

White Paper
Exploring Options to Demolition of Intake Cove,
Breakwaters and Related Infrastructure

Prepared by Pacific Gas and Electric Company, with review and input from the following:
Cheryl Hudson, California State Lands Commission
Andrea Lueker, Port San Luis Harbor District
Guy Savage, County of San Luis Obispo
Maria Soto, US Bureau of Land Management

Section 1 – Granted Public Trust Lands

The State of California acquired all right, title and interest in tide and submerged lands and beds of navigable waterways within its borders when it became a state in 1850. These lands are sovereign and have restrictions on their management and use. The state constitution, California law and the common law Public Trust Doctrine prohibit the sale or alienation of sovereign lands except in limited circumstances. All sovereign lands are held in trust for the benefit of the people of California.

The legislature has enacted more than 300 statutes granting sovereign public trust lands to over 80 local municipalities to manage in trust for the people of California. The specific uses that are permitted vary. Some trust grants authorize the construction of ports, harbors, docks, piers, slips and other structures necessary to facilitate commerce and navigation, while others allow only visitor serving recreational uses or open space. All grants reserve to the people the right to fish in the waters over the lands and the rights to convenient access to those waters for that purpose.

Revenues generated by a trustee arising out of the use or operation of their granted lands are State trust assets and must be reinvested back into the trust. These revenues must be kept separate from the entity's general fund and may not be used for any municipal purpose, or any purpose unconnected with the trust. Expenditures of trust funds by a trustee must be consistent with the Public Trust Doctrine and the statutory trust grant.

While granted public trust lands and assets are managed locally, the State's residual and review authority for granted lands is delegated to the California State Lands Commission (CSLC). CSLC represents the public interest to ensure that trustees operate their grants in conformance with the state constitution, the Public Trust Doctrine and the granting statute. All jurisdiction and authority remaining in the State as to tidelands and submerged lands is vested with CSLC.

Section 2 – Summary of Public Trust Lands Transferred to Public Agencies within San Luis Obispo County

The legislature has enacted more than 300 statutes granting sovereign public trust lands to over 80 local municipalities to manage in trust for the people of California. The following is a summary of Public Trust Lands in San Luis Obispo County

City of Morro Bay – The sovereign tide and submerged lands in a portion of Morro Bay is held in trust by the City of Morro Bay in order to operate a harbor and facilities necessary to provide commerce and navigation. The granting statute also allows for recreational use, a public park, parking, playground and businesses incidental to these uses.

Port San Luis Harbor District – In 1955, the Port San Luis Harbor District (District) was granted sovereign salt marsh, tidelands, submerged lands and swamp and overflow lands in trust for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation of wharves, docks, piers, slips, quays, public buildings, public parks and playgrounds, recreational purposes and other utilities, structures and facilities necessary for the promotion and accommodation of commerce and navigation.

Section 3 – DCPD CSLC Lease¹

The CSLC approved a lease with Pacific Gas and Electric Company (PG&E) for the lands that include the west and east breakwaters, boat dock, water intake facilities, cooling water discharge channel and associated office, maintenance, electrical and storage facilities. The current lease (Lease No. PRC 9347.1) for continued use of these areas was approved by the CSLC on June 28, 2016 and expires on August 26, 2025, unless terminated sooner as allowed under the lease.

The current lease modifies the original lease (intake facilities) and right-of-way (discharge structure) with provisions specific to the termination of the operation of Diablo Canyon Power Plant (DCPP). The current lease was issued with the understanding that PG&E will not continue operation of the DCPD past August 26, 2025. The lease does not give PG&E any rights of holdover with respect to the lease premises under the lease or any common law principles. It restricts PG&E's use of the lease premises beyond August 26, 2025 for any purpose, other than for uses consistent with a Decommissioning and Restoration Plan authorized by CSLC. The lease also requires the removal of any improvements and restoration of the area in accordance with a Decommissioning and Restoration Plan, however, it also notes that the CSLC (as delegated the authority to do so by the State of California) may waive this obligation if doing so is in the best interests of the state.

The lease specifies that the CSLC may, upon written notice, accept title to any or all improvements at the termination of the lease. The CSLC must notify PG&E that it intends to take title to any or all the improvements on the lease premises within twelve months of PG&E submitting the plan for restoration. If the CSLC chooses to take title to any improvements, PG&E must convey title free and clear of any liens, mortgages, loans or other encumbrances.

¹ On June 10, 2014, the U.S. Bureau of Land Management (BLM) granted Right-of-Way Serial No. CACA 55237 to operate, maintain, and terminate breakwaters and filled areas on public lands (three offshore rocks). The Right-of-Way expires on December 31, 2042. An assignment would be required from BLM for the continued use of the breakwaters. The assignment would be accomplished through transfer of the Right-of-Way from PG&E to the new party or termination of the existing Right-of-Way and issuance of a new one.

Section 4 – Options for transfer/sale of existing CSLC lease at lease expiration or grant of public trust lands to a public agency

There are several options for transfer or sale of the existing lease to a public entity if the intake facilities were to be retained for future use by a third party. As an alternative to transfer or sale of the lease, the lease premises could be granted from the CSLC to a local entity. The same options as identified in this Section would be available for a grant of public trust lands. The difference would be that the entity would be granted sovereign public trust lands to manage in trust for the people of California, as opposed to simply leasing the area.

The entity should have the means and resources and satisfy the public trust doctrine in the use of the lease premises. As the lease premises contain the west and east breakwaters, boat dock and associated office, maintenance, electrical and storage facilities, it makes sense to look to entities that are best suited to use those existing facilities.

The following section discusses the types of entities that might have the means, consistent with the public trust doctrine, and be suited to either lease or be granted the lease premise lands and improvements.

a. County of San Luis Obispo

Many of the existing grants of public trust lands involve Harbor Districts, Ports or other jurisdictions, such as cities and counties, that manage and maintain harbor and marina facilities. The County of San Luis Obispo is the primary land use authority for unincorporated areas of San Luis Obispo County, including the Diablo Canyon Power Plant Site. The County owns and manages properties throughout the County and provides a variety of professional real estate services, including property management, real property acquisitions and dispositions, and is lease administrator for all County-leased properties. The County could assume oversight of the lease facilities and lease or sub-let them to other entities.

b. Port San Luis Harbor District (District)

The District currently operates the harbor, dock, mooring and marina facilities located at San Luis Bay and San Luis Creek. Since 1955, the District has held this area's tidelands in trust for this purpose, as well as for parks, playgrounds, public navigation, recreation, fishing and access. This area is approximately four miles south of the lease premises. The District could expand their existing uses into the lease premises using the existing breakwaters, boat dock and associated facilities. The District's mission, to serve the public with an array of commercial and recreational boating, fishing and coastal-related opportunities while ensuring an environmentally responsible, safe, well managed and financially sustainable harbor, could be augmented by having access to the additional marine facilities located at the lease premises. In addition, the opportunity for sub-leasing to related commercial enterprises could provide new income opportunities for the District.

c. California State University/University of California

There are examples of leases and grants of public trust lands to universities or other schools. The University of California was granted lands in connection with scientific research and investigation at the Scripps Institution of Oceanography. In California, the CSU and UC system have reused decommissioned military bases, state hospitals, and other public and private lands to establish new schools or expand existing schools. Locally, Cal Poly currently has a 49-year lease with the District to use the former Unocal Pier as an educational/marine research facility. This pier is located between the District's facilities and the town of Avila Beach within lands granted to the District. Since 2001, when Unocal donated the pier to Cal Poly, the pier has been converted from a former industrial facility

to a functioning research station that includes classroom and lab facilities, a conference room, and various monitoring instruments in support of the Center for Coastal Marine Sciences. Cal Poly could expand their Marine Sciences program into the lease premise area using the existing breakwaters, boat dock and associated facilities. In addition, there could be opportunities to grow the University's science and business majors into new areas related to the ocean, such as Blue Economy/Technology projects (e.g., Ocean Energy, Maritime Tourism and Aquaculture).

d. Parks and Recreation

Entities that manage park facilities have been granted or leased public trust lands for the purpose of providing recreational uses or where the land was to remain undeveloped as a preserve area. Montaña de Oro State Park is an 8,000-acre State Park that includes seven miles of shoreline located north of the lease premises. The southern boundary of the park is directly next to the northern boundary of the DCP. Due to its proximity to the lease premises, the California Department of Parks and Recreation (State Parks) could be an option for acquisition of the lease. The lease premise could be used as an expansion of the State Park, or to provide marina facilities through a State Parks run marina. State Parks currently operates a marina in Morro Bay.

e. Extend Existing Lease with Sub-lease to Another Entity

Under this approach, the existing lease would be extended so that PG&E would continue to hold the lease and sub-let the facilities to another entity.

f. New Entity with Lease or Sub-Lease to Another Entity.

A new entity that would operate similarly to the Fort Ord Reuse Authority (FORA), which is responsible for the oversight of the Monterey Bay area economic recovery resulting from the closure and reuse of the former Fort Ord military base. FORA implements its legislatively mandated mission by overseeing replacement land use; assuring compliance with adopted measures; removing physical barriers; financing and constructing major components of required infrastructure and base-wide demands; and protecting identified environmental reserves.

g. Other

There are other options that could occur through sub-leasing of the lease premises to one or more entities. The lease premise could either be transferred using the grant of public trust lands process or leased to an entity who could then sub-let to other entities. This could allow for full use of the existing facilities at the lease premise. Examples of this type of arrangement include:

County of San Luis Obispo with sub-lease to Port San Luis Harbor District or Cal Poly University
Under this approach, the County of San Luis Obispo would hold the lease and sub-let the facility to the District or Cal Poly.

Cal Poly State University with sub-lease to Port San Luis Harbor District
Under this scenario, Cal Poly would hold the lease and use the facilities in conjunction with the District who would sub-let specific facilities for their use. There are some benefits to this option, as the Coastal Act allows for a less complicated permitting process.

Port San Luis Harbor District with sub-lease to another entity
This would create an opportunity for sub-leasing to related commercial enterprises and could provide new income opportunities for the District. This would be like the current ground lease between the District and RTA Harbor Terrace, LLC for the development and operation of an RV park and camping facility.

Section 5 – Local Management of Intake Cove

a. Benefits

There are several benefits to local management of the lease premises either through a grant of public lands or through a lease, as opposed to having the tidelands returned to the CSLC. Reuse of the existing facilities, including the breakwaters and boat dock, would mean these facilities would not need to be demolished and would provide additional opportunities in the area for commercial and recreational boating, fishing and other coastal-related uses. In addition, reuse could provide marine-related educational opportunities. Having these lands managed by an entity with local knowledge of community needs and interests would create greater benefits locally and could provide for general public use of these facilities that might not otherwise be made available.

b. Timing

If the lease was transferred or the land was granted at lease expiration or prior to lease expiration, this would occur well before when the decommissioning project no longer requires use of the lease premises (estimated to be through approximately 2038²). With a lease transfer, amendments to the lease could take place while the decommissioning process continues toward completion, ultimately leading to complete control and use of the area by the local entity. If the land were granted to a local entity prior to completion of decommissioning, that entity would become the successor in interest to CLSC and may approve modifications to PG&E's Decommissioning and Restoration Plan, which may include extending the timeframe to complete decommissioning. The grant of public trust lands would have to authorize the continued use of the lease premises during decommissioning, in addition to the other public trust uses. After decommissioning no longer requires use of the lease premises, the lease could be amended to remove these uses.

Section 6 – Recommendation

Of the options identified, three are recommended for further consideration irrespective of whether the lease premises were to be leased by or granted to the local entity.

a. County of San Luis Obispo with lease/sub lease to District, University and/or others

In this alternative, the County would be granted the public trust lands and lease/sub-let to District, University (such as Cal Poly) and/or marine related commercial enterprises, which could also provide for effective local management. The benefits as set forth above would still result from this local management scenario. In addition, the District could lease/sub-let to other marine related commercial enterprises. However, permitting would involve County review, including review under the County's General Plan and Local Coastal Plan. Approval of new uses in the lease premises may require modification to the County's Local Coastal Plan, as the plan currently only recognizes use of the site by DCP.

b. University with lease/sub lease to a Harbor District

There is a benefit to having the lease premises transferred to a University. The Coastal Act recognizes the benefits of having coastal resources available for educational purposes and gives priority to these uses. Locally, this is codified into Section 23.03.040(d)(8) of the Coastal Zone Land Use Ordinance. This section states that public works projects that involve a State University and require a permit from the California

² This date is subject to change based on development of the Decommissioning Plan.

Coastal Commission and meet the requirements of Chapter 3 of the Coastal Act, are exempt from the County San Luis Obispo and are not subject to restrictions related to General Plan land use designations. Future reuse of the lease premises would only be subject to Chapter 3 of the Coastal Act because reuse would occur in and over state tidelands. Therefore, the permitting agency would be the California Coastal Commission. This process was used at the Unocal Pier that is the current site of the Cal Poly's Marine Sciences program.

If the lease premise were to be leased by, or granted to Cal Poly, the University would have the option of jointly using the facilities with the District, who may lease/sub-let certain facilities for its own use. The intake cove may support additional activities beyond providing an area for the study of specific marine animals and safe harbor. Retaining the existing lease premise facilities and having them under local management, which could include a lease/sub lease to the District, would maximize opportunities for the promotion and accommodation of commerce and navigation for the benefit of the local community, as well as the general public.

c. Harbor District with lease/sub lease to University and/or others

In this alternative, a Harbor or Port District (such as the Port San Luis Harbor District) would be granted the public trust lands and lease/sub-let to a University (such as Cal Poly) and/or other marine-related commercial enterprises, which could also provide for effective local management. The District was already granted lands in trust for the establishment, improvement and conduct of a harbor in San Luis Bay, approximately four miles from the lease premises. The District may be a more suitable candidate for the grant of public trust lands, as opposed to lease by CLSC. The benefits as set forth above would still result from this local management scenario. In addition, the District could lease/sub-let to other marine related commercial enterprises. However, permitting would involve County review, including review under the County's General Plan and Local Coastal Plan. Approval of new uses in the lease premises may require modification to the County's Local Coastal Plan, as the plan currently only recognizes use of the site by DCP.

Section 7 – CSLC Process for Leasing or Granting Public Trust Lands

The following summarizes the process that the CSLC uses for the review of requests for leases, including the transfer of a lease, and for the granting of public trust lands. The key difference in the processes is that the legislature needs to ultimately approve a statute that would grant the sovereign public trust lands to local municipalities to manage in trust.

1. *Processing of request by CSLC*

An application and list of required materials is provided on CSLC's website. There are several site plans, project plans and environmental materials that are required to be submitted, along with processing fees. The application is subject to the Permit Streamlining Act. Following receipt of an application, staff of the CSLC will then take all steps necessary, including but not limited to title work, lands descriptions, appraisals and environmental review to process the application.

2. *CEQA review*

The issuance of any lease or other entitlement for use of State lands by CSLC requires review for compliance with the California Environmental Quality Act (CEQA). However, legislation authorizing the transfer of public trust lands is not subject to CEQA. Where the CSLC is the Lead Agency under CEQA, they would first determine if the proposed project is exempt from CEQA. There are several exemptions that could potentially be used for a lease. However, if the proposed

project is not exempt from CEQA, the staff of the CSLC conducts an Initial Study to determine whether the proposed project may have a significant effect on the environment. A determination is then made as to whether a Negative Declaration, a mitigated Negative Declaration or an Environmental Impact Report is required. The necessary document is then reviewed and approved by the CSLC after the CEQA review process has been complete. If the CSLC is a Responsible Agency, it must review the environmental documentation prepared by the Lead Agency and use this document for its review and approval. The applicant bears the cost of the preparation of CEQA documents.

3. *Review of consistency with the Public Trust*

Included in the CSLC's review is a determination of whether the project is conducive to public access, consistent with environmental safeguards and policies of the State and otherwise in the best interests of the state.

4. *Hearing*

Once the terms and conditions have been agreed to and the lease, permit or entitlement has been executed by the applicant, staff will place the item on the agenda for consideration by the Commission at a regularly-scheduled meeting, subject to public notice and comment.

Section 8 – Long Term Management

If a lease is used, long term management of the lease premise would be set forth in the lease. Leases can run up to 49 years. Rents are based on a percent of the land value or an established benchmark appraisal. The management of the lease premise would fall to the local entity.

If the lease premises were to be granted, the grant would set forth the allowed uses. Revenues generated by a trustee arising out of the use or operation of their granted lands are State trust assets and must be reinvested back into the trust. These revenues must be kept separate from the entity's general fund and may not be used for any municipal purpose, or any purpose unconnected with the trust. Expenditures of trust funds by a trustee must be consistent with the Public Trust Doctrine and the statutory trust grant.

If Cal Poly were the local entity managing either the lease or the grant of public lands, the University would manage the lease premises for educational purposes. Students could use the area as an extension of the existing Marine Sciences Program now located at the Unocal Pier. In addition, the University could offer other business, science and technology majors an opportunity to learn about the Blue Economy. The Blue Economy is the sustainable use of ocean resources for economic growth and ocean ecosystem health and encompasses many activities including aquaculture, fisheries, renewable energy, maritime transport, biotechnology, and waste management. The lease premises provide a unique opportunity for students to learn about this growing economy, while providing a hands-on experience consistent with Cal Poly's "learn by doing" motto.

If the District was the managing local entity, an expansion of Port facilities into the lease premise would allow for a more traditional use of the tidelands for harbors, docks, piers, slips, and other structures necessary to facilitate commerce and navigation, in addition to visitor serving recreational uses. It would also allow the District to pursue their own Blue Economy projects.

If the County was the managing local entity, it could lease or sub-lease to Cal Poly, the District, or other entity for commercial, recreation, and/or education purposes.

In each of these examples, there is the potential for “joint” use of the facilities, either through the County leasing/sub-leasing to Cal Poly or the District, Cal Poly leasing/sub-leasing to the District or the District leasing/sub leasing to Cal Poly, as well as to other marine businesses. This potential for local long-term management of the lease premise provides greater opportunities for use of these lands consistent with the public trust.