC requirements as well as end-state
2 requirements determined by the Navy as the landowner of the site (AR 41, 772-73, 1473). These
3 activities have not yet been defined, and were outside of the Commission’s control when it acted on
4 the CDP at issue in this case (AR 41, 772-73).

5 The SLC was the first public agency to consider a discretionary approval for the Project, a
6 lease for decommissioning of the SONGS’ offshore discharge conduits and associated
7 appurtenances. Accordingly, the SLC served as the lead agency pursuant to the California
8 Environmental Quality Act (“CEQA”) (Pub. Resources Code § 21000 et seq.)⁵ and prepared an EIR
9 for the Project (see AR 1469-1589). The EIR covered both the Project’s offshore and onshore
10 activities, not only the decommissioning activities associated with the SLC lease (AR 1472). The
11 EIR specifically evaluated the dismantlement and demolition of the spent fuel pools (AR 1555 [“The
12 spent fuel pools would be prepared for demolition by removing the [spent nuclear fuel] storage
13 racks”]; see also 789-96 [EIR master response to comment regarding retention of the spent fuel
14 pools], AR 8042). The EIR also included a thorough analysis of the Project’s potential environmental
15 impacts, including the Project’s impacts related to tsunamis, sea level rise, geology and erosion. (See,
16 e.g., AR 782-89 [tsunamis and sea level rise]; AR 1825-54 [geology]; AR 2135-39, 2999 [climate
17 change and sea level rise].) In addition, the EIR evaluated 15 alternatives to the Project, including an
18 alternative that would have relocated the ISFSI (AR 1977-2055). The EIR also provided thorough
19 responses to all public comments received, including comments from Petitioner (AR 3100 [EIR
20 master responses to comments]; AR 953-972 [EIR responses to Petitioner’s comments]).

21 After holding a public hearing on March 21, 2019, the SLC certified the EIR for the Project
22 and approved the lease (AR 46). The SLC’s action was challenged under CEQA in 2019. (See *Public*
23 *Watchdogs v. Cal. State Lands Com.*, San Diego Superior Court Case No. 37-2019-00020624-CU-
24 WM-NC.) The Superior Court dismissed the action, and the Court of Appeal recently affirmed the
25 dismissal. (See *Public Watchdogs v. Cal. State Lands Com.* (April 20, 2021, D077166 [nonpub.
26 opn.] 2021 WL 1232109.) Accordingly, the SLC’s EIR is valid and beyond legal challenge. (§
27 21167.2.)

28 ⁵ Hereafter, statutory citations are to the Public Resources Code unless otherwise indicated.

1 **D. The Coastal Commission’s Approval of the 2019 CDP for the Project and**
2 **Analysis under the Coastal Act**

3 In addition to the lease for the offshore structures, the Project also required the Commission’s
4 approval of a CDP for the decommissioning of SONGS’ onshore structures. Before approving the
5 CDP for the Project, the Commission thoroughly reviewed the Project’s potential environmental
6 impacts and consistency with the Coastal Act. (See AR 25-87 [Staff Report], AR 7994-8047
7 [Exhibits to Staff Report], AR 10095-98 [Addendum to Staff Report].) In addition to its independent
8 analysis, the Commission also relied on the SLC’s extensive environmental review. (See AR 83-84;
9 see also AR 32-33 [Special Condition 9]; AR 8010-8017 [Ex. 13 to Staff Report].)

10 After holding a public hearing on October 17, 2019, the Commission approved the CDP for
11 the Project (the “2019 CDP”), incorporating mitigation measures from SLC’s EIR related to site
12 stabilization, biological resources, water quality, archaeological and tribal monitoring, and
13 paleontological monitoring (Special Condition 9) and imposing 18 additional special conditions (AR
14 14-24; AR 4989-5229 [hearing transcript]; AR 10101-08 [hearing presentation].) The Commission
15 determined that, as conditioned, the Project would be consistent with applicable Coastal Act policies.
16 (See AR 49-82 [Staff Report analysis of applicable Coastal Act policies].)

17 **III. REGULATORY BACKGROUND**

18 **A. Federal Preemption and the NRC’s Exclusive Jurisdiction Over the Handling**
19 **and Storage of Nuclear Material**

20 In its Opening Brief, Petitioner provides an overview of the Coastal Act, but omits a
21 discussion of the NRC’s exclusive jurisdiction over the handling, storage, and transportation of
22 nuclear material. (Opening Brief (“OB”), pp. 8-10). Under the Atomic Energy Act of 1954 (42 U.S.C.
23 § 2011 et seq.), the NRC has exclusive jurisdiction over the construction and operation of nuclear
24 power plants and the storage of spent nuclear fuel. (See *Pacific Gas and Electric Co.*, *supra*, 461
25 U.S. at p. 212; *Public Watchdogs v. So. Cal. Edison* (9th Cir. 2020) 984 F.3d 744, 749; see also 10
26 C.F.R. Part 71 [regulations concerning cracked canisters], 10 C.F.R. Part 72 [regulations concerning
27 storage of spent nuclear fuel]; see also AR 44 [Staff Report], AR 1502-04 [EIR]).

28 Carrying out its statutory mandate, the NRC prepared a Generic Environmental Impact

1 Statement (“GEIS”) in 2002 under the National Environmental Policy Act (“NEPA”) (42 USC §
2 4321 et seq.) to analyze environmental impacts associated with the decommissioning of nuclear
3 power plants throughout the country (AR 1502; see *Baltimore Gas & Elec. Co. v. Natural Resources*
4 *Defense Council* (1983) 462 U.S. 87, 101 [upholding the NRC’s method of evaluating impacts of
5 stored nuclear fuel on a generic rather than plant-specific basis, holding “[t]he generic method chosen
6 by the agency is clearly an appropriate method of conducting the hard look required by NEPA”]).
7 The NRC has determined the Project fits within the scope of impacts under the GEIS (AR 1502-03
8 [summary of Post Shutdown Decommissioning Activities Report]). In addition, the NRC thoroughly
9 reviewed and approved licenses that allow for the ISFSIs at SONGS (AR 375-76). In a recent
10 decision upholding the dismissal of a challenge to NRC actions related to SONGS, the Ninth Circuit
11 affirmed the NRC’s exclusive authority over the radiological safety of the on-site storage facilities
12 at SONGS. (See *Public Watchdogs, supra*, 984 F.3d at p. 749.)

13 **B. The Coastal Act**

14 The Coastal Act (§ 30000 et seq.) is a “comprehensive scheme to govern coastal land use
15 planning for the entire state.” (*Ross v. Cal. Coastal Com.* (2011) 199 Cal.App.4th 900, 923.) Chapter
16 3 of the Coastal Act contains planning and management policies governing development of coastal
17 resources. (§§ 30200-30265.5; *San Diego Navy Broadway Complex Coalition v. Cal. Coastal Com.*
18 (2019) 40 Cal.App.5th 563, 571.) The Chapter 3 policies cover a range of resources, including
19 policies related to geologic and coastal hazards (§ 30253); water quality and marine resources (§§
20 30230, 30231, 30232); coastal access and recreation (§§ 30210, 30212(a), 30214(a); environmentally
21 sensitive habitat (§ 30240), visual and scenic resources (§ 30251); and cultural resources (§ 30244).

22 With respect to the decommissioning Project, the Commission evaluated the Project’s
23 consistency with the applicable Chapter 3 policies and imposed numerous special conditions to
24 ensure the Project’s consistency with those policies (AR 49-56 [analysis of geologic and coastal
25 hazards, including site geology and seismic activity, tsunamis and sea level rise, and coastal erosion
26 and Special Conditions 3, 4, and 5]; AR 56-66 [water quality and marine resources and Special
27 Conditions 4, 6, 7, 8, 9, and 10]; AR 66-69 [coastal access and recreation and Special Conditions 3,
28 4, 9, and 11]; AR 69-79 [ESHA and Special Conditions 9, 12, 13, 14, and 15]; AR 79-80 [visual and

1 scenic resources and Special Conditions 3 and 4]; AR 80-81[cultural resources and Special
2 Conditions 9, 16, and 17]; see also AR 8128-42, Attachment B [Project applicant’s analysis of the
3 Project’s consistency with applicable Coastal Act Policies provided to the Commission]).

4 Petitioner focuses on just two policies in Chapter 3—Section 30250 (governing the siting of
5 new development) and Section 30253 (safety considerations associated with new development).
6 (OB, pp. 8-10). For the reasons described further in Section V below, Section 30250 does not apply
7 to the Project, and substantial evidence supports the Commission’s determination that the Project is
8 consistent with Section 30253.

9 C. CEQA

10 The Coastal Act and CEQA empower the Commission to approve permits pursuant to a
11 “certified regulatory program” that is exempt from the requirement to prepare an EIR under CEQA.
12 (§ 21080.5). To obtain approval of a certified regulatory program, “the program must satisfy statutory
13 criteria that assure environmental review that is functionally equivalent to the EIR process.” (*Ross*,
14 *supra*, 199 Cal.App.4th at p. 872.) The Commission reviewed the Project pursuant to its certified
15 regulatory program and found that there are “no additional feasible alternatives or feasible mitigation
16 measures available, beyond those required, which would substantially lessen any significant adverse
17 environmental effect that approval of the proposed project, as modified, would have on the
18 environment,” and that the Project is consistent with the Coastal Act and CEQA (AR 83-84).
19 Petitioner does not assert a CEQA claim in its Petition.⁶

20 IV. STANDARD OF REVIEW

21 Petitioner’s challenge to the Commission’s approval of the CDP is subject to review under
22 Code of Civil Procedure Section 1094.5 for abuse of discretion. (§ 30801; see also *San Diego Navy*
23 *Broadway*, *supra*, 40 Cal.App.5th at p. 572.) In reviewing the Commission’s decision, the trial court
24 must determine whether (1) the Commission proceeded in excess of its jurisdiction, (2) there was a
25 fair hearing, and (3) the agency abused its discretion. (*Ross*, *supra*, 199 Cal.App.4th at p. 921.) The
26 Commission commits an abuse of discretion if it has “not proceeded in a manner required by law,
27 the decision is not supported by the findings, or the findings are not supported by the evidence.”

28 ⁶ The applicable CEQA statute of limitations now bars a CEQA claim. (§ 21080.5, subd. (g).)

1 (Code Civ. Proc., § 1094.5(b); *San Diego Navy Broadway, supra*, 40 Cal.App.5th at p. 572.)

2 For the Commission’s factual determinations, the Court must determine whether substantial
3 evidence supports the Commission’s findings. (*Ross, supra*, 199 Cal.App.4th at p. 921.) On review
4 for substantial evidence, courts do not “weigh conflicting evidence and determine who has the better
5 argument.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. County of Rancho Cordova*
6 (2007) 40 Cal.4th 412, 435.) Nor will courts engage in a battle of the experts to determine whose
7 opinion is correct. (*Assn. of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383,
8 1391.) “It is for the agency to weigh the preponderance of conflicting evidence, as the court may
9 reverse its decision only if, based on the evidence before it, a reasonable person could not have
10 reached the conclusion reached by it.” (*San Diego Navy Broadway, supra*, 40 Cal.App.5th at p. 572.)
11 “The Commission’s findings and actions are presumed to be supported by substantial evidence, and
12 [the petitioner] bears the burden to show otherwise. (*Id.* at p. 572.)

13 The Court may not disregard or overturn a finding of fact of an administrative agency simply
14 because it believes that a contrary finding would have been equally or more reasonable. (*San*
15 *Franciscans for Livable Neighborhoods v. Cty. and County of San Francisco* (2018) 26 Cal.App.5th
16 596, 613.) The Court may overturn the factual findings of the agency only if the evidence is
17 insufficient as a matter of law to sustain the findings. (*Barrie v. Cal. Coastal Com.* (1987) 196
18 Cal.App.3d 8, 14.) In determining whether substantial evidence supports the Commission’s decision,
19 the Court must resolve any reasonable doubts in favor of the Commission. (*Paoli v. Cal. Coastal*
20 *Com.* (1986) 178 Cal.App.3d 544, 550.) The Commission is the sole arbiter of the evidence and
21 credibility of witnesses. (*Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, 970-971.)

22 Finally, while the Court reviews questions of law de novo,⁷ the Commission’s interpretation
23 of the Coastal Act and regulations thereunder is entitled to deference given the Commission’s special
24 familiarity with the regulatory and legal issues. (*Ross, supra*, 199 Cal.App.4th at p. 938.) “The
25 Commission has the ultimate authority to ensure that coastal development conforms to the policies
26

27 ⁷ Petitioner cites to *Ballona Wetlands Land Tr. v. City of Los Angeles* (2011) 201 Cal. App 4th 455,
28 for the position that the entirety of the Commission’s decision is reviewed de novo. Yet Petitioner
fails to inform the Court that the *Ballona* court held the substantial evidence test governs an agency’s
findings of fact. (201 Cal. App 4th at p. 468.)

1 embodied in the state's Coastal Act.” (*Charles A. Pratt Construction Co., Inc. v. Cal. Coastal Com.*
2 (2008) 162 Cal.App.4th 1068, 1075.)

3 **V. SUBSTANTIAL EVIDENCE SUPPORTS THE COASTAL COMMISSION’S**
4 **DETERMINATION THAT THE PROJECT, INCLUDING DISMANTLEMENT OF**
5 **THE SPENT FUEL POOLS, IS CONSISTENT WITH THE COASTAL ACT**

6 **A. Petitioner Challenges the Coastal Commission’s Factual Determination, Which**
7 **Is Subject to Review for Substantial Evidence**

8 Petitioner first alleges the Commission did not evaluate the Project’s consistency with
9 Sections 30250 and 30253 of the Coastal Act. (OB, pp. 17-18.) As to Section 30250, Petitioner’s
10 argument fails because Section 30250 of the Coastal Act is not applicable to the Project. Section
11 30250 governs only the siting of new development.⁸ The Project does not concern the siting of new
12 development, but rather the dismantling of an existing development. Thus, the Commission properly
13 did not apply Section 30250 as a Coastal Act policy to the Project, and the Commission’s
14 interpretation of the applicability of its own statute to the Project is entitled to deference. (*Ross,*
15 *supra*, 199 Cal.App.4th at p. 938.)

16 Further relying on inapplicable Section 30250, Petitioner argues the Commission failed to
17 address cumulative impacts. (See OB, p. 17.) In advancing that argument, however, Petitioner
18 identifies only one related project whose impact would combine with the Project—the existing
19 ISFSI. (See OB, pp. 17-23.) Yet, the EIR expressly included the ISFSI as a related project in its
20 cumulative impact analysis for all impact areas (AR 1591-1611). The EIR describes the ISFSI as a
21 “relevant cumulative project,” and states all resource areas (including geology, soils, and coastal
22 processes) may be cumulatively affected by that project (AR 1599 [Section 3.2.1], AR1602 [Table
23 3-2].) Further, in addition to including the ISFSI in its cumulative impact analysis, the EIR included
24 51 other related projects for consideration in the cumulative impact analysis (AR 1602-11). In its

25 ⁸ Section 30250 states: “(a) New residential, commercial, or industrial development, except as
26 otherwise provided in this division, **shall be located within, contiguous with, or in close proximity**
27 **to, existing developed areas** able to accommodate it or, where such areas are not able to
28 accommodate it, in other areas with adequate public services and where it will not have significant
adverse effects, either individually or cumulatively, on coastal resources . . . (b) Where feasible,
new hazardous industrial development **shall be located** away from existing developed areas; (c)
Visitor serving facilities that cannot feasibly be located in existing developed areas **shall be located**
in existing isolated developments or at selected points of attraction for visitors.” [emphasis added]

1 Opening Brief, Petitioner utterly fails to address the cumulative impact analysis in the EIR. As
2 explained further below at pages 19-20, the Commission appropriately relied on the EIR’s analysis
3 to determine that the Project is consistent with the Coastal Act (AR 83 [Staff Report finding the SLC
4 certified an EIR in March 2019 and “[t]he project as conditioned herein incorporates measures
5 necessary to avoid any significant environmental effects under the Coastal Act...Therefore, the
6 proposed project is consistent with CEQA.”]).

7 As to Section 30253, Petitioner frames its challenge to the Commission’s finding that the
8 project is consistent with Coastal Act Section 30253 as a question of law. (OB, p. 11 [citing to *Sierra
9 Club v. County of Fresno* (“*Friant Ranch*”) (2018) 6 Cal.5th 502, 516, for the proposition that an
10 omitted analysis is subject to de novo review].) However, Petitioner’s real objection is to the
11 Commission’s factual determination that the Project’s dismantlement of the spent fuel pools is
12 consistent with those policies. Such a determination is a factual question, subject to the Court’s
13 review for substantial evidence. (See *San Diego Navy Broadway, supra*, 40 Cal.App.5th at p. 604;
14 see also *Cal. Native Plant Society v. Cty. of Santa Cruz* (2009) 177 Cal.App.4th 957 [holding “[m]any
15 CEQA challenges thus concern the amount or type of information contained in an EIR, the scope of
16 analysis, or the choice of methodology,” which are “factual determinations”]; see also *Ebbetts Pass
17 Forest Watch v. Cal. Dept. of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 944 [applying
18 CEQA standard of review to approvals under a certified regulatory program].) Petitioner’s factual
19 objections are without merit for two principal reasons: (1) Petitioner ignores the NRC’s exclusive
20 jurisdiction to regulate the safety of nuclear material; and (2) Petitioner ignores the substantial
21 evidence the Commission relied on to find the Project is consistent with all applicable Coastal Act
22 policies, including Section 30253.

23 **B. NRC Has Exclusive Jurisdiction Over Storage & Transport of Nuclear Fuel**

24 First, Petitioner argues the Commission did not evaluate the Project’s consistency with the
25 applicable Coastal Act policies because the Commission purportedly did not evaluate the potential
26 impact that dismantling the pools will have on the future transportability of the spent fuel stored in
27
28

1 the ISFSI. Specifically, Petitioner argues the pools may be necessary to repair or repackage⁹
2 potentially damaged canisters storing fuel in the ISFSI and, without the pools, such canisters could
3 not be transported off site. (OB, pp. 17-23.) Petitioner’s challenge to the Commission’s review omits
4 the critical legal framework under which the NRC exercises its exclusive jurisdiction over the storage
5 and transport of spent fuel. (See 10 C.F.R. Part 71; 10 C.F.R. Part 72.)

6 As stated in the Commission’s Staff Report, the “NRC has exclusive jurisdiction over
7 radiological aspects of the proposed project” (AR 44). “The state is preempted from imposing upon
8 operators of nuclear facilities any regulatory requirements concerning radiation hazards and nuclear
9 safety.” (*Id.*) Accordingly, “Coastal Commission findings herein address only those concerns related
10 to the conformity to applicable policies of the Coastal Act, and do not evaluate or condition the
11 proposed project with respect to nuclear safety or radiological issues.” (*Id.*)

12 Indeed, the Ninth Circuit recently affirmed the NRC’s exclusive jurisdiction over the ISFSI
13 at SONGS, in a decision affirming the dismissal of a challenge to NRC determinations over the
14 ISFSI. (See *Public Watchdogs, supra*, 984 F.3d at pp. 749-52.) Summarizing the NRC’s review and
15 evaluation of the Holtec System approved in the Holtec ISFSI CDP, the Ninth Circuit held,
16 “[u]ltimately, the NRC concluded that the activities authorized by the Holtec System Certificate of
17 Compliance could be conducted without endangering the health and safety of the public and could
18 be conducted in compliance with the applicable regulations of [10 C.F.R. Part 72].” (*Id.* at p. 752.)
19 The Ninth Circuit further held that the public had an opportunity to comment before the NRC issued
20 the certificate of compliance for the Holtec ISFSI design, and affirmed the time had passed for such
21 a challenge to the NRC’s approval of the dry storage system. (*Id.* at pp. 751-52.)

22 Thus, while Petitioner attempts to find fault with the Commission for not dictating to the
23 NRC how spent nuclear fuel must be stored, the Commission appropriately deferred to the NRC’s
24 authority on the radiological aspects of the fuel storage. The NRC has evaluated and approved the
25 fuel storage system at SONGS to ensure future transportability, and the Commission properly relied
26 on the NRC’s determinations to evaluate the Project’s consistency with the Coastal Act.

27 ⁹ The NRC has determined repackaging of canisters would not need to occur for 100 years (AR 7324-
28 25; 90074). Neither the repair nor the repackaging of a potentially damaged canister would require
the use of pools in the future, as explained further below in Sections V.C and VI.

1 **C. Substantial Evidence Shows the Coastal Commission Analyzed the Project’s**
2 **Consistency with the Applicable Coastal Act Policies**

3 In addition to ignoring the NRC’s exclusive authority, Petitioner’s argument that the
4 Commission did not evaluate consistency with the Coastal Act ignores the express analysis the
5 Commission conducted with respect to the spent fuel pools. (OB, p. 18.) The description of the
6 Project evaluated in the CDP included the dismantlement of the fuel handling buildings and pools.
7 (See AR 39 [Staff Report stating the Project included decontaminating and dismantling certain
8 structures, including Units 2 and 3 Containment Buildings the fuel handling buildings and spent fuel
9 pools]; AR 8042 [EIR stating that because “the spent fuel pools are no longer required, the
10 [Structures, Systems and Components] would be prepared for demolition”].) Given that Project
11 description, the Commission’s analysis of the Project’s consistency with the Coastal Act included
12 analysis of the consequences of dismantling the spent fuel pools. Indeed, retention of the spent fuel
13 pools was addressed in (i) the Commission’s Staff Report and Addendum; (ii) testimony at the public
14 hearing before the Commission; and (iii) the SLC EIR that the Commission relied upon.

15 **(1) The Coastal Commission Staff Report and Addendum**

16 Contrary to Petitioner’s characterization, the Staff Report expressly evaluated the consistency
17 of the Project (including the dismantlement of the spent fuel pools) with Section 30253, subdivisions
18 (a) and (b), determining the Project would minimize risks to life and property and would not create
19 geologic instability (AR 49). The Staff Report addressed the geologic and seismic activity-related
20 hazards that may apply to the site, the threat of tsunamis and sea level rise, and coastal erosion (AR
21 49-56). The Staff Report further evaluated the Project’s consistency with the other applicable Coastal
22 Act policies, including policies concerning protecting water quality and marine resources, enhancing
23 public coastal access and recreation opportunities, protecting environmentally sensitive habitat,
24 protecting visual and scenic resources, and protecting cultural resources (AR 56-82). Notably,
25 Petitioner never challenges the evidence the Commission relied on to make its determinations under
26 Section 30253. (See OB, pp. 18-23.) Petitioner merely asserts the Commission’s analysis of the
27 “Project” did not address dismantlement of the spent fuel pools. The Project description and analysis
28 in the Staff Report belie that argument.

1 Petitioner also mischaracterizes the Addendum to the Staff Report, alleging it only evaluated
2 retention of the spent fuel pools for purposes of keeping spent fuel in the pools (as opposed to
3 maintaining the pools for the potential need to repackage the stored fuel in the future). (OB, p. 22.)
4 However, the Addendum specifically addressed public concerns that dismantlement of the spent fuel
5 pools may impact transportability in the future (AR 10095-98). Indeed, the Addendum modified the
6 Staff Report specifically to address comments received on this issue, adding Special Condition 19 to
7 address the spent fuel pools and future transportability (AR 10095-98). As the Addendum stated,
8 “Special Condition 19 would result in an expedited scheduled and expert review of the Inspection
9 and Maintenance Program, which is intended to address the Commission’s concerns regarding *the*
10 *transportability of spent nuclear fuel to a federally designated storage facility* and the long-term
11 goal of removing all spent fuel from the SONGS site (AR 10097 [emphasis added]). The Addendum
12 further stated that certain commenters on the Project expressed concerns related to the “suitability of
13 the casks used for storage of spent fuel rods once they are moved from spent fuel pools, the stated
14 preference for spent nuclear fuel to remain in the spent fuel pools, and the need for a ‘hot cell’ to be
15 constructed on site for purposes of handling spent fuel” (AR 10097). The Addendum directly
16 addressed those concerns, summarizing the NRC’s exclusive jurisdiction over the radiological
17 aspects of the Project and how the Special Conditions in the 2015 CDP added protections to ensure
18 storage in the ISFSI would be consistent with the Coastal Act (AR 10097).

19 **(2) The Public Hearing Before the Coastal Commission**

20 Moreover, the Commission specifically evaluated concerns about dismantlement of the spent
21 fuel pools at its public hearing on the Project. (See, e.g., AR 4999-5001, 5020, 5155-60, 5164-65.)
22 The Commission’s staff explained why dry storage is used at SONGS, stating, that “without any
23 designated permanent or interim repository, nuclear plants have resorted to on-site dry storage of the
24 spent nuclear fuel waste in concrete steel casks” (AR 4991-92). The director of the NRC’s Office of
25 Nuclear Materials Safety and Safeguards presented additional evidence concerning the safety of the
26 ISFSI (AR 5152 [stating “we’ve done those reviews and believe that what SONGS is doing today
27 and the system that they put in place is safe and we’ve done a thorough review to make that
28 determination . . .”]). The Commissioners evaluated that evidence, determining retention of the spent

1 fuel pools is not necessary for future transportability of the fuel off site. (See AR 5155-60
2 [Commissioner Wilson confirming that the preferred method to address potential damaged canisters
3 in the future would not require the spent fuel pools]; AR 5164-65 [Commissioner Bochco discussing
4 retention of the spent fuel pools as not necessary for safety].)

5 At the public hearing, the Commissioners also acknowledged that failure to approve the CDP
6 would delay the decommissioning of the SONGS site, which is needed to ensure the site's
7 compliance with Coastal Act policies, further supporting the need to include dismantlement of the
8 spent fuel pools as part of the Project. As Commissioner Bochco summarized, “. . . I don't really
9 believe, after everything we've heard today, that we can possibly say no to this permit without further
10 endangering this area and the people in the surrounding area” (AR 5166-67). Vice Chair Padilla
11 similarly said, “. . . if we fail to move this forward, we just delay the decommissioning. We delay the
12 ability to remediate this site and open it up, ultimately for public use” (AR 5173-74).

13 (3) The SLC's EIR and Substantial Evidence Provided Therein

14 Finally, Petitioner attempts to erode the substantial evidence the Commission relied on by
15 asserting the Commission could not have relied on the EIR for analysis of the Project's consistency
16 with the Coastal Act because (i) the EIR did not make a determination concerning consistency with
17 the Coastal Act and (ii) the EIR's analysis was allegedly flawed. (OB, p. 19.) Petitioner's argument
18 is unfounded for several reasons.

19 First, the Commission did not exclusively rely on the EIR to evaluate the Project's
20 consistency with the Coastal Act. Instead, the Commission relied on the EIR's thorough analysis of
21 the Project's environmental impacts to supplement its independent determination of the Project's
22 consistency with the Coastal Act. As stated above at pages 11-12 and 16-17, the EIR included
23 thorough analysis of the Project's potential impacts that could affect coastal resources. (See, e.g., AR
24 1839, 1898, 1925.) The EIR also expressly addressed the possibility of retaining the spent fuel pools,
25 and concluded retaining the pools was infeasible and unnecessary (AR 1988).

26 Second, Petitioner faults the EIR analysis, alleging the SLC should have required the
27 construction of “hot cells” as mitigation to potentially repackage fuel in the future. (OB., p. 21). Yet,
28 required procedures for repackaging the fuel and repairing damaged storage canisters are under the

1 exclusive authority of the NRC (AR 44, 1502-04). Courts have widely held that agencies can rely on
2 the regulatory schemes of agencies with expertise over certain environmental impacts. (See *Citizens*
3 *Opposing a Dangerous Environment v. County of Kern* (2014) 228 Cal.App.4th 360, 83-84 [finding
4 substantial evidence supported the conclusion that reliance on a federal agency’s regulatory
5 determination appropriately mitigated significant impacts in an area preempted by federal law].)

6 In addition, to the extent Petitioner argues the EIR’s analysis is flawed, the Court of Appeal
7 recently affirmed dismissal of the only lawsuit challenging the EIR. (*Public Watchdogs, supra*, 2021
8 WL 1232109.) Accordingly, the EIR certified by the lead agency is valid, and the Commission
9 appropriately relied on the EIR’s analysis to make its independent determinations concerning
10 consistency with the Coastal Act. (*Silverado Modjeska Recreation & Park Dist. v. County of Orange*
11 (2011) 197 Cal.App.4th 282, 303 [holding section 21167.2 “mandates that the EIR be conclusively
12 presumed valid unless a lawsuit has been timely brought to contest the validity of the EIR.
13 This presumption acts to preclude reopening of the California Environmental Quality Act” even if
14 the initial EIR is discovered to have been inaccurate].)

15 Finally, Petitioner’s cited cases alleging the Commission could not rely on the EIR are
16 inapposite. *Santa Clara Valley Water Dist. v. San Francisco Bay Regional Water Quality Control*
17 *Bd.* (2020) 59 Cal.App.5th 199, 213 held only that under CEQA, a responsible agency *may* impose
18 additional mitigation measures beyond those required by the lead agency to execute independent
19 statutory requirements. Contrary to Petitioner’s contention, the Court did not hold that reliance by a
20 responsible agency on a certified EIR would constitute an error of law. Similarly, *La Costa Beach*
21 *Homeowners’ Assn. v. Cal. Coastal Com.* (2002) 101 Cal.App.4th 804, 819-820 provides only that
22 a certified regulatory program may supplant certain requirements under CEQA, but it remains subject
23 to CEQA’s overarching mandate to impose measures to avoid significant environmental impacts
24 whenever feasible. Here, the Commission imposed all such necessary measures, including the mitigation
25 measures identified in SLC’s EIR. (AR 30-35, 83-84.)

26 In sum, substantial evidence supports the Commission’s express determination that the
27 Project (including dismantling of the fuel pools) is consistent with applicable policies of the Coastal
28 Act, and Petitioner’s argument to the contrary has no merit.

1 **VI. THE NRC’S REGULATIONS AND SUBSTANTIAL EVIDENCE SUPPORT THE**
2 **COMMISSION’S DETERMINATION THAT MAINTAINING THE SPENT FUEL**
3 **POOLS IS NOT NECESSARY TO TRANSPORT THE SPENT FUEL OFF SITE IN**
4 **THE FUTURE**

5 Petitioner’s argument that the Commission did not evaluate the Project’s consistency with
6 applicable Coastal Act policies also fails because it is based on the flawed premise that the spent fuel
7 pools are necessary for the repair or repackaging of canisters for off-site transfer should a canister
8 be damaged in the future. (OB, pp. 15-16.) Petitioner cites to no evidence that the NRC—the agency
9 with exclusive jurisdiction over the handling and transport of nuclear fuel—has determined that spent
10 fuel pools must be retained to ensure future transportability. (OB, pp. 20-21.) Petitioner instead turns
11 the facts upside down, arguing that the NRC “has never said that the spent fuel pools must be
12 demolished immediately on removal of the last spent fuel assembly.” (OB, pp. 20-21.)

13 Contrary to Petitioner’s mischaracterizations, substantial evidence before the Commission
14 supported its determination that retention of the spent fuel pools was not necessary for future
15 transportability of the spent fuel or canister maintenance. The Commission had the authority to weigh
16 the evidence before it, and its determination may be reversed only if a reasonable person could not
17 have reached the same conclusion. (*San Diego Navy Broadway, supra*, 40 Cal.App.5th at p. 572.)
18 The substantial evidence before the Commission included: (i) NRC’s regulations that confirm
19 retention of spent fuel pools is not necessary; (ii) additional evidence presented to the Commission
20 in the SLC’s EIR as well as testimony presented at the Commission’s public hearing; (iii) the
21 infeasibility of retaining the spent fuel pools while decommissioning SONGS; and (iv) other
22 protections provided by monitoring and maintenance inspections.

23 **A. Retention of Spent Fuel Pools Is Not Necessary Under NRC Regulations**

24 First, long-established NRC regulations confirm spent fuel pools are not necessary or
25 required to ensure safe on-site spent fuel storage and eventual off-site transport after fuel is
26 transferred to the ISFSI for storage. The NRC regulations include comprehensive requirements
27 related to all aspects of nuclear power plant construction, operation, and decommissioning. (See 10
28 C.F.R. Part 50 [detailing the domestic licensing of production and utilization facilities, which
includes SONGS as it is currently licensed]; see also 10 C.F.R. Part 72 [detailing the licensing

1 requirements for the independent storage of spent nuclear fuel and high-level waste, including
2 facilities like the SONGS ISFSI.] Amongst those comprehensive regulations, none impose any
3 requirements for decommissioning plants to maintain a spent fuel pool.

4 Guidance documents from the NRC confirm spent fuel pools are not required (AR 7322). For
5 example, NRC Regulatory Guide 1.184, titled “Decommissioning of Nuclear Reactors,” provides
6 the actions required to decommission nuclear plants for the eventual termination of the license; the
7 guidance does not require operation of a spent fuel pool during decommissioning (AR 7322). The
8 guidance assumes that fuel would not be placed back into the spent fuel pools once it has been
9 transferred to dry storage (AR 7322).

10 Further, in a webinar held on November 8, 2018 (before the Commission considered the 2019
11 CDP) that addressed its special inspection of fuel transfer at SONGS, three NRC representatives
12 confirmed that spent fuel pools are not necessary (AR 7320-7455 [including transcript of webinar];
13 AR 7388-89, lines 16-5; 7445, lines 1-5). During that webinar, the NRC explained that there are
14 alternatives to using spent fuel pools should fuel need to be retrieved from a canister in the future,
15 including licensing and installing what is known as a “hot cell” or transferring the canister to another
16 radiological facility where repackaging could be performed¹⁰ (AR 7378, lines 12-15; AR 7388-89,
17 lines 16-5; AR 7445, lines 1-5). Further, the NRC panel expressly confirmed that retaining the spent
18 fuel pools at SONGS is not necessary (AR 7323).

19 **B. Additional Evidence Confirming that Retention of Fuel Pools Is Not Necessary**

20 In addition to the NRC regulations, guidance documents, and guidance from the NRC’s
21 webinar on SONGS, the Commission considered other substantial evidence confirming that there is
22 no technical or safety reason to maintain the spent fuel pools. First, the SLC’s EIR directly addressed
23 the potential need to maintain the spent fuel pools, evaluating a project alternative that would retain

24 ¹⁰ Different technologies provide options for addressing potential canister damage that do not require
25 transferring a canister to a spent fuel pool, including in-place repair or recreating a secondary
26 confinement boundary for the spent fuel (AR 7326). For example, a “hot cell” or dry transfer facility
27 could be utilized for repairs or for replacing the canister. However, it is not necessary to build such
28 a facility today because cracking or corrosion to the degree that would necessitate either canister
repair or replacement would take a long time to form, providing sufficient time to construct such a
facility (AR 5160). Alternatively, a damaged or degraded canister could also be encapsulated in a
larger canister or an overpack such as a transportation cask, which can be licensed for transportation
or long-term storage by the NRC under 10 C.F.R. Parts 71 and 72 (AR 7326).

1 the spent fuel pools (AR 1988). The EIR eliminated that alternative from further analysis, concluding
2 retention of the pools could interfere with the decommissioning and removal of on-site facilities.
3 (*Id.*) The EIR further concluded the spent fuel pools are an integral part of the containment buildings,
4 such that it would not be feasible to retain the existing spent fuel pools while also dismantling the
5 containment buildings. (*Id.*) Further, the pools would not reduce any identified significant impacts
6 of the Project, nor would the Project exacerbate any potential hazards associated with storage of the
7 spent fuel in the ISFSI. (*Id.*)

8 The EIR also addressed specific comments asserting that the spent fuel pool should be
9 retained, and again determined that retention of the spent fuel pools was not feasible or necessary for
10 safety (AR 789-96). As the EIR states, the potential for damage or corrosion that would render
11 canisters unsuitable for transport is unlikely, as there are numerous ISFSIs at shutdown nuclear
12 reactors nationwide, and all of those sites have removed the spent fuel pools (AR 791-92). Those
13 facilities and other facilities undergoing decommissioning have followed NRC's guidance that spent
14 fuel pools are not required for decommissioning nuclear power plants. (*Id.*)

15 Following the NRC guidance, the EIR explained that on January 9, 2018, the NRC issued
16 three amendments to the SONGS licenses that mandate that no spent fuel storage shall be permitted
17 in the spent fuel pools after all fuel has been transferred to the approved ISFSI in 2019 (which
18 occurred in August 2020). (AR 792.; see also RJN, Exh. C [NRC Amendment, January 9, 2018]).
19 Thus, SCE does not have the authorization to utilize the pools under its current NRC license. (AR
20 7324.)¹¹ Further, the EIR also summarized the alternatives to using spent fuel pools should the need
21 arise in the future, and the NRC's determination that SCE's transfer of spent fuel to the approved
22 ISFSI was safe (AR 793).

23 In addition to the evidence in the EIR, SCE provided the Commission with additional
24 information concerning the safety of dry storage of spent nuclear fuel. (See AR 7320-26; see also
25 AR 8050-62.) Spent fuel has been stored in dry storage systems in the U.S. for more than three
26 decades, and there has never been a need to replace any major component of the dry storage systems

27 ¹¹ Following authorization to remove the spent nuclear fuel in the pools (see RJN, Exhs. C, F),
28 support systems necessary to operate the fuel pools for storage of spent nuclear fuel have already
been dismantled at SONGS.

1 or repackage spent fuel into a new system (AR 7321; see also AR 5023). The NRC has also renewed
2 several licenses and certificates of compliance for dry storage systems, each for a total storage period
3 of 60 years (AR 7321). All decommissioned nuclear power plants in the U.S. have removed their
4 spent fuel pools, and several facilities undergoing decommissioning at the time of the 2019 CDP had
5 removed from service or dismantled their spent fuel pools (AR 7323-24).

6 Testimony at the Commission’s public hearing further affirmed that retention of the spent
7 fuel pools is not necessary to address a potentially damaged fuel canister. (See AR 5158-59). As the
8 representative from SCE explained at the hearing, the preferred remedy to repair a damaged canister
9 would be to repair the canister rather than remove the spent fuel from the canister for transfer to a
10 new canister (AR 5158-59 [testimony of T. Palmisano at the hearing; “if you can repair a canister
11 from the outside and not have to open it back up, that is preferable”]). The NRC’s representatives
12 likewise affirmed during its webinar on SONGS that retention of the pools to repair a damaged
13 canister is not necessary or even preferable (AR 7379, lines 2-8; “the fuel is hot, the canisters . . .
14 [are] at an elevated temperature. So you want to make sure that you carefully analyzed and studied
15 the impact of . . . a water shock on the canister before you put it in a water environment.”)

16 **C. Retaining the Spent Fuel Pools and Decommissioning SONGS Is Infeasible**

17 As SCE explained to the Commission, practical limitations made retaining the spent fuel
18 pools infeasible at SONGS and would defeat the objective of the decommissioning Project (AR
19 7324). Operation of the SONGS spent fuel pools relies on infrastructure that is interconnected with
20 other plant buildings and structures, systems and components, including power supply systems,
21 heating, ventilation, cooling and lighting systems, radiation monitoring equipment, communications
22 equipment, and a command center (AR 7324). For the pools to remain functional and in compliance
23 with NRC licenses and NRC regulations, either some or all of those components would have to be
24 retained, or new structures, systems and components would have to be installed to replace what was
25 removed (AR 7324). For either option, a substantial amount of infrastructure that would otherwise
26 be decommissioned would have to be left in place (AR 7324).

27 In addition, the spent fuel pool buildings are located in the heart of the plant in the area that
28 is central to the decommissioning activities (AR 7324; AR 8001). Requiring the decommissioning

1 contractor to avoid operational pools would pose significant challenges to decontamination and
2 dismantlement work in that area (AR 7324). For all of these reasons, maintaining the spent fuel pools
3 would make it infeasible for SCE to carry out the decommissioning Project (AR 7324). Based on
4 this substantial evidence demonstrating the infeasibility of retaining the spent fuel pools, SLC's EIR
5 rejected a project alternative that would have retained the spent fuel pools (AR 1988-89). The
6 Commission relied on all of this record evidence in determining that decommissioning, including
7 removal of the spent fuel pools, was consistent with applicable Coastal Act policies.

8 **D. Monitoring and Maintenance Provide Early Detection of Any Need to**
9 **Repackage the Fuel**

10 The Commission also considered evidence that inspections of canisters will provide early
11 detection of any potential damage and allow ample time to implement appropriate remediation
12 measures, if any were necessary, to ensure future transportability (AR 7325). The NRC explained
13 that corrosion cracking of stainless steel materials is a slow-developing and well understood
14 phenomenon, and a through-wall crack of a canister from stress corrosion cracking would take
15 decades to develop from the time of initiation, if at all (AR 7325; AR 7368, lines 6-20; AR 7374,
16 lines 8-24; AR 7378, lines 7-10; AR 7390-91, lines 22-11). The NRC conservatively calculated
17 through-wall cracking to take approximately 80 years in the mild California coastal environment
18 (AR 7325). The NRC further confirmed that SCE's aging management program, a required
19 monitoring program under NRC regulations for the ISFSI, would identify and monitor corrosion
20 cracking in its early stages to allow time to plan for a careful mitigation process (AR 7325; AR 7368,
21 lines 6-20; AR 7381-82, lines 18-6; AR 7390-91, lines 22-11; AR 7424, lines 13-20; AR 7431, lines
22 21-24; AR 7441, lines 2-10; AR 7324-25). The IMP required under Special Condition 7 of the 2015
23 CDP for the ISFSI provides an additional layer of inspection to monitor for potential slow-developing
24 corrosion (See AR 35, 369; AR 10096).

25 In addition, robotic cameras can be inserted into existing air circulation pathways within a
26 concrete encasement, as has been done at other nuclear plants (AR 7325, 5099-5101). For the Holtec
27 ISFSI, SCE also retained space for a test canister that will not be loaded with spent fuel, but will
28 instead be electrically heated to mimic spent fuel storage thermal conditions (AR 7325-26). This test

1 canister provides an additional opportunity in the inspection processes, as the canister can be
2 removed from the ISFSI for more detailed and intrusive inspection (AR 7325-26).

3 In sum, the Commission relied on a wealth of evidence to determine retention of the spent
4 fuel pools was not necessary for the Project’s consistency with Coastal Act policies.

5 **E. Petitioner’s Arguments Do Not Counter the Substantial Evidence Supporting**
6 **the Commission’s Determination**

7 Against this backdrop of overwhelming evidence supporting the determination that retention
8 of the spent fuel pools is not necessary, Petitioner’s cited evidence does not support its argument that
9 the spent fuel pools must remain to ensure transportability of the fuel off site in the future. For
10 example, Petitioner primarily relies on evidence that was before the Commission when it approved
11 the 2015 CDP—a decision that can no longer be challenged. (OB, pp. 12-13 [citing to 2015 Staff
12 Report at AR 362-434].) As for the evidence before the Commission in 2019, Petitioner cites only
13 to (i) statements from NRC representatives taken out of context; (ii) its own experts; or (iii)
14 inapposite comments from other Project opponents. (See OB, pp. 15-17.) Yet, Petitioner’s cited
15 evidence affirms that retention of the spent fuel pools provides only *one* avenue to address damaged
16 canisters in the future, but it does not demonstrate that there are no other avenues.

17 First, all of Petitioner’s references to statements from the NRC affirm that retention of the
18 spent fuel pools is not necessary. (See, e.g., AR 7378-79, lines 12-8 [NRC representative stating
19 spent fuel pools could be used for repackaging in the future, among other possible options]; AR
20 7388-89, lines 16-5 [NRC representative stating “San Onofre, nor any other site, is required to
21 maintain a spent fuel pool solely for the purpose of repacking or opening the canister” and “there are
22 other safe ways to do that if required or needed” by the facility]; AR 7348-49, lines 22-6 [NRC
23 representative stating 10 C.F.R. § 72.122(1) requires storage systems to allow ready retrieval of spent
24 fuel before processing or disposal].)

25 Second, Petitioner cites to testimony from its own experts or comments from other project
26 opponents, but that testimony also confirms that retention of the pools would provide only one
27 avenue to repackage damaged canisters in the future. (See, e.g., AR 8174-75; AR 8249; AR 8299
28 [emphasis added] [Petitioner’s expert stating, “[i]f a canister breach is detected, the canister will be

1 required to be handled in a controlled environment, and the existing spent fuel pool infrastructure
2 *might* provide that”]; AR 8639 [emphasis added] [comment letter stating, “[i]t *may* be necessary to
3 maintain a fuel pool near any ISFSI. . .”].)

4 In addition, as support for its assertion that the pools may be needed in the future, Petitioner
5 refers to the purported “gouging” of canisters during an incident that occurred in August 2018 during
6 a fuel transfer operation moving fuel into the storage vault at the ISFSI. (OB, pp. 13-14.) Yet,
7 Petitioner grossly overstates—by orders of magnitude—the extent of gouging of canisters in the
8 loading process. Detailed inspections and representative sampling confirmed that minimal scratches
9 to canisters occurred during the loading process, and those scratches were well within the safety
10 requirements under the regulatory standards (AR 8052). Further, the NRC conducted a thorough
11 investigation of the incident and concluded fuel loading could safely resume at SONGS. (See AR
12 8051-52 [summarizing inspections of representative sample of canisters]; see also NRC Statement,
13 May 21, 2019, “NRC has Determined Fuel Loading Can be Safely Resumed at San Onofre Nuclear
14 Generating Station”¹²]; see also AR 8053-54 [summary of three independent radiological monitoring
15 reports conducted from September through October 2018 confirming radiation levels were well
16 within NRC limits].) Moreover, the Ninth Circuit recently upheld the NRC’s determination that spent
17 fuel is stored safely at SONGS in January 2021. (See *Public Watchdogs v. U.S. Nuclear Regulatory*
18 *Com.* (9th Cir. 2021, No-20-70899 [nonpub. mem.], RJN Exh. G.)

19 Finally, Petitioner cites to NRC’s GEIS for the Continued Storage of Spent Nuclear Fuel.
20 (See AR 9063-64, 9067-72.) However, the 2002 GEIS affirms maintenance of spent fuel pools is not
21 necessary. In the GEIS, the NRC analyzed environmental impacts of storage of spent fuel for
22 multiple timeframes and identified a dry transfer system (or “hot cell”) facility as an effective method
23 for future retrieval and repackaging, if necessary (AR 9074). The GEIS’s analysis includes the
24 assumption that the dry storage system would be built in a long-term storage timeframe, defined to
25 be 100 years beyond the initial 60-year short term storage timeframe (AR 9074). SONGS canisters
26 were placed into dry storage in 2002, and the SONGS spent fuel would not reach the long-term
27 storage timeframe until 2062 at the earliest (AR 7325).

28 ¹² Available at <https://www.nrc.gov/docs/ML1914/ML19141A378.pdf>.

1 Considering the breadth of evidence presented to the Commission concerning the spent fuel
2 pools, substantial evidence supported the Commission’s determination. The Commission has the
3 discretion to choose between differing expert opinions concerning a Project’s impacts, and a
4 disagreement among experts does not invalidate the Commission’s determination. (*Mountainlands*
5 *Conservancy, LLC v. Cal. Coastal Com.* (2020) 47 Cal.App.5th 214, 239.) Petitioner has not met its
6 burden to show no reasonable person could have reached the Commission’s determinations.

7 **VII. SPECIAL CONDITION 19 ONLY STRENGTHENED SPECIAL CONDITION 7 OF**
8 **THE 2015 CDP**

9 Relying further on its flawed argument that retention of the spent fuel pools is necessary to
10 ensure transportability of the stored fuel off site in the future, Petitioner next argues that Special
11 Condition 19 in the CDP effectively “nullified” Special Condition 7 adopted as part of the 2015 CDP.
12 (OB, pp. 24-26.) Special Condition No. 7 of the 2015 CDP required SCE to submit an inspection and
13 maintenance program (“IMP”) for the ISFSI as soon as technologically feasible or by 2022. (AR
14 369.) Special Condition 19 accelerated the timeline for SCE to submit the IMP by two years. (AR
15 34, 48-49.) In 2015, the Commission noted that the IMP was intended to ensure the ISFSI system
16 and fuel storage casks will remain in a physical condition sufficient to allow on-site transfer and off-
17 site transport through 2035. (AR 399-400.) The IMP was not intended to ensure radiological safety
18 but only to ensure the storage casks could be moved. (See AR 397-400.)

19 Petitioner now argues that dismantlement of the spent fuel pools eroded the purpose of
20 Special Condition No. 7 by allowing dismantlement before approval of the IMP under Special
21 Conditions 7 and 19. (OB, pp. 24-26.)¹³ Petitioner mischaracterizes the purpose of the IMP and
22 ignores the NRC’s exclusive jurisdiction over the storage of the nuclear fuels. First, the Project
23 complies with all NRC requirements addressing the safety of stored spent nuclear fuel, which do not
24 require retention of the spent fuel pools as necessary to ensure transportability of the fuel.

25 Next, NRC’s regulations require ISFSI license holders to implement an Aging Management
26

27 ¹³ The Commission’s approval of the IMP in July 2020—only nine months after approval of the 2019
28 CDP and before any dismantling of support systems for the fuel pools began—is the subject of
Petitioner’s challenge in the related case *Samuel Lawrence Foundation v. Cal. Coastal Com.*, Los
Angeles County Superior Court Case No. 20STCP02957.

1 Plan (“AMP”) comparable to the IMP to ensure ISFSI components are effectively monitored so spent
2 fuel can be safely removed for off-site transport. (10 C.F.R. § 72.240.) Based on its environmental
3 studies, regulatory monitoring, and observation of successful operation of existing ISFSIs at other
4 sites over the last 30 years, the NRC has determined that AMPs are not required until the initial ISFSI
5 license is up for renewal (AR 374). Thus, while the Commission’s Special Conditions required an
6 IMP by an earlier date (Special Condition 7 in the 2015 CDP requiring the IMP by 2022; Special
7 Condition 19 in the 2019 CDP requiring the IMP by 2020), the NRC only requires operators to
8 implement AMPs after an ISFSI has been in service for more than 20 years. (See 10 C.F.R. § 72.720
9 [requiring AMP as part of process to seek renewal of license for spent fuel storage at least two years
10 prior to license expiration].) Thus, Special Condition 19 only *added* a layer of protection for coastal
11 resources by accelerating the submission of the IMP (initially required under Special Condition 7 of
12 the 2015 CDP). (Even Petitioner acknowledges the accelerated timeline under Special Condition 19.
13 at OB, p. 25 [“While the expedited submission of the IMP is noted. . .”].) Special Condition 19
14 further *strengthened* the previous requirements of the IMP, by requiring third party independent
15 review of the IMP, which can enhance the design and implementation of the IMP to ensure that the
16 fuel in the canister can be transferred and transported off-site (AR 48-49).

17 In sum, substantial evidence supports the Commission’s determination that retention of the
18 spent fuel pools is not necessary to ensure transportability of the spent fuel in the future, and
19 Petitioner cites to no evidence or regulation requiring approval of the IMP to ensure safe storage or
20 future transport of the spent fuel. Thus, Petitioner has not met its burden to show approval of the
21 IMP was required before approval of the 2019 CDP.

22 **VIII. SUBSTANTIAL EVIDENCE SUPPORTS THE COASTAL COMMISSION’S**
23 **DETERMINATION THAT SPECIAL CONDITION 3 SUPPORTS THE PROJECT’S**
24 **CONSISTENCY WITH THE COASTAL ACT**

25 Finally, Petitioner argues that the Commission deferred analysis of potential on-site locations
26 of the ISFSI in the event future relocation is required by including Special Condition 3 in the Project
27 CDP. Special Condition 3 requires SCE to submit an application to amend the CDP after completing
28 the decommissioning activities or by 2028, and imposes several annual reporting requirements. (AR
19-20.) One of those annual reporting requirements is to provide: “Updates regarding the

1 opportunities for long-term storage of nuclear waste, including specific discussion of potential
2 opportunities to relocate waste currently stored in the ISFSI either elsewhere on the SONGS site or
3 at offsite locations” (AR 19-20 [Special Condition 3(d)]). After receiving those progress reports, the
4 Commission’s Executive Director will determine whether there is a need to amend the permit.

5 **A. Petitioner Attempts to Re-Open the 2015 Review of the CDP for the ISFSI**

6 Petitioner’s argument concerning the potential need to relocate the ISFSI attempts to re-open
7 the Commission’s review of the 2015 CDP. Petitioner essentially argues that the Commission should
8 have considered “what cleared areas would be best suited for relocating ISFSIs off the beach” after
9 decommissioning has been completed. (OB, 23.)

10 Any objections to the Commission’s approved location for the ISFSI and whether the ISFSI
11 would need to be relocated should have been raised six years ago during the review of the 2015 CDP.
12 Before approving the 2015 CDP, the Commission thoroughly reviewed the location of the ISFSI
13 with respect to geologic, seismic and coastal hazards. (See AR 383-401.) The Commission also
14 extensively evaluated **five** alternative on-site locations for the ISFSI before approving the 2015 CDP.
15 (See AR 380.) The 2015 Staff Report noted the approved location for the ISFSI was selected based
16 on a wide range of criteria, including suitability of site for long-term storage, avoidance of natural or
17 man-made events that could affect safety, and site grade and foundation properties (e.g., bearing
18 capacity, seismic response, etc.) (AR 380). The ISFSI location was also selected based on the
19 location’s several key advantages, including: (i) it had been previously graded and developed,
20 minimizing needed site preparation and new impacts to land resources; (ii) it lies in proximity to the
21 spent fuel pools along a secure and proven haul path; (iii) it is underlain by relatively stable San
22 Mateo formation sandstone; and (iv) it could make use of existing security arrangements (AR 380).

23 Moreover, Petitioner incorrectly implies the ISFSI could be constructed and operated
24 anywhere on the SONGS site. (See OB, p. 24.) First, a location for the ISFSI must meet extensive
25 NRC requirements, including requirements to withstand seismic events. (See AR 385 [discussion of
26 NRC’s modeling of seismic events].) Second, the ISFSI must be constructed on certain soil
27 conditions that can bear the weight capacity of the facility (AR 390). Third, the Holtec ISFSI is
28 constructed partially below grade, and the extent to which the subsurface structures will be removed

1 throughout the SONGS site remains unknown (AR 372 [describing the ISFSI below grade]; AR
2 1523-24 [EIR explaining that the Navy or NRC may require removal of additional subsurface
3 structures or material in the future]). Petitioner’s cited evidence confirms that unknown, as Petitioner
4 cites to Figure 2-3 from the EIR (attached as Exhibit 4 to an earlier version of the Staff Report for
5 the 2019 CDP), which shows only which *above-grade* facilities will remain at SONGS after the
6 Project (AR 7668). That figure provides no information on what areas at SONGS may be suitable
7 for a relocated ISFSI, let alone which areas will have no subsurface structures.

8 Faced with the uncertainty concerning off-site storage and potential on-site locations, the
9 Commission imposed Special Condition 2 in the 2015 CDP, requiring SCE to return to the
10 Commission in 2035 for an amendment to authorize the retention, removal, or relocation of the
11 proposed ISFSI (AR 47, 367). At that time, the Commission can re-evaluate the environmental
12 impacts of the ISFSI’s location given any changes in circumstances. Thus, Petitioner’s current
13 challenge to the Commission’s analysis of alternative on-site locations of the ISFSI attempts to re-
14 open the analysis concerning potential on-site locations that was settled years ago and is time-barred,
15 (see *Silverado Modjeska Recreation & Park Dist, supra*, 197 Cal.App.4th at p. 285), particularly
16 when the only lawsuit challenging the 2015 CDP was resolved by settlement in August 2017. (See
17 AR 36; see AR 3928-45 [settlement agreement]; see *Citizens Oversight, Inc., et al. v. Cal. Coastal*
18 *Com.*, San Diego Superior Court Case No. 37-2015-00037137.)

19 **B. Substantial Evidence Supports the Commission’s Finding that It Remains**
20 **Speculative to Consider What Onsite Locations May Be Available in the**
21 **Future for Relocation of the ISFSI**

22 Petitioner’s argument concerning the potential on-site alternative locations for the ISFSI also
23 fails because the Commission faced the same uncertainties concerning alternative on-site locations
24 for the ISFSI in 2019 as it did in 2015. The Commission’s findings concerning the speculative nature
25 of potential locations to relocate the ISFSI are factual determinations subject to review for substantial
26 evidence. (See *Cadiz Land Co. Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 105 [upholding the
27 seismic analysis in an EIR evaluating a proposed landfill project, finding “[t]here is substantial
28 evidence supporting a finding that there was a thorough investigation of the [nearby] fault and that
future seismic activity was too speculative for evaluation beyond that contained in the EIR”]; see

1 also *Alliance of Small Emitters/Metal Industry v. South Coast Air Quality Management Dist.* (1997)
2 60 Cal.App.4th 55, 66 [holding environmental analysis of certain impacts under CEQA was not
3 necessary because “it would be speculative to do so”]; *Ross, supra*, 199 Cal.App.4th at p. 921
4 [rejecting a petitioner’s argument that the Commission should have conducted further analysis,
5 holding “[n]o provision of law required the commission to *speculate* on the environmental impacts
6 of the two previously tied parcels or on lots that could be created in the future through purchase of
7 developed adjoining properties that could be merged and subdivided” (emphasis in original)].)

8 As explained in the EIR, there is uncertainty related to future activities at the SONGS site,
9 including the potential need to relocate the ISFSI (AR 1514-15). That uncertainty stemmed from
10 many factors, including (1) whether there will be federal approval of a storage facility elsewhere in
11 the country for spent nuclear fuel; and (2) the extent of the landowner’s (U.S. Navy) requirements
12 for final physical disposition of the SONGS site (AR 1514-15; see also AR 1983 [EIR reason for
13 eliminating the project alternative to relocate the ISFSI from further review]). Petitioner’s Opening
14 Brief implies that nearly all above-grade and on-shore components will be removed and large swaths
15 of land will be available after decommissioning for potential relocation of the ISFSI. (OB, p. 24.)
16 However, the Commission relied on substantial evidence regarding the speculative nature as to the
17 final disposition of the SONGS site. As the Commission summarized in the Staff Report, “[i]t is
18 presently unknown if and how much additional subsurface material the NRC or the Navy would
19 require to be removed beyond what is currently proposed” (AR 26; see also AR 41 [The amount and
20 location of below-grade structures that remain on site will be based on NRC requirements as well as
21 end-state requirements determined by the Navy as landowner, these activities have not yet been
22 defined]; AR 772-73 [exact nature of future activities depends on actions of multiple federal and
23 state agencies and will not be known for years]; AR 1514-15 [final site disposition subject to Navy
24 determination]).

25 Recognizing the speculative nature of the future state of the SONGS site, the Commission’s
26 Staff Report also explained that the Commission cannot control the actions of other regulatory
27 agencies, such as the NRC, DOE, or Navy. In its 2019 Staff Report, the Commission affirmed that it
28 faced the same uncertainties with respect to the long-term storage of spent nuclear fuel and the final

1 disposition of the SONGS site as it faced when approving the 2015 CDP. (AR 47.) As the 2019 Staff
2 Report stated, the special conditions in the 2015 CDP requiring an amendment application with
3 certain analyses by 2035 “reflected the uncertainty in 2015, which continues to the present, regarding
4 the long-term storage of spent nuclear fuel” (AR 47 [emphasis added]). Further, “[b]ecause no
5 federally-designated facility for such storage exi[s]ts, the timing for removing spent nuclear fuel—
6 and thus removing the ISFSI—is not known.” (AR 47; see also AR 10097 [Addendum to Staff
7 Report, reaffirming requirement in 2015 CDP to apply for amendment by 2035 to retain, remove, or
8 relocate the ISFSI accompanied by an evaluation of coastal hazards at that time].)

9 The Commission imposed Special Condition 3 in part to address that uncertainty, which
10 remained in 2019 (AR 47). Special Condition 3 requires “completion of the NRC-required site Final
11 Status Surveys, a description of all remaining structures, proposed removal or retention of those
12 structures, and locations that may be feasible for ISFSI relocation” (AR 47; see also AR 30-31).
13 Special Condition 3 also requires a review of annual progress to identify needs for amendment due
14 to unforeseen changes in assumptions (AR 43-44, 5139-40). Without definitive information
15 concerning the status of off-site repositories and the final status surveys of the SONGS site, analysis
16 of the potential to relocate the ISFSI in 2019 would have been speculative. Moreover, Special
17 Condition 3 in the 2019 CDP did not supersede the condition in the 2015 CDP requiring an
18 amendment by 2035. Special Condition 3 merely required SCE to provide annual updates concerning
19 the need for an amendment.

20 In its comment letters and Opening Brief, Petitioner does not address the overwhelming
21 evidence in the record confirming the uncertain and speculative nature of relocating the ISFSI in the
22 future. Rather, Petitioner’s argument relies on inapplicable cases. Petitioner cites *Laurel Heights*
23 *Improvement Assn. v. Regents of University of Cal.* (1988) 47 Cal.3d 376 and *POET, LLC v. State*
24 *Air Resources Bd.* (2013) 218 Cal.App.4th 681 for the premise that an EIR must evaluate reasonably
25 foreseeable future expansions pursuant to CEQA. First, this issue was thoroughly addressed in the
26 SLC EIR, on which the Commission relied, and any allegation that the SLC’s EIR did not properly
27 analyze reasonably foreseeable future activities under CEQA is untimely. Second, a project is
28 required only to consider future impacts that are reasonably foreseeable, not those that are speculative

1 or uncertain. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th
2 1344 [long range goals do not in of themselves create foreseeable consequences of a project such
3 that they are required to be considered under CEQA]; *Rio Vista Farm Bureau Center v. County of*
4 *Solano* (1992) 5 Cal.App.4th 351, 371 [where adoption of a plan does not commit the county to a
5 particular course of action, further environmental review can properly be deferred].) Similarly, under
6 the Coastal Act, the Commission is directed to consider “probable” future projects, not those that are
7 speculative or uncertain. (§ 30105.5.) “No provision of law requires the commission to speculate on
8 [] environmental impacts.” (*Ross, supra*, 199 Cal.App.4th at p. 944.) In light of the evidence
9 demonstrating these uncertainties, the Commission properly imposed Special Condition 3 to add the
10 possible need for additional or amended permits as well as additional evaluation at a time when the
11 future activities are known. (*Id.*)

12 Facing that uncertainty, the Commission took a proactive approach to protecting coastal
13 resources by imposing Special Condition 3, and Petitioner’s challenge to that approach has no merit.

14 **IX. CONCLUSION**

15 For the foregoing reasons, the Commission and Real Parties respectfully request the Court
16 deny the Petition in full.

17
18 Dated: May 17, 2021

Dated: May 17, 2021

19 STATE OF CALIFORNIA
20 OFFICE OF THE ATTORNEY GENERAL

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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, California 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On May 17, 2021, I served the document(s) described as **RESPONDENT CALIFORNIA COASTAL COMMISSION AND REAL PARTIES IN INTEREST’S JOINT OPPOSITION TO PETITION FOR WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

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UPS NEXT DAY AIR: I deposited such envelope in a facility regularly maintained by UPS with delivery fees fully provided for or delivered the envelope to a courier or driver of UPS authorized to receive such documents at Alston & Bird LLP, 333 South Hope Street, 16th Floor, Los Angeles, CA 90071.

ELECTRONIC TRANSMISSION WITH ATTACHMENT: By electronically mailing a true and correct copy through Alston & Bird LLP’s electronic mail system from dana.camacho@alston.com to the email addresses set forth on the attached service list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 17, 2021, at Los Angeles, California.



Dana Camacho