Decision **PROPOSED DECISION OF ALJ ECONOME** (Mailed 3/2/2000)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Lodi Gas Storage, LLC for Certificate of Public Convenience and Necessity for Construction and Operation of Gas Storage Facilities.	Application 98-11-012 (Filed November 5, 1998)

(See Attachment A for a List of Appearances.)

OPINION ON LODI GAS STORAGE'S APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT AND OPERATE A GAS STORAGE FACILITY

1. Summary

By this application, Lodi Gas Storage, LLC (LGS, or applicant) seeks a certificate of public convenience and necessity (CPCN) to develop, construct, and operate an underground natural gas storage facility and ancillary pipeline and to provide firm and interruptible storage services at market-based rates.

This decision certifies the Environmental Impact Report (EIR) for LGS' project. It also denies this application after weighing the need for the project against the factors set forth in Pub. Util. Code § 1002. This decision finds a general need for competitive gas storage projects in California. However, the record does not show a specific need for this project in the general Lodi community; that is, the citizens in the Lodi area have no greater need for this gas storage project than do any other Californians. The record demonstrates that the Lodi community, as well as LGS, bears some elements of risk with regard to the project, notwithstanding the EIR's conclusion that all but one of the environmental impacts can be mitigated to a less than significant level for California Environmental Quality Act (CEQA) purposes. When weighing the factors set forth in Pub. Util. Code § 1002 against the need for the project, we exercise our discretion and deny LGS' application for a CPCN.

2. Background

A. Brief Overview of the Recent Changes in the Natural Gas Industry

The natural gas industry underwent considerable change in the 1980s and 1990s, with major policy changes occurring at both the federal and state level. Before these changes, investor-owned utilities provided all natural gas

services to customers within their service territories. The three largest investor-owned natural gas utilities in California are Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCalGas), and San Diego Gas and Electric Company (SDG&E). Historically, the Commission has regulated these utilities' monopoly activities and, under traditional ratemaking, has authorized and reviewed most utility actions and operations. The Commission determined the utility customers' gas costs through regulatory ratemaking decisions, which set rates for the entire "bundle" of services the utility provides (including supply, pipeline transmission, distribution, storage, metering, and billing.) Historically, rates were based principally on the costs of purchasing and delivering natural gas.

Today in California, some gas customers can choose to purchase different natural gas services from different companies. Increasingly, large commercial and industrial customers and groups of smaller customers are arranging to purchase their own natural gas supplies directly from gas producers, and then are paying pipeline companies and local gas utilities to deliver the purchased gas to the customers' facilities. These customers may also benefit from purchasing natural gas storage services. This service allows customers to purchase and store gas when prices are relatively low and supplies are relatively high. These customers can then withdraw the gas from storage for use when prices are high or supplies are scarce, such as during a severe cold spell.

The rapid changes in the natural gas industry during the past decade started when the Federal Energy Regulatory Commission (FERC) mandated open access and allowed unbundled services on interstate natural gas pipelines throughout the United States. Under open access, pipeline companies must allow other gas companies and customers to bid for and reserve transportation

capacity on their pipelines. California gas users could then purchase their gas supplies directly from natural gas producers across the western half of North America and arrange with other companies to provide the other gas services they need.

In 1992, the California Legislature formally expressed its objective of creating competition for natural gas storage services. The Legislature passed and the Governor approved Assembly Bill (AB) 2744 (Chapter 1337 of the California Statutes of 1992, which is uncodified), which made certain findings about gas storage and urged certain action by the Commission. The Commission has summarized AB 2744 as not requiring, but urging, Commission action in the gas storage area.

> "... AB 2744 does not require action by the Commission, but it does make legislative findings about gas storage and urges certain actions by the Commission.
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> "In summary, AB 2744 finds that: (a) storage has gas service benefits; (b) there are barriers to investment in new storage facilities; primarily the inability of independent storage providers to compete in an open storage market; and (c) unbundling of utility storage service will greatly increase the benefits of storage. The Legislature then urges that the Commission:
> (1) expeditiously unbundle utility storage service, (2) encourage the development of independent storage by establishing interconnection rules and reasonable cost allocations, (3) adopt market-based storage rates, (4) give expedited consideration of applications for certificates of public convenience and necessity (CPCNs) filed by independent storage providers, and (5) ensure that storage costs borne by core customers are commensurate with benefits.
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> "This decision [the Gas Storage Decision] directly responds to all of the Legislature's urgings except the item on expedited handling of CPCN applications. We intend to give CPCN applications a high administrative priority, but we cannot

> overlook due process and other statutory requirements in doing so." (*Re Natural Gas Procurement and System Reliability Issues; Re Southern California Gas Company*, Decision (D.) 93-02-013, 48 CPUC2d 107, 126 (Gas Storage Decision).)

The Commission issued various decisions in order to increase competition in the gas industry. Among other things, the Commission removed the cross-subsidies of utility-provided non-core natural gas storage services,[1] and responded to the Legislature's urgings in AB 2744. (See generally the Gas Storage Decision.) Specifically, in the 1993 Gas Storage Decision, the Commission adopted a "let the market decide" policy for gas storage. The Commission stated that it should not test the need for new gas storage projects on a resource planning basis, so long as all of the risk of the unused new capacity resides with the builders and users of the new facility.[2] The Gas Storage Decision also adopted market-based rates for noncore storage including incremental rates for service derived from new or expanded facilities. The Gas Storage Decision also approved the SoCalGas' and SDG&E's proposed permanent storage programs. In a subsequent decision, D.94-05-069, the Commission adopted a permanent storage program for PG&E as well.

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[1] Eliminating the cross-subsidies means that utilities cannot subsidize their non-core storage operations with revenue gathered from other service areas. In other words, these gas storage projects must operate on a stand-alone basis, with their profitability depending solely on the utility's ability to effectively market its storage services.

[2] In the Gas Storage Decision, the Commission stated that its "let the market decide" policy was consistent with Pub. Util. Code §§ 451 and 1001. However, the Commission also recognized that it was not abandoning regulation of gas storage and that CPCN's were still necessary to the extent required by law. (See generally discussion of need issue which follows.)

These Commission decisions set the stage for allowing other non-utility companies to develop storage facilities in competition with PG&E and SoCalGas, the only two California utilities presently able to offer storage services. Several years ago, the Commission approved a CPCN for the first of these non-utility storage facilities, the Wild Goose facility in Butte County, to operate. (See *Application of Wild Goose Storage Inc. for a CPCN to Construct Facilities for Gas Storage Operations*, D.97-06-091 (Wild Goose Decision).) The instant application is the second application for a CPCN to offer competitive gas storage services to be considered by the Commission.

In the Gas Storage Decision, the Commission left open the issue of whether independent gas storage providers are public utilities. This issue is significant to this application because if an independent gas storage provider is a public utility, it would have the power of eminent domain under the rationale set forth below. However, Wild Goose's application resolved this issue, because after receiving its CPCN, Wild Goose exercised the power of eminent domain for property necessary for the construction and maintenance of its gas storage facility.

The underlying rationale is that upon receipt of a CPCN, an applicant becomes a "gas corporation," which Pub. Util. Code § 222 defines as "every corporation or person owning, controlling, operating, or managing any gas plant for compensation within this state... ." Pub. Util. Code § 221 defines "gas plant" as including all real estate, fixtures, and personal property, owned, controlled, operated, or managed in connection with or to facilitate, among other things, gas storage. Pub. Util. Code § 613 provides that a gas corporation may condemn any property necessary for the construction and maintenance of its gas plant.

The Commission has also recently initiated its Gas Strategy Rulemaking 98-01-011, which is assessing the current market and regulatory

framework for California's natural gas industry to identify services for which the public interest suggests the need for greater competition and to determine the steps that the Legislature and this Commission must take to facilitate healthy competition.

D.99-07-015, slip op. at 23, discussed methods other than constructing competitive gas storage facilities to further increase competition in the gas storage area, such as creating a system of tradable storage rights to existing gas storage.

> "There is reason to believe that it would promote more efficient use of the hard-to-find gas storage resources if individual shippers and customers could bid for firm storage access rights. In addition, the local distribution company will be motivated to pursue more complete utilization of its storage assets if its shareholders bear the risk for cost recovery. If accompanied by an active secondary market, the bidding and trading of storage rights should lead to pricing that reflects demand. A market-based price for storage should spur the development of more storage capacity, or other alternatives to storage, when existing capacity becomes scarce.
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> "In addition, we anticipate that the existence of an active secondary market for storage would reduce a utility's ability to increase its storage revenues in an unfair manner. Shippers should be more willing to acquire storage rights when they know they will have the ability to sell unused capacity on the secondary market. As more of the storage rights are held by market participants other than the utilities, the utilities' ability to gain from manipulation of storage prices is reduced. As with our proposal for transmission rights trading, this option should advance our goals of mitigating potential competitive abuses, and providing a wider array of choices to market participants.
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> "In the next phase of this inquiry, we ask parties to consider the costs and benefits related to creating a system of tradable storage rights in Southern California that places the utility at risk for unused resources and preserving such a market in Northern

> California beyond the period of the Gas Accord. As part of that discussion, we wish to consider the merits of treating the utilities' core procurement departments like any other customer, allowing the core group to bid for and acquire needed storage in the same manner as all others." (D.99-07-015, *slip op.* at pp. 22-23.)

B. Overview of LGS and the Proposed Project

1. LGS

LGS is a wholly-owned subsidiary of Western Hub Properties, LLC (WHP). Haddington Ventures, LLG (Haddington) formed WHP in 1998 to develop natural gas facilities, primarily in the western United States and Canada. WHP is presently owned by two limited partnerships, Haddington Energy Partners, L.P. and Haddington/Chase Energy Partners (WHP), L.P., respectively.

In the mid-1980s, and before forming Haddington Ventures, LLC, the three Haddington principals, Larry Bickle, John Strom and Chris Jones formed and managed Tejas Power Corporation, which later became TPC Corporation (TPC). Under the management of the three principles, TPC developed the Moss Bluff (Texas), Egan (Louisana) and Tioga (Pennsylvania) salt cavern gas storage projects. The two Gulf Coast projects have a combined deliverability of 1.5 Bcfd and, as of mid-1999, Tioga is about to begin construction. TPC was also an independent gas marketer and one of the largest independent natural gas pipeline companies in the Gulf of Mexico. TPC was sold to PacifiCorp in the spring of 1997. The LGS project management team, Mssrs. Dill (LGS' President) and Bergquist (a WHP Vice President) have substantial experience in the natural gas industry, including gas storage.

2. The Proposed Project

All components of this proposed project are more thoroughly defined in the final EIR, which consists of two separate documents, the Draft EIR

and the Final EIR, which cumulatively make up the EIR. We generally refer to the cumulative documents as the EIR, unless referring to a particular section or discussion, in which case we will specifically reference either the Draft or Final EIR.

Lodi Gas proposes to convert a depleted natural gas production field into a storage facility. The field LGS has chosen is about 1,450 acres, or approximately 5.4 miles, northeast of Lodi in San Joaquin County. The EIR describes the project area as characterized by a mosaic of agricultural fields and orchards. In addition to agricultural lands, which grow wine grapes, among other crops, other land uses in the vicinity of the project include dairies, a fish farm, scattered light-industrial uses, single family residences, and recreation.

According to the EIR, although the gas field was declared depleted in 1972, the field still has large pockets of gas trapped in two reservoirs, one on top of the other, that are more than 2,000 feet under the ground surface. A dome-shaped layer of hard shale caps each reservoir and keeps gas trapped in the reservoirs. Each reservoir is pressurized from beneath by a deep, brackish water table. LGS would drill 10 or up to 11 new wells into the two reservoirs to allow customers to inject or withdraw gas from the facility several times a day.

The project has the following principal components: the Lodi gas field, a field collection and water separation facility, a gas dehydration and compressor facility, approximately 33 miles of field and transmission gas pipeline, and two PG&E interconnect and meter stations. The compressor facility and gas pipeline would enable LGS to get the gas into and out of the storage facility, and the pipeline would connect the facility to PG&E's gas transmission pipeline network. LGS' storage customers would make their own arrangements for purchasing the gas and transporting it to and through PG&E's

natural gas pipeline system for delivery to the storage facility, and for delivery from the storage facility to the customer.

LGS explains that only the storage rights, and not the mineral rights, are required for the project because the right to store natural gas in a depleted or non-gas bearing reservoir on a property is not a mineral right. Rather, it is part of the rights of a surface owner unless this right has been specifically severed in a deed or other conveyance. However, LGS is also seeking either the mineral rights to the property or consent and agreement of the mineral owners, in some instance limited to the specific zones to be utilized for natural gas storage. According to LGS, this is being done for two purposes: (1) to preclude another owner of the mineral rights from drilling into or through the storage reservoirs and causing damage or recovering the stored gas; and (2) to preclude claims that there exist remaining recoverable gas reserves in the storage reserves prior to injection of new gas.

The EIR proposes several alternative pipeline routes to that proposed by LGS. These alternatives are discussed more fully below. The EIR also considers an alternative location for the dehydration and compressor facility. In its initial application, LGS proposed to locate the dehydration and compressor facility near Highway 99 and adjacent to a frontage road, where LGS states that noise produced by the compressor facility would be less noticeable. The primary components of this facility include three large piston-type compressors fueled by natural gas plus an operator's control room and related facilities. The compressors would be housed in an approximately 60 foot by 125 foot by 30 foot tall prefabricated metal building. The ventilation sound dampers and the engine exhaust piping may be as tall as 35 feet. Several other small maintenance buildings would also be located on the site. LGS has

committed to spend more than $60,000 on air emission mitigation equipment at the compressor facility.

In its amended application, LGS submitted an alternative location for the compressor facility on the southwest corner of the Lind Airport property. The individual facilities and structures on the compressor site would be the same as those described for the proposed project. However, the site would likely be laid out differently than the proposed project site because of the orientation of the field, transmission pipelines, and access road.

The field collection and water separation facility would prepare the gas for transportation through PG&E's system. LGS proposes to construct the water separation facility near the injection wells and a dehydration facility at the gas compressor facility. The purpose of these facilities would be to remove any water absorbed into the gas during storage. LGS would then pump that water back into the gas storage reservoirs using separate water injection wells which it would drill into the reservoirs at locations where the injected water would not interfere with the injection/withdrawal wells.

In its application, LGS describes its own system capability as offering both firm and interruptible storage services and designed to accommodate an inventory of 12 billion cubic feet (Bcf) of working gas, with a maximum firm deliverability of 500 million cubic feet per day (MMcf/d) and a maximum firm injection capability of 400 MMcf/d.[3]

[3] We clarify here that this is LGS' project description, and does not refer to PG&E's ability to transport gas to and from LGS.

C. Procedural Background

1. The Application

LGS filed its initial application on November 5, 1998. Subsequently, LGS filed three amendments to the application, dated January 22, February 5, and April 30, 1999, respectively. The first two amendments primarily addressed additions to LGS' Environmental Assessment, and the third amendment primarily addressed LGS' proposed relocation of the compressor facility.

Rule 17.1 of the Commission's Rules of Practice and Procedure (Commission's Rules) provides that notice of the preparation of either a negative declaration or Draft EIR should be given to, *inter alia*, owners of land, under, or on which the project may be located, and owners of land adjacent thereto. Rule 18(b), which provides service requirements for applications, does not contain such a requirement. In order to promote efficiency, so that interested landowners could receive notice of this proceeding as soon as possible, a January 7, 1999 Administrative Law Judge (ALJ) ruling, *inter alia*, required LGS to serve a notice of availability of its application and the ruling on all owners of land, under, or on which the project may be located, and owners of land adjacent thereto.[4] Because the third amendment to the application presented an alternative siting of the compressor station, LGS was also required to undertake similar service requirements as set forth above on landowners affected by the third amendment to the application.

[4] LGS was required to send any person receiving a notice of availability a copy of the application within 24 hours after receiving such a request.

The following parties filed limited or full protests, or responses to the application: The Office of Ratepayer Advocates (ORA); PG&E; and SoCalGas.[5]

2. Non-Environmental Review

After a February 11, 1999 prehearing conference, the Assigned Commissioner and ALJ issued a joint scoping memo and ruling (scoping memo) which recognized that the application involved the interplay between hearings on the non-environmental issues and environmental review. The scoping memo stated that the Commission's Energy Division (ED) would be conducting the environmental review and did not provide a detailed scope and schedule for that process. The scoping memo identified the issues to be addressed in hearings on the non-environmental issues and set forth the schedule for the rest of the proceeding. Pursuant to Pub. Util. Code § 1701.3, the scoping memo designated ALJ Econome as the principal hearing officer.

Hearings on the non-environmental issues were held from June 14 through 16, 1999. The parties participated in closing argument before Assigned Commissioner Bilas, as well as the ALJ, on June 22, 1999. Additionally, the Commission held two public participation hearings in Lodi on October 19, 1999, where the public could comment on both the non-environmental issues and the Draft EIR.

[5] Although SoCalGas served written testimony, it never offered this testimony into evidence or participated in the hearings. On May 4, 1999, it subsequently withdrew from the case, because PG&E addressed the interconnection issue of concern to SoCalGas, and the priorities for SoCalGas' limited resources did not justify further participation on the remaining issues.

Pursuant to Rule 8(d), parties were given until June 30, 1999, to submit a written request for final oral argument before the entire Commission. A July 16, 1999 ALJ ruling confirmed that no party submitted such a request, and that such argument would therefore not be scheduled or heard.

Parties filed opening and reply briefs on the non-environmental issues in July 1999. In addition to LGS, the following parties participated in the hearings or filed briefs: LGS, Calpine Corporation (Calpine), California Farm Bureau Federation and the San Joaquin Farm Bureau Federation (Farm Bureau), District Council No. 36,[6] Pacific Realty Associates, L.P. (Pacific Realty), PG&E, Wild Goose Storage, Inc. (Wild Goose), and a group of interested landowner parties referred to as Williams.[7]

On October 7, 1999, the Governor signed into law Senate Bill (SB) 177, which places conditions on the ability of certain public utilities to exercise the power of eminent domain for purposes of providing competitive services. (SB 177 is discussed more fully below.) Because this legislation was not enacted when parties had filed their briefs in July, the ALJ afforded parties the opportunity to file supplemental briefs on SB 177. The following parties filed opening or reply supplemental briefs: Lodi, the Farm Bureau, Wild Goose, and the Williams.

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[6] District Council No. 36 collectively refers to District Council No. 36 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry and the United States and Canada, AFL-CIO, and its affiliated Local Unions No. 062, 228, 246, and 442 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada.

[7] These individual landowners include Todd and Maureen Williams; David and Mary Perry, Trustees of the Perry Family Trust; Reba Turnbull, Trustee of the Turnbull Family Trust; and Mary Gamblin, Trustee of the Gamblin Family Trust.

Altogether, the Commission held six days of hearings in this case (including the prehearing conference). Assigned Commissioner Bilas was present for three of those days. The final decision is timely issued, because it follows the schedule outlined in the scoping memo and is also issued before the 18-month time period set forth in SB 960, Section 1 (uncodified portion).

On June 24, 1999, the Williams' filed a notice of intent (NOI) to claim compensation. A July 16 ALJ ruling denied this request, ruling that the Williams are not a "customer" and therefore have not met the threshold test for eligibility for compensation in this proceeding under Pub. Util. Code § 1801 et seq. We affirm the July 16, 1999 ALJ ruling.

3. The EIR

The EIR sets forth a detailed schedule of the environmental process. On February 17, 1999, the Commission, through its ED, notified LGS that its application had been deemed complete for purposes of Rule 17.1.[8] On February 17, the Commission also mailed a Notice of Preparation (NOP) for the EIR to local, state and federal agencies and the State Clearinghouse for a 30-day review period. The NOP provided a general description of the proposed project and a summary of the main regulations and permit conditions applicable to its development and operation. Responses from these agencies helped to determine relevant environmental issues associated with the project.

[8] The ED determined that deficiencies identified in the two deficiency letters sent out by ED had been adequately addressed by LGS' response. Nonetheless, ED stated that additional information may be needed to complete the environmental review process. In fact, LGS' application was not complete as evidenced by its filing a third amendment to the application after February.

Also, to gather information related to the possible environmental effects of this application, the Commission consulted with other affected agencies and jurisdictions. The Commission's conducted a Public Agency Outreach Program to establish early contact and open lines of communication with key public agencies that would be directly affected by the proposed project. The program included consultations with more than 25 public agencies conducted at central meeting locations, in agency offices, and by telephone. Local agency representatives provided background information, community perceptions, and local environmental concerns.

The Commission also conducted two public scoping meetings to explain the environmental review process and to receive public comment on the scope of the EIR. The Commission held these widely-noticed meetings in two locations convenient to residents who live in the area where LGS proposes to develop its project, as described more fully in the EIR.

In September 1999, the Commission issued its Draft EIR. The Commission accepted written comments on the Draft EIR through November 12, 1999. The Commission held two public information meetings on the Draft EIR in Lodi and Isleton so that the public could learn about the draft EIR and the status of the project, and to answer questions prior to the conclusion of the Draft EIR comment period. In addition, the Commission held two public participation meetings on October 19, 1999, where individuals could make formal comment on the Draft EIR in lieu of submitting written comments.[9]

[9] As set forth above, the public could also comment on the non-environmental aspects of the application at the public participation hearings.

The Commission issued its Final EIR on February 15, 2000. Under the Permit Streamlining Act (Government Code § 65950), the Commission generally has 180 days from the date the lead agency certifies the EIR to approve or disapprove the project. If the Commission fails to act within this time frame, the project could be deemed approved under certain circumstances. (See Government Code § 65956(b).)

CEQA and the Commission's regulations generally require that a lead agency complete and certify the EIR within one year of the date the agency has accepted the application as complete. (See Pub. Res. Code §21100.2 (a) and § 21151.5; CEQA Guidelines § 15108, Rule 17.1(f)(3)(A) of the Commission's Rules.) CEQA Guidelines and Commission Rules permit a one-time 90-day extension of the one-year EIR completion and certification requirement, with the concurrence of applicant and the Commission. (CEQA Guidelines § 15108; Commission Rule 17.1(f)(5).) An October 14, 1999 letter from applicant's counsel to the assigned ALJ memorializes this agreement to a 90-day extension, because of the time necessary to finalize the EIR after the conclusion of the public comment period. Therefore, the one-year deadline for the Commission to complete and certify the EIR is May 17, 2000, and the deadline for the Commission to approve or disapprove the project is 90 days thereafter. (See Government Code § 65950.1.) The Commission appreciates LGS' cooperation in this matter, which allowed the Commission and the public to fully review the EIR in accordance with the purpose of CEQA.

Jones & Stokes Associates, Inc. were the consultants which assisted the Commission's ED in the EIR's preparation.

3. Standard of Review: The CPCN/CEQA Process

Two different regulatory schemes define this Commission's responsibilities in reviewing LGS' request for the approval of this application. Pub. Util. Code §§ 1001 et seq., require that before LGS can construct this project, the Commission must grant a CPCN on the grounds that the present or future public convenience and necessity require or will require construction of the project. Public Resources Code §§ 21000 et seq. (CEQA) require that the Commission, as lead agency for this project, prepare an EIR assessing the environmental implications of the project for its use in considering the request for a CPCN.

Generally, the CPCN requirements in the Public Utilities Code include a determination of whether the project is necessary. Also, before granting a CPCN, the Commission generally considers an analysis of the financial impacts of the proposed project on the utility's ratepayers and shareholders. The Commission reviews the expected cost of the project and for those projects estimated to cost more than $50 million, it sets a cap, or the maximum amount which can be spent by the utility on the project without seeking further Commission approval. In the Gas Storage Decision and subsequent decisions, the Commission has modified some of these requirements as they apply to competitive gas storage providers under its "let the market decide" policy. These modifications are discussed more fully below.

In addition, under Pub. Util. Code § 1002, the Commission has a statutory obligation, even in the absence of CEQA, to consider the following factors in determining whether or not to grant a CPCN: (1) community values; (2) recreational and park areas; (3) historical and aesthetic values; and (4) influence on the environment.

CEQA requires the preparation of an EIR where there is substantial evidence that a project may have a significant effect on the environment. The lead agency determines whether or not to prepare an EIR, and prepares and certifies the EIR. The lead agency is the governmental body with primary authority over the proposed project which, for this application, is this Commission.

In preparing the EIR, the lead agency must consider alternatives to the proposed project, including the alternative that there be no new project at all. The lead agency must identify all significant and potentially significant impacts of the proposed project, must identify the mitigation measures available to lessen those impacts, and must determine whether those mitigation measures would reduce the impacts to less than significant levels. If the EIR concludes that the project will still have a significant impact on the environment even after all reasonable mitigation measures are applied, any CPCN must be accompanied by a statement of overriding consideration explaining why the project should still be approved. In any event, the lead agency cannot approve the CPCN until it has certified that the final EIR is complete. The permit that is finally issued must be conditioned on completion of any adopted mitigation measures.

4. Parties' Positions

This section briefly summarizes the position of those parties who participated in the evidentiary hearings on the non-environmental portion of the case. This section sometimes touches upon the parties' positions on the environmental issues raised in the EIR, although those issues are discussed in greater detail in the EIR. This section is a summary, and parties' specific arguments are raised, as appropriate, throughout the discussion in this decision.

LGS states that it has met every condition stated by the Commission to receive a CPCN as an independent storage provider. LGS is the second member of the gas storage community to apply to the Commission to be a competitive gas storage provider. LGS believes that its application furthers the Legislature's goal of facilitating a competitive gas storage market in California, and that under the Commission's "let the market decide" policy, it is appropriate to dispense with the traditional CPCN need review because the risk of the project falls entirely on the project's investors. Although LGS does not believe a need showing is appropriate for this application, if it is, LGS states that it has met that showing.

LGS believes that it has also addressed community concerns as a good neighbor regarding the project by agreeing to various mitigation measures, such as changing the pipeline route and compressor station location, spending $60,000 on air quality mitigation equipment for the compressor station, and agreeing to bury the pipeline a minimum of four feet (as opposed to three feet required by federal regulation) or deeper, if agreed to with affected landowners, so as not to disrupt agricultural practices. LGS states that its project design and pipe placement addresses safety concerns.

LGS believes that most of the opposition to the project is in reference to short-, and not long-term impacts of the project, because only a limited number of acres (less than 15) will be permanently impacted and taken out of production.

LGS repeatedly states its commitment to compensate landowners through whose property the project must go for the losses associated with the project. That includes the market value of easements or storage rights, the market value of lost crops, both present and future, and the costs of planting and replanting crops. LGS states its preference to do so through individual negotiations.

Some parties raise indemnity questions, such as who will indemnify them in the event of an accident caused by the project. LGS believes that it has ample

liability insurance, and has committed to carrying $1 million general liability insurance, with an excess liability policy of $20 to $25 million per occurrence. LGS states that as of June 1999, its current assets were $100,000, but that it anticipates having $30 to $40 million in equity upon the project's completion. Finally, LGS believes that there is no need for the Commission to condition its certificate.

Calpine concurs in the need for this project. Calpine states that because LGS will only be the second independent member of the gas storage community, it will provide an important role in forcing all storage providers to be responsive to market forces. Calpine maintains that the Commission should approve this application because it will improve competition in gas storage facilities and because LGS has met all of the conditions set out by the Commission for approval.

LGS, PG&E, and Wild Goose presented testimony on various interconnection issues such as how LGS' facilities will initially be connected with PG&E's system, and whether interconnection can be accomplished without interfering with existing service. Other issues include whether the Commission should require LGS, as it did Wild Goose, to: (1) provide the Director of the Commission's ED the final total cost of the interconnection, including the share of the cost paid by each entity and (2) to enter into an operating and balancing agreement with PG&E before gas, including cushion gas, flows to the LGS facility on the PG&E system. During hearings, the parties largely resolved these issues. PG&E states that its support for the application is conditioned on the Commission adopting its position on the above issues.

The most hotly contested issues include those raised by landowners and community members. The Farm Bureau, Pacific Realty, and the Williams oppose the project on various grounds. The Williams are the only party to contest need.

The Farm Bureau believes that the project significantly impacts the criteria set out in Pub. Util. Code § 1002, namely, community, recreational, historical, and aesthetic values. The Farm Bureau is concerned with the project's impact on the winegrape growing industry. The Farm Bureau also believes that the burden or risk of this project not only falls on LGS' investors, but also on the local landowners and their community. These include, but are not limited to, many environmental concerns discussed in detail in the EIR such as the project's impact on winegrape agricultural practices, residents' homes and businesses. The Farm Bureau is concerned with impacts such as gas odors, noise, visual blight, reduced tourism, and short- and long-term agricultural production, to name a few.

The Farm Bureau is also concerned that the local landowners will also bear the risk of the project economically, environmentally, and aesthetically. If the Commission approves the project, the Farm Bureau raises various mitigation measures which it believes the Commission should impose on LGS. The Farm Bureau, Pacific Realty, and the Williams believe that the Commission should require LGS to use public rights-of-way, to the extent possible.

Pacific Realty supports a pipeline which maximizes the public rights-of-way rather than running through agricultural land, notwithstanding the fact that CalTrans will not consider installing the pipeline along Highway 12, citing to Streets and Highway Code § 661 [in the event of a conflict between CalTrans and the Commission, the powers and duties vested in the Commission shall prevail.] Pacific Realty does not believe that LGS has adequately planned for the pipeline installation, for instance, in areas of soil subsidence. Pacific Realty is concerned with the efficacy of individual negotiations to resolve pipeline easement and placement issues, because if negotiations fail (and this application is granted) LGS would have the power of eminent domain.

Pacific Realty is also concerned with abandonment issues, the economic impact of the pipeline on its future farming operations, and any increased occupational safety liability which may result. Pacific Realty, as well as the Williams, raise indemnity issues and request that the Commission require LGS to obtain bonds and/or greater liability insurance than LGS has proposed.

In addition to questioning the need for the project, the Williams also echo many of the concerns of the Farm Bureau and Pacific Realty. The Williams also believe that the project is contrary to Pub. Util. Code § 1002, in that, *inter alia*, it will substantially decrease the value and desirability of living in the largely rural residential area because of the actual and perceived safety and other environmental risks created by it. The Williams discuss some of these risks, such as the location of the compressor facility near the airport, in greater detail. Citing to testimony offered by their appraiser expert witness, the Williams argue that this perceived and actual risk will cause a substantial decrease in property values in the area.

The Williams point out that LGS proposes to locate the project in a rural residential area made up of single family homes and small ranch sites. An elementary school and at least 190 homes are within a one and one-half mile radius of the proposed compressor facility. The Williams also suggested necessary mitigation measures in the event the Commission approves this project.

The Farm Bureau, Pacific Realty, and the Williams are also concerned with the unequal bargaining position landowners have with LGS concerning land acquisition because LGS will have the power of eminent domain if the Commission approves this project. This issue was also raised repeatedly in the public participation hearings. LGS states it is committed to bargaining fairly with landowners, and has not used eminent domain in its past projects. If this

application is approved, LGS plans to condemn property necessary for its project only as a last resort.

District Council 36's reply brief states that the Commission should not determine the necessity for further hearings until after the Draft EIR issues and the parties have had the opportunity to identify any unresolved issues. The Farm Bureau concurs.

Finally several parties contest how SB 177 should apply to LGS. The parties' positions on this issue are set out in the discussion addressing SB 177.

5. Do the Present or Future Public Convenience and Necessity Require Construction of the Project?

A. Need

As summarized above, in response to AB 2744 in the 1992 California Legislature, the Commission issued the 1993 Gas Storage Decision. This decision adopted a "let the market decide" policy for competitive gas storage, notwithstanding its statement that "the need for additional storage capacity is less certain [than the need for gas transportation], as shown by the evidence in this proceeding." (Gas Storage Decision, 48 CPUC at p. 119.)

This means that the Commission stated that it would not test the need for new gas storage projects on a resource planning basis, so long as all of the risk of the unused new capacity resides with the builders and users of the new facility.[10] In this case, the scoping memo stated that need is one of the issues to

[10] The Gas Storage Decision states that "The Commission should entrust noncore storage expansion decisions to market participants. The Commission should not review the need for new storage projects intended to serve noncore customers, as long as all the risk of unused capacity resides with the builders and users of the new facilities." (Gas Storage Decision, 48 CPUC2d at p. 140, Finding of Fact No. 37.)

be addressed in this proceeding. LGS addressed this issue under objection, given the Commission's pronouncement in the Gas Storage Decision.

In the Gas Storage Decision, the Commission stated that its "let the market decide" policy was consistent with Pub. Util. Code §§ 451 and 1001. However, the Commission also recognized that it was not abandoning regulation of gas storage, and that CPCNs were still necessary *to the extent required by law*. (Gas Storage Decision, 48 CPUC2d at p. 127, emphasis added.)

Because CPCNs are still necessary to the extent required by law, LGS' application must still comply with, *inter alia*, Pub. Util. Code § 1002, which we discuss more fully below. Second, if LGS only relies on the Gas Storage Decision for a presumptive showing of need, it may be difficult for the Commission to determine whether or not there is evidence to support a finding of overriding consideration, if necessary, with respect to the EIR that CEQA requires in this case. In short, in some instances, a fuller showing of need may be necessary to the extent required by law.[11]

LGS' testimony addressing need describes the need for gas storage facilities for the general benefit of California. For instance, LGS states that its project will further the objectives of creating competition in the gas storage business as enunciated by the Legislature in 1992 (in AB 2744), and by the Commission in the 1993 Gas Storage Decision, and notes that it is only the second applicant seeking to develop a competitive gas storage business in California.

[11] Under SB 177, enacted in 1999 and discussed more fully below, certain public utilities must make various showings of need prior to exercising the right of eminent domain. The scope of the need showing necessary to meet an applicant's burden of proving need set forth in SB 177 is an open issue.

LGS also believes there is a need for the project for the following reasons: (1) the project will increase the availability of noncore storage capacity and will assist shippers and marketers in managing their loads more effectively; (2) the project will assist in meeting supply reliability requirements in the California marketplace in the event of, among other things, the loss of transmission capacity or the curtailment of wellhead production; (3) LGS will add to the physical balancing services in PG&E's service territory for large commercial and industrial customers and should eliminate the need for additional system-wide storage; (4) LGS will provide storage which can match changes in electric load and which might thereby affect the price of power in the new competitive era of electric generation; and (5) the project could reduce the need for construction of new natural gas transmission pipelines.

Calpine points out that the Gas Storage Decision recognized the benefits of gas storage, namely "to achieve and maintain access to diverse gas sources so that all gas customers in California can obtain adequate, reliable, reasonably priced gas supplies," and "to reduce the likelihood of peak period curtailments in a cost-effective manner." (Gas Storage Decision, 48 CPUC2d at p. 118.)

The only party to challenge need in the evidentiary hearing was the Williams, although others at the public participation hearing generally questioned need. Based on the California Energy Commission's 1998 Natural Gas Market Outlook, the Williams argued that natural gas will remain in plentiful supply for several decades, its cost is expected to rise at only about 1.4 % a year, and that California will have a sufficient supply of gas through at least 2017.

Therefore, according to the Williams, there is little public need for this project. To the extent the project is necessary to meet price spikes, the Williams

argued that the commodity futures trade market is a more efficient way to address spikes. At the public participation hearing and in comments to the Draft EIR, other residents indicated that the general Lodi community will not benefit from the proposed project, and many of them did not use gas at their homes or businesses. In fact, some do not have access to natural gas service.

In response, LGS submits that competitive gas storage assists in the physical delivery of gas, and that storage is an alternative to the construction of additional pipelines which might otherwise be necessary in order to meet California's gas needs. LGS also believes that its project will be able to serve the needs of many new gas-fired electric generation facilities now awaiting entry into the California market. According to LGS, its project will offer competitive balancing services, in order to more effectively balance gas supplies.

The EIR summarizes the general need for gas storage and states that, even with the tripling of pipeline capacity into California over the last 15 years, as recently as last winter (1998-1999), the state experienced more than 10 days of natural gas shortages, which forced some fossil-fueled power plants in the state to switch to fuel oil. The EIR does not examine all the causes for this event.

As stated above, in the early 1990s, both the Commission and the Legislature have found the need for competitive gas storage facilities. LGS and Calpine reiterate and elaborate on the rationale underlying this need. The record has established a general need for competitive gas storage services in California.

B. Pub. Util. Code § 1002

As stated above, under Pub. Util. Code § 1002, the Commission must consider the following factors in determining whether to grant a CPCN:

(1) Community values;

(2) Recreational and park areas;

(3) Historical and aesthetic values;

(4) Influence on the environment.

The obligation to consider the factors listed in § 1002 is independent of the Commission's CEQA obligation. In addition to its CEQA obligations, Pub. Util. Code § 1002 provides the Commission "with responsibility independent of CEQA to include environmental influences and community values in our consideration of a request for a CPCN." (See *Re Southern California Edison Company*, D.90-09-059, 37 CPUC2d 413, 453.)

A confluence of factors requires denial of this CPCN application, when exercising our discretion in weighing the factors set out in Pub. Util. Code § 1002, balanced against the need for the project. First, the proposed project is incompatible with community values. At the two public participation hearings held on October 19, 1999, over 60 persons spoke regarding the project. All but one opposed it, as did the State Assembly Representative from the project area, and a member of the San Joaquin County Board of Supervisors.[12] Many other Lodi area residents also have written letters to the Commission opposing the project. These facts alone demonstrate incompatibility with community values.

LGS argues that the people at the public participation hearings only represented approximately eight affected property owners, that many community members support the project, and that more people would support the project if they better understood it. LGS also states that it has endeavored to

[12] An April 22, 1999 letter from the San Joaquin Board of Supervisors states the project has merit if many of its proposed mitigation measures are adopted. The EIR does not recommend all of the proposed mitigation measures as its preferred alternative. The individual Board of Supervisor member stated his opposition to the project at the October 19, 1999 public participation hearing, which postdates the April letter.

be a good neighbor, has communicated regularly with community leaders about the project, and has made numerous reasonable changes to the project in light of community concerns. Also, as set forth more fully in the EIR discussion below, the EIR shows that all of the identified environmental impacts, except one, can be mitigated to a less than significant level.

LGS also states that it has entered into a memorandum of understanding with an ad hoc group of six grape growing representatives, in which these representatives agree not to oppose LGS' application to construct the project if LGS agrees to certain changes in the projects design or construction. Additionally, LGS and the ad hoc committee worked together to develop new deed, contract and lease documents.

However, the Commission has received many letters and extensive oral opposition to the project from both the elected public officials of the community as well as the community members. Only one individual supported the project at the public participation hearing. Although six grape growers in the ad hoc group agreed not to oppose the project, one of the six signatories to the memorandum of understanding indicated at the public participation hearing that his support for the memorandum of understanding was lukewarm at best. He urged the Commission not to give his position any more weight than that of the other community members who opposed the project.

The project also affects community values in that, according to local residents, it may frustrate the community goal of continued development of the Lodi area wine industry. The Lodi area has been a major agricultural and winegrape growing region since the 1850s. The winegrape business contributes a farm gate value of about $300 million a year, with additional community benefits generated by associated jobs and tax revenues. The general community, and particularly the Lodi-Woodbridge Winegrape Commission, has spent about

$5 million dollars over the last several years on developing the Lodi Wine Grape Appellation, establishing a scenic wine tour, and facilitating wine tourism in the area. LGS's proposed facility would lie in close vicinity to the tour area and according to local residents, could potentially jeopardize it, and the area's winegrape growing reputation. A witness at the evidentiary hearings and speakers at the public participation hearing were very concerned that the mere existence of this project in close vicinity with their emerging wine tourism could damage the area's winegrape growing reputation by associating the area with gas storage, as opposed to world-class grape growing.

LGS states that most of the effects of its project are short-term, and that less than 15 acres will be permanently taken. LGS maintains that it only requires an easement for much of the pipeline, as opposed to the entire property, and that farmers can replant grapes over the pipeline area. Thus, LGS maintains that the actual and perceived impact on the wine industry is negligible. Moreover, LGS states that it will appropriately compensate the landowners for the project's short-term, as well as long-term effects, and that it is willing to provide appropriate mitigation measures to lessen the potential impact upon the industry. Many mitigation measures are also a part of the EIR. For example, according to the EIR, LGS will have to develop a landscape buffer for the compressor facility, and in certain areas place the pipeline deeper than the minimum federal requirements to allow certain agricultural practices to continue.

The EIR states that most of the project's short-term and long-term impacts can be mitigated to a less than significant levels. However, community members nonetheless raise concerns regarding the existence of this project side-by-side with their wine tourism and winegrape growing operations, not only because of the actual short-term construction impacts on tourism and the

winegrape industry, but also because it might "affect the perception of our beautiful winegrape district by industrial development."[13] While we cannot conclude from the record that it is reasonable that the existence of this project in close vicinity with the area's emerging wine tourism will damage the public's perception of the area's winegrape growing reputation, neither can we guarantee that it will not occur. Moreover, although LGS states that less than 15 acres of winegrapes will be taken out of production, and that it will fairly compensate landowners for winegrapes and vines which it temporarily and permanently takes, some of the vines to be removed are old growth vines, which some landowners believe would be difficult, if not impossible, to replace.[14]

LGS further represents that its project will bring needed tax revenues into the Lodi community. However, we are not aware of community members who support the project on the basis of the tax revenues it might generate, and some are concerned that the project may jeopardize revenues generated by the local wine industry and result in additional public safety costs for the community.

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[13] See Exhibit 101, Testimony of Farm Bureau witness Fry at p. 2.

[14] Other gas facilities and pipelines currently exist in the larger Lodi area. For example, PG&E operates a gas facility at McDonald Island. Part of the EIR's preferred alternative is located next to an existing PG&E pipeline route. A Sacramento Municipal Utility District pipeline lies to the north. LGS may argue that because these other facilities exist, LGS' project fits in well with the surrounding community that includes similar facilities. However, no area in California should carry more than its fair share of the infrastructure necessary for all Californians. Although we are not exempting this general area from a future gas storage or pipeline project on this ground, the fact that other gas pipelines are placed in the general community does not automatically mean we will approve another such facility.

At both the evidentiary and public participation hearings, many community members raised safety and environmental concerns, which are addressed in more detail in the EIR discussed more fully below. According to the EIR, most, if not all, of these concerns can be mitigated. Therefore, the EIR does not recommend that the Commission reject the project from an environmental perspective.

However, the preferred alternative (the Composite Route Alternative) and the other alternatives have one significant and unavoidable impact. In order to approve the project, the Commission must make a statement of overriding consideration with respect to this impact, which concerns the impact of construction-related reactive organic gasses (ROG) and nitrogen oxides (NOx) emissions in Sacramento County.[15] ROG and NOx are ozone precursors. Although we recognize that this is one small issue in a project of this complexity, and the EIR recommends a best maintenance practice to address this issue, we still cannot make the statement of overriding consideration for this issue in light of the project's impact on community values.

The EIR discusses the "no project" alternative. The plethora of environmental and safety concerns discussed and mitigated by the EIR would not be present if the "no project alternative" were followed. According to the EIR, "[n]ot building the proposed project would avoid the environmental impacts associated with the project. The proposed project itself is not needed to avoid any environmental impact." (Draft EIR at p. 2-60.)

[15] The proposed project contains two significant and unavoidable impacts. The remaining alternatives contain only one such impact.

We are also concerned with several other environmental effects of the project which do not raise CEQA concerns, but nonetheless affect the Commission's analysis under Pub. Util. Code § 1002. Although the EIR states that air emissions from the proposed compressor station are sufficiently offset under CEQA by obtaining emission offsets within San Joaquin County, this does not necessarily mitigate the actual or perceived effect of the air emissions on the property adjacent or close to the project. LGS maintains that such emissions do not become a problem, if at all, until carried downstream by air and mixed with other elements, and that it has committed to spend about $60,000 to further reduce air emissions. However, the release of the remaining emissions associated with the compressor facility greatly concerns to the people who live near it, notwithstanding the fact that the release can be mitigated on a regional basis through offsets. Also, although the compressor facility and separation facility appear to meet the CEQA noise impact requirements, there still is noise impact from these two facilities on the surrounding neighbors, especially at night when other sounds are absent.

We note that one of the short-term mitigation measures suggested by the EIR to address potential construction nighttime noise levels for well-drilling activities is that, if all reasonable and practicable attempts to reduce noise have been attempted and nighttime construction noise levels remain above the significance threshold, LGS shall be required by this Commission to offer temporary relocation assistance to affected residents. Although this would mitigate the construction-related noise problem, and is a short-term impact, it is still disruptive to the individual landowners involved.

We are also concerned that the EIR does not more fully analyze the risks of a potential levee failure or weakening as a result of placing the pipeline under the levees. The EIR levee analysis, which places the decision on whether

or not to permit placement of the pipeline under the levees in the hands of the State Lands Commission, the State Reclamation Board, or the local reclamation district, as appropriate, is sufficient analysis for purposes of the EIR. The EIR also notes that requiring LGS to use directional drilling under the levees reduces the risk of a levee failure.

However, the potential harm to the surrounding community from a levee failure is enormous; previous levee breaks in California demonstrate that widespread damage can occur as a result of a levee failure. The EIR recognizes that levee failures continue to be a serious problem. Since 1950, several islands or tracts that the project or alternatives would cross have been flooded: Canal Ranch Tract (1958); Terminous Tract (1958); Tyler Island (1986); Brannan Island (1972); Andrus Island (1972); and Sherman Island (1969). We also note that in its comments to the Draft EIR, one of the reclamation districts in the project area, Reclamation District 2033, Brack Tract, opposes the project in part, because it poses a potential hazard. A further analysis of the risk of such an occurrence would have benefited our assessment of this project and its impact on the community, and the absence of such analysis adds to our concerns that this project infringes on community values.

Finally, we address the issue of eminent domain, which is a concern raised by many residents. Many residents question the wisdom and logic of giving a competitive gas storage business the power of eminent domain, which they believe puts them at an unequal bargaining position with LGS. They reason that if they cannot agree with LGS regarding the terms and conditions of a deed or easement agreement, LGS can condemn the property through a court action. LGS responds that it has never exercised the power of eminent domain in building other gas storage projects, that it prefers to negotiate with landowners and will do so fairly, and that it will use the power of eminent domain only as a

last resort. If that occurs, the courts will determine, and the landowner will receive, just compensation for the property taken.

We also note that last October, the Governor signed SB 177, which places certain conditions on the ability of certain public utilities to exercise the power of eminent domain to provide competitive services. We discuss SB 177 more fully below.

If we grant LGS's application, it will have the right to exercise the power of eminent domain with respect to property it believes is necessary to conduct the authorized gas storage operations, although LGS will have to comply with SB 177 before exercising this right. This is a sovereign right which lets the courts, and to the extent set forth in SB 177, the Commission, rather than the market, decide whether or not LGS can acquire certain landowners' property and at what price. This is a powerful negotiating tool in property acquisition. In weighing the factors set out in Pub. Util. Code § 1002 against the project's need, our conclusion might be different if LGS's ability to acquire property necessary for its project were solely limited to market constraints.

Also, an appraiser witness and community members stated that they are concerned regarding the diminution in value this project will bring to the surrounding properties, as a result of the actual and perceived impact of the project on these properties. The appraiser, with 34 years of experience, stated that, in general, property values in the vicinity of the compressor facility and pipeline will decline in value. He explained that this decrease will occur because of people's natural fear of large commercial projects, especially those with actual or perceived environmental or explosive dangers. He stated that the threat of a natural gas explosion will have a significant effect on neighboring property values and the ability to resell property in the project's vicinity.

Although LGS argues that owners whose property is necessary for the project will be fairly compensated either by agreement or in condemnation proceedings, not all property losses of the community may be compensable. For example, diminution in value of property lying near, but not on or under the proposed project, may not be compensable in a condemnation proceeding. (See e.g. *San Diego Gas & Electric Co. v. Superior Court*, 13 Cal.4th 893, 942 [plaintiff's allegation of diminution in value of property due to the proximity of power lines on adjoining property is not enough to show a taking or damaging of property for which compensation is required.])

In our need discussion above, we have found a general need for competitive gas storage projects in California. The record does not show a specific need for this project in the general Lodi community; that is, the citizens in the Lodi area have no greater need for this gas storage project than do any other Californians. The above discussion, as well as the EIR, demonstrates that the Lodi community also bears some elements of risk with regard to the project, notwithstanding the EIR's conclusion that all but one of the environmental impacts can be mitigated to a less than significant level for CEQA purposes. When weighing the factors set forth in Pub. Util. Code § 1002, as discussed above, against the need for the project, we exercise our discretion and deny LGS' application for a CPCN.

6. Certifying The EIR

A. The EIR Process

The EIR is part of the record, quite voluminous, and will not be reproduced in full here. As stated above, the EIR consists of two separate documents, the Draft EIR and the Final EIR, which cumulatively make up the EIR. We refer to the cumulative documents as the EIR, unless referring to a

particular section or discussion, in which case we will specifically reference either the Draft or Final EIR. This section provides a summary of the EIR process and certifies the EIR.

Additionally, attached to this decision as Attachments B and C are two tables addressing the mitigation measures which the Final EIR proposes. Attachment B summarizes the environmental impacts and mitigation measures of the proposed project as well as the three alternatives the EIR reviews. Attachment C summarizes the mitigation monitoring plan of the composite route alternative, which is the EIR's preferred alternative. Attachment D sets forth LGS' proposed mitigation measures, which are also set forth in the Draft EIR at pp. 2-37 through 2-46.

For purposes of evaluating the project under CEQA, the "proposed project" identified in the EIR is the project formally presented in LGS' application as modified by the three amendments to the application and LGS' proposed mitigation measures. The EIR assumes that LGS will meet all the construction specifications and will complete all mitigation measures.

LGS states it has been negotiating with individual landowners to develop lease agreements and easements for the proposed pipeline and other facilities. Indeed, there has been much controversy in the non-environmental portion of the case about such negotiations, such as the alleged unequal bargaining position of LGS vis-a-vis landowners, if LGS is able to assert the power of eminent domain, etc. The EIR does not include a review of the terms of these private agreements, but rather considers broad impacts on the natural and human environment, such as the effects on prime farmland in Sacramento and San Joaquin counties.

The EIR notes that LGS will continue to negotiate with individual landowners and the negotiations may result in minor adjustments to the

proposed pipeline route to accommodate individual landowner needs. The Commission does not anticipate that these minor changes would result in different environmental impacts from those described in the EIR. However, the EIR states that if the Commission approves the proposed project, LGS would have to apply to the Commission for approval of a variance, if LGS makes any changes in the proposed route or other project components.

The EIR made the following assumptions to evaluate the potential environmental impacts of the project. Each environmental issue in the EIR is analyzed based on significance criteria suggested in the CEQA Guidelines. When the Guidelines do not suggest specific significance criteria, the EIR employs professional judgment to develop reasonable significance thresholds. Potential impacts are categorized as (1) significant and unavoidable; (2) significant, but able to be mitigated to a less than significant level; or (3) less than significant. When the analysis presented in the EIR shows that no impact will occur as a result of the project, that impact is generally not discussed further. When the EIR determines that the proposed project could potentially cause significant environmental impacts, the EIR identifies feasible mitigation measures to reduce the impact to a less than significant levels.

The EIR states that during the review, consideration was given to the permits and approvals LGS must obtain from other agencies to construct and operate the proposed facilities. For many design, construction, and operation issues, the responsible federal, state, and local regulatory agencies' permit review processes require that LGS implement measures to ensure proper implementation of the project. For example, the EIR points to the U.S. Department of Transportation, Office of Pipeline Safety, which is responsible for ensuring that the design of the pipeline meets stringent standards adopted by the federal government to protect public health and safety. Because

the U.S. Department of Transportation, Office of Pipeline Safety has a major role in reviewing and approving the safety of the proposed pipeline, and state and federal laws require LGS to obtain design approval from this agency, the EIR assumes that these standards will be implemented. The EIR focuses on any remaining or residual potential impacts resulting from implementation of the project. In other words, the EIR is based on the assumption that LGS would operate its facilities within the parameters of the required permits, and that operations in excess of permitted levels would require new discretionary permits and additional environmental review.

B. Alternatives to the Project

The EIR describes the screening process in which LGS engaged before filing this application. LGS reviewed alternative means of providing natural gas storage and analyzed alternative gas storage locations. From this analysis, LGS further narrowed its analysis to four gas fields. Although technically feasible as gas storage reservoirs, LGS eliminated them from further consideration because two would not meet the project objectives and two reduced economic feasibility and had the potential for greater environmental impacts.

During preparation of the Draft EIR, the Commission developed three alternative pipeline routes, all of which are technically feasible and acceptable to LGS. These alternatives were developed in response to public concerns during the scoping process regarding disruption of agriculture production and consistency with county and Delta Protection Commission policies regarding the consolidation of gas pipelines into transmission corridors. The alternative routes are: (1) the Public Right-of-Way Alternative, where the pipeline would generally run along established rights-of-way; (2) the Existing Pipeline Corridor Alternative, where the pipeline would generally run along an existing pipeline

corridor; and (3) the Composite Route Alternative, which uses both established rights-of-way and existing pipeline corridors. All three alternatives include an alternative location for the compressor southwest of Lind airport, instead of northeast of Highway 99 and Peltier Road. Because of conditions and the location of various facilities in the project area, all of the alternatives use public right-of-way and existing pipeline corridors to some extent.

The EIR discusses the various alternatives at length, and determines that the Composite Route Alternative is the preferred alternative, largely because it has one less significant and unavoidable environmental impact than does the proposed project (see Attachment B). The EIR also has concerns about the other proposed alternatives. The EIR states that although use of the existing public right-of-way alternative may be preferable in some areas, in other areas this alternative route may run closer to residences than the original planned route. The EIR reasons that the pipeline would be placed outside of the current Caltrans right-of-way along Highway 12 because Caltrans typically discourages longitudinal easements and because Caltrans is studying the widening of Highway 12. East of Highway 5, the Existing Pipeline Corridor has greater impacts on private landowners because it does not follow the existing rights-of-way, as does the preferred alternative through most of that portion of the route. LGS has stated that the Composite Route Alternative is now its preferred route and includes its preferred compressor facility location.

C. Environmental Impacts

The EIR analyzes the environmental impacts, mitigation measures, and significance after mitigation under the following categories: (1) land use, planning, and agricultural resources; (2) population and housing; (3) geology, soil, and paleontology; (4) hydrology; (5) air quality; (6) transportation and

circulation; (7) biological resources; (8) energy and mineral resources; (9) public health and safety; (10) noise; (11) public services and socioeconomics; (12) visual resources; and (13) cultural resources. The EIR determines that under its preferred alternative, all significant environmental impacts except one can be mitigated to a less than significant level. The EIR discusses the potential environmental impacts at a project-wide level, but does not consider the project's impacts on specific individual landowners (i.e., any review of negotiated easement agreements between LGS and individual landowners, etc.).

This section highlights the key areas of environmental concern and the mitigation the EIR recommends to address those concerns. This discussion focuses primarily on the environmental impacts for which the EIR requires mitigation. Unless otherwise stated, the EIR finds that the mitigation measure reduces the identified environmental impact to a less than significant level. This discussion is not set out under the 13 categories listed above, but is organized around the key community concerns. Because the EIR's recommended mitigation for the proposed project and alternatives is identical except in the area of land use, planning, and agricultural resources, the mitigation measures discussed apply to all alternatives unless otherwise stated.[16]

1. Safety

Safety is important in the design and construction of any facility that handles or stores natural gas, because natural gas is explosive in certain conditions. The EIR examines the potential for a fire or catastrophic explosion resulting from facility operation, including during a major earthquake, and

[16] The discussion below specifically identifies the recommended mitigation measures.

analyzes the systems and procedures proposed by LGS to ensure the project's safety.

The EIR's safety analysis also relies on the U.S. Department of Transportation's Office of Pipeline Safety (Office of Pipeline Safety), which is the agency primarily charged with regulating safety of natural gas pipeline facilities. The EIR's safety analysis is based on the assumption that LGS will construct and operate the project in accordance with the Office of Pipeline Safety regulations. The Office of Pipeline Safety regulations govern where a pipeline can be placed, the design features of the pipeline, the minimum depth it must be buried, and how often and thoroughly it must be inspected. As required by the U.S. Department of Transportation, an operating and maintenance plan would establish the written procedures for the operation, inspection, maintenance, and repair of the project pipelines, equipment, and facilities.

Additionally, the EIR requires LGS to comply with the requisite safety management programs of other regulatory bodies by instituting the following plans and programs: (1) operating and maintenance plan and inspection program; (2) damage prevention program; (3) emergency response plan; (4) hazardous materials release response plan; (5) fire prevention plan; (6) fire fighting training program; (7) employee drug testing program; (8) safety program; (9) stormwater pollution prevention plan; and (10) groundwater monitoring program.

The EIR also identifies the potential peat fire hazard during the construction of the pipeline as an environmental impact. This is because in the Delta portion of the pipeline alignment, the pipe would be buried in peat soils that are combustible. The EIR states that there is a slight possibility that pipeline joint preparation and welding may initiate a peat fire causing harmful air emissions and damage to property. In mitigation, the EIR requires LGS to

develop and implement a peat fire prevention plan as required by the Office of Pipeline Safety, and in consultation with the local authorities. (See Mitigation Measure 3.9-1.)

The compressor station's location at the airport site raises both land use and safety concerns. In the evidentiary and public participation hearings, people raised safety concerns about locating the compressor near the airport. The EIR requires LGS to construct the project according to federal, state, and local agency requirements. In addition, the Final EIR states that LGS recently received a letter from the Federal Aviation Administration (FAA) that indicates that the proposed project meets all FAA safety requirements.

The Final EIR re-examined safety issues with respect to the location of the compressor facility and confirms that no additional mitigation measures are required. According to the Final EIR,

> "[i]n the unlikely event that an aircraft collided with the compressor facility, gas could be released to the atmosphere. If an ignition source were present, the likely outcome would be a fire that would be directed upward and that would continue until all natural gas has escaped from the damaged portion of the facility. Because natural gas is not a liquid, the fire would not spread from the source of the gas leak. Considering the very low density of residences in the area, the low rate of aircraft collisions with buildings, the safety of natural gas, and the lack of substantial quantities of hazardous materials, the location of the alternate compressor site and the buried pipeline facilities is not considered to pose an unacceptable safety risk." (Final EIR at p. 2-11.)

The EIR recommends a mitigation measure to address land use issues surrounding the compressor facility's location. The EIR notes that there is uncertainty regarding the applicability of the Airport Land Use Plan to the

project facilities. Therefore, as a mitigation measure, the EIR requires LGS to obtain a determination from the Airport Land Use Commission that the project is consistent with the local land use plan, and if not, to obtain an amendment to the plan to allow the project. (Mitigation Measure 3.1-3.) If the Airport Land Use Commission finds that Airport Land Use Plan applies to the project, that no amendment to the plan is appropriate, and if that decision is affirmed on appeal to the County Board of Supervisors, LGS could not build the compressor facility at the site set out in the preferred alternative. If, at that point, LGS were to relocate the compressor facility, such relocation may require further environmental review.

The EIR finds that the potential for increased demand for fire control and emergency response services during both the project's construction and operation is a less than significant impact. This is in part because LGS has committed to providing equipment and training to local fire agencies. To ensure this commitment is met, the Final EIR adds an additional mitigation measure on this issue. (Mitigation Measure 3.11-1.)

To address the project's temporary disruption of traffic and the potential for interference with emergency response routes, the EIR requires LGS to develop and implement a traffic control plan. (Mitigation Measure 3.6-1.)

2. Agricultural Impacts

LGS proposes to drill several wells into the underground gas reservoir northeast of Lodi and to construct a pipeline to connect the wells to PG&E's pipeline system. For the most part, both the wells and the pipeline would be located on or adjacent to land currently used for agricultural purposes, with scattered rural residences and businesses. The EIR addresses the impact the

project would have on agricultural resources and operations in the regions, and identifies measures to reduce the impacts to agricultural land.

One such measure is to avoid pipeline construction in and near vineyards during harvest season. (Mitigation Measure 3.1-1.) Another is to bury the pipeline deeper than normal in some areas where certain agricultural practices are used. For example, a mitigation measure requires LGS to bury pipelines at a depth of eight feet in lands that are suitable for grape production but have not been deep ripped, and at least two feet below the bottom of existing irrigation and drainage ditches, or obtain the landowner's agreement to bury the pipeline at a shallower depth. (Mitigation Measure 3.1-2.) LGS also states that it will bury the pipeline deeper than 4 feet where agreed during individual negotiations.

Another mitigation measure requires LGS to prepare and submit a report to this Commission identifying where there the pipeline may potentially interfere with agricultural practices in the future, primarily because of soil conditions, and to undertake necessary remedial actions. (Mitigation Measure 3.3-1.)

These actions could include (1) reburying the pipeline to an appropriate depth; (2) looping the pipeline segment by placing a replacement pipeline segment at a greater depth and removing the shallow segment; (3) importing additional soil cover to maintain the pipeline depth at least four feet below the ground surface, unless it will interfere with existing agricultural practices; or (4) other measures which LGS proposes and this Commission approves. Also, when the project is abandoned, then this same mitigation measure requires LGS to remove pipeline segments in subsiding lands to prevent future interference with agricultural operations.

Another mitigation measure requires LGS weight or anchor the pipeline in areas where saturated soils would not prevent the pipeline from floating. (Mitigation Measure 3.4-1.) LGS must submit the engineering designs and supporting soil studies to the Commission for review.

Comments to the Draft EIR were concerned about subsidence of peat lands in the Delta, and focused on three primary issues: interference with agricultural activities, reduction in levee stability and rate of subsidence. The Final EIR analyzes more information developed for the CALFED Bay-Delta Program to explain subsidence issues. Because this information demonstrates that subsidence rates are less than historic rates, the EIR concludes that its recommended mitigation measures are sufficient.

3. Rural Character

Because the project would be located on rural lands in the Central Valley and Sacramento-San Joaquin River Delta, the EIR examines potential impacts of the project on rural aesthetics and character. The EIR identifies measures for reducing or eliminating visual or noise impacts. Key issues analyzed by the EIR include whether constructed facilities are visually compatible with the surrounding landscape, whether scenic view is affected by construction, and whether the project would result in noise impacts on people living, working, or attending school near the facilities. The EIR also examines consistency with the Sacramento and San Joaquin County General Plans and other regional plans.

The EIR describes the measures LGS has agreed to implement to minimize disturbance of the visual character of the site including, but not limited to, painting the facilities in earthtone colors to blend with the surrounding vegetation and landscape; screening the compressor facility with trees and other

facility components with vegetative landscape; and using shielded non-glaring light at the facility. The EIR states that LGS has agreed to provide a surety bond in the amount of the estimated annual cost of maintaining the landscaping. This bond will remain in effect until one year following the termination of the project's operations.[17] Mitigation Measure 3.12-1 also requires LGS to develop and implement a landscaping and site design plan to address the potential some of the larger project facilities have to degrade the view.

The EIR also addresses the project's compatibility with local land uses. In addressing the proposed project, the EIR finds a significant and unavoidable environmental impact in its pipeline alignment, and that no mitigation is available to reduce the inconsistency of this alignment with local and Delta Protection Commission policies to a less than significant level. This finding is not present in all the alternative pipeline routes. In addressing the alternative routes' compatibility with surrounding land uses, the EIR recommends several mitigation measures to minimize the project's effects on the surrounding communities. (See Mitigation Measures 3.1-4 and 3.1-5 for the Pubic Right-of-Way Alternative and Mitigation Measures 3.1-5 and 3.1-6 for the Existing Pipeline Corridor and the Composite Route Alternatives.)

The Draft EIR discusses the temporary disruption that residences and businesses would experience during construction activities. As proposed mitigation, the Draft EIR recommends two mitigation measures. The first is for LGS to employ noise-reducing practices to reduce construction noise. (Mitigation Measure 3.10-1.) The second is to reduce the project construction

[17] As stated above, all of LGS' agreed-to modifications of the project, such as those just described, become part of the definition of the project which the EIR reviews.

noise by restricting construction activities from 7:00 a.m. to 7:00 p.m., Monday through Saturday, installing noise-reducing barriers around drilling sites, and employing other noise-reduction activities. In its comments to the Draft EIR, the California Division of Gas, Geothermal, and Oil Resources had concerns about the recommendation to suspend drilling activities in the evening and weekend hours because requiring well-drilling activities to stop at night could compromise the safety and integrity of the wells.

In response, the Final EIR allows nighttime construction but requires LGS to follow a list of additional noise reduction measures. If, after LGS attempts all reasonable and practicable attempts to reduce noise, but nighttime noise levels remain above the significance threshold, the Final EIR requires LGS to offer temporary relocation assistance to affected residents. (See Mitigation Measure 3-10.2.)

Commenters on the Draft EIR expressed concern about regular releases of gas to the atmosphere from the compressor facility, or compressor facility venting. The Final EIR explains that normal operation of such facilities requires an operator to depressurize portions of the system regularly for maintenance. Additionally, LGS may have to release relatively large quantities of natural gas at high pressures in an emergency. The comments focused on three primary issues: noise, false emergency response alarms and odor.

Since publication of the Draft EIR, LGS performed additional engineering studies and design work. Based on this additional work, LGS will burn or "flare" all normal depressurization events, with the flare tip located in an excavated area on the compressor facility site, surrounded by a berm. The flames associated with normal operations should not rise above the berms and therefore should not generate false emergency response calls. The Final EIR states that CEQA would not require the noise produced from this approach to be mitigated,

since it would be less than the noise significance threshold established in the Draft EIR.

Flaring repair and maintenance events will result in a minor increase in compressor facility emissions from those analyzed in the Draft EIR. However, the Final EIR concludes that this small increase does not affect the Draft EIR's emissions analysis.

The Final EIR also concludes that its air quality analysis is sufficient for emergency depressurization events, because they are expected to occur infrequently, about every five to 10 years, and will result in a small increase in emissions. The Final EIR states that because emergency depressurization will result in the release of larger quantities of gas to the flare system, the flare would not rise higher than the landscaping surrounding the project site and therefore would not be highly visible. The Final EIR states that LGS will notify all appropriate agencies in the case of emergency depressurization.

The Final EIR determines that the potential noise impacts from these emergency events are less than significant because such events: (1) would not be excessively loud at the nearest sensitive receptor; (2) are not predictable; (3) are anticipated to occur infrequently, once every 5 to 10 years; (4) are expected to last no more than 1 hour and noise levels would decline during this period as pressure in the system decreased; and (5) are related to emergency events.

Additionally, the Final EIR adds an additional mitigation measure in order to minimize the occurrence of emergency depressurization events. (Mitigation Measure 3.10-3.)

4. Levee Stability

The pipeline would cross under several major waterways, all of which are kept in their channels by levees, before the pipeline terminates at Sherman Island in the Delta. The EIR discusses the issue of levee stability during and after pipeline placement because much of the surrounding land would be inundated in the event of a levee failure. The EIR also examines the potential impacts from the directional drilling process which LGS proposes to route the pipeline under the waterways.

The EIR states that the State Lands Commission will require LGS to prepare and have approved detailed engineering plans before LGS will be granted a lease to cross state lands, and the State Reclamation Board requires LGS to obtain an encroachment permit from the local flood control or reclamation district. The EIR states that the local districts have the opportunity to impose similar or more stringent requirements than the State Lands Commission on permits to drill under their respective levees. The EIR also notes that requiring LGS to use directional drilling under the levees reduces the risk of a levee failure.

The EIR also states that portions of the proposed pipeline within the 100 year floodplain could potentially be damaged if flood waters erode the soil cover. Also, because the pipeline is lighter in weight than the soil materials it displaces, the pipeline may float out of the trench when the over covering soil materials become saturated, especially in areas of low strength soil in the Delta. Exposing the pipe to flowing water may impose shear and bending loads that exceed design capacity, possibly causing the pipeline to rupture. Therefore, as a mitigation measure, the EIR requires LGS to use concrete coating, concrete collars, or other suitable methods to weight the pipeline in all areas subject to the

100-year flood, where saturated soils would not prevent the pipeline from floating. (Mitigation Measure 3.4-1.)

5. Water Quality

The EIR examines the potential for groundwater contamination from drilling activities, including contamination from drilling fluids and cross-connection of water tables. Cross-connection occurs when drilling opens a pathway between two separate sources of groundwater. The California Division of Oil, Gas and Geothermal Resources closely monitors well drilling procedures to prevent groundwater contamination. The EIR also examines surface water contamination that could occur wherever the project encounters waterways, including boring under rivers, canals, and ditches. In examining the potential for water quality effects, the EIR relies on the federal Environmental Protection Agency regulations, the California State Water Resources Control Board's and the Regional Water Quality Control Board's rules, regulations, and guidelines, and assumes that the project would be constructed and operated consistent with these agencies' requirements.

6. Geology

The EIR analyzes the potential effect of seismic and other geologic hazards on the project. The EIR considers the potential for destruction of unique paleontologic resources. The EIR also examines soils in the project area and discusses the potential for erosion and loss of top soil caused by construction and operation of the project. The EIR identifies measures to reduce or eliminate significant impacts, such as having LGS identify in a report to the Commission the areas of unstable soils where pipeline placement could interfere with agricultural practices, and undertaking necessary remedial actions as more fully described above in the discussion on agricultural impacts.

The EIR states that geologic hazards such as seismic activity must be considered in the design of the project, and that when the detailed engineering design of the project is completed, it will be submitted to several responsible agencies for approval. The EIR identifies numerous federal, state, and local agencies which have oversight responsibilities to ensure safety including (1) the U.S. Department of Transportation, Office of Pipeline Safety, which provides oversight of pipeline construction, operation, and safety; (2) the California Division of Oil, Gas, and Geothermal Resources, which provides oversight of design, installation, and operation of gas wells; and (3) San Joaquin County, which provides oversight of aboveground structures and buildings. The EIR states that at a minimum, the project will be designed to meet the seismic safety standards of the Uniform Building Code. The EIR also states that the Office of Pipeline Safety records of natural gas leaks in California show no relationship between pipeline leaks and major seismic events that have occurred since 1985.

7. Wetlands, Wildlife, and Habitat

The EIR examines potential impacts on wetlands, plants, wildlife, and habitats, including seasonal wetlands, vernal pools, and riparian areas. The EIR also identifies measures to avoid, minimize, or reduce impacts on biological resources to less-than-significant levels, such as confining construction activities and equipment to the designated construction work area, and, in areas that are not agricultural or developed, to restore the construction zone to preconstruction site conditions. (See Mitigation Measures 3.7-3a; 3.7-3b; and 3.7-3c.) Mitigation Measure 3.7-2 also requires LGS to control dispersal of noxious and invasive weeds and pests during construction.

The EIR analyzes potential impacts on fish and wildlife, including species designated as listed and sensitive under the state and federal Endangered Species Act, including the greater sandhill crane, Swainson's hawk, and giant garter snake. The EIR also analyzes the corridors, nesting areas, and habitats used by wildlife in the project's vicinity. The EIR also examines seasonal issues, and addresses the issue of when to avoid construction to protect nesting birds during the mating season.

Sandhill cranes winter in the Delta from September 1 through March 15, and these areas are important for foraging and roosting habitat. The Draft EIR conditioned construction in key areas during these months. In response to comments on the Draft EIR from the California Department of Fish and Game, the Final EIR modified its mitigation and prohibits LGS from constructing near important foraging and roosting habitats from September 1 through March 15 unless, after coordination with the Department of Fish and Game, the Commission determines construction can occur during this period without significantly affecting the sandhill crane. (Mitigation Measure 3.7-6.)

Additionally, Mitigation Measures 3.7-5; 3.7-7; 3.7-8; and 3.7-9 requires LGS to conduct preconstruction surveys, or consult with appropriate government agencies, and follow appropriate mitigation for potential construction disturbances of the valley elderberry longhorn beetle; nesting raptors, owls, and tricolored blackbirds; and nesting Swainson's hawks. Mitigation Measures 3.7-1a; 3.7-1b; and 3.7-1c require LGS to conduct a floristic survey and follow appropriate mitigation to minimize impacts on special-status plant populations.

8. Air Quality

Both the U.S. Environmental Protection Agency and the California Air Resources Board have designated the San Joaquin Valley as a nonattainment area, that is, an area that does not meet the relevant federal or state air quality standard, for ozone and PM 10. The EIR identifies both stationary and mobile sources of emissions resulting from the project, such as the natural gas-fueled compressors used for moving gas through project facilities, and identifies mitigation measures to reduce or eliminate those impacts from a CEQA analysis.

For example, the EIR directs LGS to comply with the San Joaquin Air District's regulations for, among other things, reducing exhaust from construction equipment and for fugitive dust prohibitions. The EIR requires LGS to water the construction site frequently to control dust. (Mitigation Measures 3.5-1a and 3.5-2.) The EIR also requires LGS to obtain emission offsets for NOx and ROG emission increases or install electric compressor facilities. (Mitigation Measure 3.5-3.) In order to reduce the potential for the release of small amounts of odorized natural gas, the EIR requires LGS to properly maintain above-ground piping components to minimize leaking of odorized gas, and that piping connections be welded to the extent practicable given design considerations. The EIR also requires LGS to inspect and maintain the facilities quarterly and to submit a report to the Commission identifying all detected leaks and repair actions taken no more than one month following each quarterly inspection. This mitigation measure also requires LGS to maintain a hotline to handle odor complaints. (Mitigation Measure 3.5-4.)

The EIR finds that the construction-related ROG and NOx emissions in Sacramento County are a significant and unavoidable

environmental impact for the proposed project and all three alternatives. Although no mitigation is available to reduce this impact to a less than significant level, the EIR recommends as a best management practice, the Commission should require LGS to comply with the San Joaquin Air District's recommendation for construction equipment mitigation measures to reduce exhaust emissions from construction equipment for construction activities within Sacramento County.

Several commenters on the Draft EIR stated that although the compressor facility would comply with the San Joaquin Valley Unified Air Pollution Control District requirements, the EIR should impose additional mitigation on LGS because local residents would still be exposed to substantial emissions. The commenters suggested that the EIR should require LGS to install electricity-driven compressors to eliminate air quality impacts and to reduce potential noise impacts.

In response, the Final EIR concludes that after additional air quality modeling of ozone precursors, their levels would not be considered substantial under CEQA. The Final EIR also refers to the Draft EIR where the noise generated by a gas-fired compressor facility does not require mitigation under CEQA. The Commission's EIR consultant also contracted with an independent consulting firm, Henwood Energy Services, to evaluate information on cost and reliability of electric compressors. In light of this new information, the Final EIR concludes that the potential air quality and noise impacts associated with the compressor facility are not significant under CEQA, and that requiring electric motors for gas compression could affect the viability of the project. Therefore, the Final EIR does not adopt additional mitigation for this issue.

D. Other EIR Sections

As required by CEQA, the EIR also contains a section addressing the cumulative and growth-inducing impacts of the proposed project. For the most part, the EIR determines that the project has very little potential for cumulatively considerable effects as defined by the CEQA Guidelines, mainly because most of the project's effects are temporary, and the long-term effects are either not additive to the effects of other projects or are so minor as to not be cumulatively considerable.

Pub. Res. Code § 21081.6 provides that when a public agency approves a project subject to implementing and monitoring measures, the agency must adopt a reporting or monitoring program for the changes made to the project or adopted conditions of project approval to mitigate or avoid significant effects on the environment. The purpose of the reporting or monitoring program is to ensure compliance during project implementation.

The EIR presents a draft mitigation monitoring and reporting framework for the mitigation measures proposed by LGS and incorporated into the project, and a mitigation and monitoring plan for the mitigation measures proposed for the Composite Route Alternative.

The Final EIR responds to public agency and general comments to the Draft EIR, and includes a clarification of major issues, revisions to the Draft EIR, and a verbatim copy of comments to the Draft EIR and responses to each comment.

E. EIR Certification

The Commission must conclude that the EIR[18] is in compliance with CEQA before any final approval can be given to the application. This is to insure that the environmental document is a comprehensive, accurate, and unbiased tool to be used by the lead agency and other decisionmakers in addressing the merits of the project.

Although we deny the application, we do not do so on the basis of the adequacy of the EIR. The EIR has been completed in compliance with CEQA. The EIR reflects the Commission's independent judgment and analysis on the issues addressed by the EIR, and the Commission has reviewed and considered the information in the EIR before issuing this decision on the project. We will certify the EIR.

7. SB 177

On October 7, 1999, the Governor signed SB 177 into law. SB 177 was effective on January 1, 2000. A November 22, 1999, ALJ ruling made tentative conclusions regarding the applicability of SB 177 to this proceeding, and requested the parties' comments.

SB 177 places conditions on the ability of certain public utilities to exercise the power of eminent domain for purposes of providing competitive services. For example, Section 3 of SB 177, which adds Section 625 to the Public Utilities Code, provides that "a public utility that offers competitive services may not condemn any property for the purpose of competing with another entity in the

[18] As stated above, this decision defines the EIR as consisting of two separate documents, the Draft EIR and the Final EIR, which cumulatively make up the EIR.

offering of those competitive services, unless the commission finds that such an action would serve the public interest, pursuant to a petition or complaint filed by the public utility... " (Section 625(a)(1)(A).) Section 625(e) further states that a public utility that does not comply with this section may not exercise the power of eminent domain.

The ALJ ruling stated that SB 177 expressly exempts certain public utilities from its coverage, but these exemptions do not appear to extend to a company like LGS.[19] SB 177 also limits the applicability of its requirements in other ways which do not apply to this application.[20]

We do not define here all services which may be "competitive services" as opposed to those services provided pursuant to a "commission-ordered obligation to serve." However, because LGS' application concerns a competitive gas storage facility, and LGS requests exemptions from other statutory requirements because it plans to operate a competitive business which is not financed with ratepayer funds, we find that LGS' application concerns

[19] According to Section 625(a)(4), these exceptions include a railroad corporation, a refined petroleum product common carrier pipeline corporation, and a water corporation, none of which describes LGS.

[20] For example, Section 625(a)(1)(B) says in part that the requirements set forth above do not apply to the condemnation of any property necessary solely for an electrical company or gas corporation to meet its "commission-ordered obligation to serve." This section further provides that "[p]roposed exercises of eminent domain by electrical or gas corporations that initially, or subsequently, acquire property for either commission-ordered electrical corporation obligation to serve and telecommunications services are subject to paragraph (2) of subdivision (b)." Furthermore, certain utilities or their affiliates or subsidiaries are required to give notice, as specified, if they intend to install telecommunications equipment on property acquired by eminent domain. Again, these situations do not describe the instant application.

"competitive services" for purpose of SB 177, and that none of the other exemptions set forth in SB 177 apply to LGS.

We therefore agree with the ALJ's tentative conclusion that if LGS were to obtain a CPCN from this Commission, that LGS would have to follow the mandates of § 625 before LGS could condemn any property for the approved project. This is so because if LGS obtained a CPCN from this Commission, it would be a public utility offering competitive gas storage services and any condemnation action it might initiate would not be filed until after January 1, 2000, the effective date of SB 177.

Although we deny this application, were we to grant it, we would issue that CPCN on the condition that LGS would have to follow the mandates of SB 177 before it could exercises the power of eminent domain. That means that LGS would have to file a complaint which has been served on the owner of the property to be condemned, and other affected interests. This complaint would initiate an adjudication hearing before the Commission. (The Commission has developed a document entitled "Information for Property Owners, Utilities, and the Public Regarding Senate Bill 177," which is attached to the EIR.)

According to SB 177, before the Commission could make a finding that LGS' proposed condemnation is in the public interest, LGS must show either that the proposed condemnation is necessary to provide service as a provider of last resort to an unserved area, except that when there are competing offers from facilities-based carriers to serve that area; or all of the following:

(a) The public interest and necessity require the proposed project;

(b) The property to be condemned is necessary for the proposed project;

(c) The public benefits of acquiring the property by eminent domain outweighs the hardship to the owners of the property;

(d) The proposed project is located in a manner most compatible with the greatest public good and least private injury. (See Section 625(b)(2).)

In their briefs, the parties are in general agreement that if the Commission grants LGS a CPCN, that LGS would have to comply with § 625(b)(2) of SB 177. The parties differ on the details of such implementation. For example, LGS agreed that the ALJ's tentative conclusions set out in the November ruling (that LGS would have to comply with SB 177 if the Commission granted LGS a CPCN) were correct. Wild Goose believes that in order to ensure an efficient process, with no undue delay, LGS should file a petition to comply with SB 177 during the pendency of the CPCN process. The Farm Bureau appears to argue that LGS must satisfy SB 177's requirements before this Commission can act upon the instant CPCN application. Other parties raise the issue of the conclusory effect of findings made in this decision upon the SB 177 issues.

By enacting SB 177, the Legislature placed conditions on the ability of certain public utilities to exercise the power of eminent domain for the purposes of providing competitive services. However, in this case, the proceedings called for by SB 177 are separate proceedings (i.e. a complaint and an adjudicatory hearing) from the instant CPCN proceeding. Moreover, LGS could not yet initiate an action pursuant to SB 177 because it is not yet a public utility. We deny LGS' request for a CPCN in this decision. However, were we to grant LGS' request, we would not address the SB 177 criteria at this time but rather, if and when LGS filed commenced a proceeding according to the mandates of SB 177. Similar issues with respect to the weight certain findings in this decision would have, if any, in a subsequent proceeding would be addressed in the subsequent proceeding.

The Williams argue that in order for landowners to effectively participate in SB 177 proceedings, they should be compensated for their reasonable costs of

participation, including attorneys fees. We do not resolve this issue here, because the issue of whether a party qualifies for intervenor compensation in this circumstance should be addressed in the specific proceeding in which the party is appearing (i.e., the complaint proceeding). The Commission's informational document, cited above, also contains a section on intervenor compensation.

8. Other Issues

Because we deny this application, we do not resolve other outstanding issues. Some of these include interconnection issues, which for the most part were uncontested or resolved by the interested parties. The first is to determine the manner in which LGS' facilities will initially be connected with PG&E's system, and to determine if interconnection can be accomplished without interfering with existing service. Another issue is whether the Commission should require LGS, as it did Wild Goose, to: (1) provide the Director of the ED the final total cost of the interconnection, including the share of the cost paid by each entity; and (2) enter into an operating and balancing agreement with PG&E before gas, including cushion gas, flows to the LGS facility on the PG&E system.

Other uncontested issues include whether LGS lacks market power, and therefore should be permitted to charge market-based rates and to file its tariffs without cost justification.

Indemnity issues were contested. Included in these issues is whether LGS will carry ample liability insurance coverage, etc. Given our disposition of this application, it is not necessary to address these issues further.

Finally, the scoping memo left open the issue of whether to hold further hearings on this application after the issuance of the Final EIR. The hearings would not be on the Final EIR, which does not require hearings, but rather, on issues raised in the non-environmental portion of the case that might need to be

addressed further in light of any changes to the proposed project made in the EIR. We do not believe that the EIR contains the type of changes that require further hearings. Also, given our disposition of this application, further hearings are not necessary.

Findings of Fact

1. The natural gas industry underwent considerable change in the 1980s and 1990s, with major policy changes occurring at both the federal and state level.

2. Several years ago, the Commission approved a CPCN for the first competitive gas storage facility, the Wild Goose facility in Butte County, to operate. The instant application is the second application for a CPCN to offer competitive gas storage services to be considered by the Commission.

3. LGS is a wholly-owned subsidiary of Western Hub Properties, LLC (WHP). Haddington Ventures, LLG (Haddington) formed WHP in 1998 to develop natural gas facilities, primarily in the western United States and Canada. WHP is presently owned by two limited partnerships, Haddington Energy Partners, L.P. and Haddington/Chase Energy Partners (WHP), L.P., respectively.

4. In the mid-1980s, and before forming Haddington Ventures, LLC, the three Haddington principals, Larry Bickle, John Strom and Chris Jones, formed and managed Tejas Power Corporation, which later became TPC Corporation (TPC). TPC was sold to PacifiCorp in the spring of 1997.

5. The LGS project management team, Mssrs. Dill (LGS' President) and Bergquist (a WHP Vice President) have substantial experience in the natural gas industry, including gas storage.

6. The final EIR consists of two separate documents, the Draft EIR and the Final EIR, which cumulatively make up the EIR.

7. Lodi Gas proposes to convert a depleted natural gas production field into a storage facility. The field LGS has chosen is about 1,450 acres, or approximately 5.4 miles, northeast of Lodi in San Joaquin County. For purposes of evaluating the project under CEQA, the "proposed project" identified in the EIR is the project formally presented in LGS' application as modified by the three amendments to the application and LGS' proposed mitigation measures. The EIR assumes that LGS will meet all the construction specifications and will complete all mitigation measures.

8. The project has the following principal components: the Lodi gas field, a field collection and water separation facility, a gas dehydration and compressor facility, approximately 33 miles of field and transmission gas pipeline, and two PG&E interconnect and meter stations.

9. Only the storage rights, and not the mineral rights, are required for the project. However, LGS is also seeking either the mineral rights to the property or consent and agreement of the mineral owners, in some instance limited to the specific zones to be utilized for natural gas storage. According to LGS, this is being done for two purposes: (1) to preclude another owner of the mineral rights from drilling into or through the storage reservoirs and causing damage or recovering the stored gas; and (2) to preclude claims that there exist remaining recoverable gas reserves in the storage reserves prior to injection of new gas.

10. LGS describes its own system capability as offering both firm and interruptible storage services and designed to accommodate an inventory of 12 Bcf of working gas, with a maximum firm deliverability of 500 MMcf/d and a maximum firm injection capability of 400 MMcf/d. This is part of LGS' project description and does not refer to PG&E's ability to transport gas to and from LGS.

11. LGS filed its initial application on November 5, 1998. Subsequently, LGS filed three amendments to the application, dated January 22, February 5, and April 30, 1999, respectively.

12. A January 7, 1999 ALJ ruling, *inter alia*, required LGS to serve a notice of availability of its application and the ruling on all owners of land, under, or on which the project may be located, and owners of land adjacent thereto. Because the third amendment to the application presented an alternative siting of the compressor station, LGS was also required to undertake similar service requirements as set forth above on landowners affected by the third amendment to the application.

13. Pursuant to Pub. Util. Code § 1701.3, the scoping memo designated ALJ Econome as the principal hearing officer.

14. Hearings on the non-environmental issues were held from June 14 through 16, 1999.

15. The parties presented closing argument before Assigned Commissioner Bilas, as well as the ALJ, on June 22, 1999.

16. The Commission held two public participation hearings in Lodi on October 19, 1999, where the public could comment on both the non-environmental issues and the Draft EIR.

17. Pursuant to Rule 8(d), parties were given until June 30, 1999, to submit a written request for final oral argument before the entire Commission. A July 16, 1999 ALJ ruling confirmed that no party submitted such a request, and that such argument would therefore not be scheduled or heard.

18. Altogether, the Commission held six days of hearings in this case (including the prehearing conference). Assigned Commissioner Bilas was present for three of those days. The final decision is timely issued, because it

follows the schedule outlined in the scoping memo and is also issued before the 18-month time period set forth in SB 960, Section 1 (uncodified portion).

19. A July 16, 1999 ALJ ruling denied the Williams' notice of intent to claim compensation on the grounds that the Williams are not a "customer" and therefore have not met the threshold test for eligibility for compensation in this proceeding under Pub. Util. Code § 1801 *et seq.*

20. On February 17, 1999, the Commission, through its Energy Division, notified LGS that its application had been deemed complete for purposes of Rule 17.1.

21. The Commission issued the Draft EIR in September 1999.

22. The Commission issued its Final EIR on February 15, 2000.

23. CEQA, its Guidelines, and the Commission's regulations generally require that a lead agency complete and certify the EIR within one year of the date the agency has accepted the application as complete. CEQA Guidelines and Commission Rules permit a one-time 90-day extension of the one-year EIR completion and certification requirement, with the concurrence of applicant and the Commission.

24. An October 14, 1999 letter from applicant's counsel to the assigned ALJ memorialized the agreement to a 90-day extension, because of the time necessary to finalize the EIR after the conclusion of the public comment period.

25. The one-year deadline for the Commission to complete and certify the EIR is May 17, 2000, and the deadline for the Commission to approve or disapprove the project is 90 days thereafter.

26. Two different regulatory schemes define this Commission's responsibilities in reviewing LGS' request for the approval of this application. Pub. Util. Code §§ 1001 *et seq.*, require that before LGS can construct this project, the Commission must grant a CPCN on the grounds that the present or future

public convenience and necessity require or will require construction of the project. Pub. Res. Code §§ 21000 *et seq*. (CEQA) require that the Commission, as lead agency for this project, prepare an EIR assessing the environmental implications of the project for its use in considering the request for a CPCN.

27. In 1992, the California Legislature formally expressed its objective of creating competition for natural gas storage services. The Legislature passed and the Governor approved AB 2744 (Chapter 1337 of the California Statutes of 1992, which is uncodified), which made certain findings about gas storage and urged certain action by the Commission. The Commission has summarized AB 2744 as not requiring, but urging, Commission action in the gas storage area.

28. In the 1993 Gas Storage Decision, the Commission adopted a "let the market decide" policy for gas storage. The Commission stated that it should not test the need for new gas storage projects on a resource planning basis, so long as all of the risk of the unused new capacity resides with the builders and users of the new facility.

29. In the Gas Storage Decision, the Commission stated that its "let the market decide" policy was consistent with Pub. Util. Code §§ 451 and 1001. However, the Commission also recognized that it was not abandoning regulation of gas storage, and that CPCNs were still necessary to the extent required by law.

30. Both the Commission and the Legislature have found the need for competitive gas storage facilities. LGS and Calpine reiterate and elaborate on the rationale underlying this need.

31. Under Pub. Util. Code § 1002, the Commission must consider the following factors in determining whether to grant a CPCN: (1) Community values; (2) Recreational and park areas; (3) Historical and aesthetic values; and (4) Influence on the environment. The obligation to consider the factors listed in § 1002 is independent of the Commission's obligation under CEQA. In addition

to its CEQA obligations, Pub. Util. Code § 1002 provides the Commission with responsibility independent of CEQA to include environmental influence and community values in the Commission's consideration of a request for a CPCN.

32. The proposed project is incompatible with community values. At the two public participation hearings held on October 19, 1999, over 60 persons spoke regarding the project. All but one opposed it, as did the State Assembly Representative from the project area, and a member of the San Joaquin County Board of Supervisors. Many other Lodi area residents also have written letters to the Commission opposing the project.

33. The project affects community values in that, according to local residents, it may frustrate the community goal of continued development of the Lodi area wine industry and result in additional public safety services costs.

34. We are not aware of community members who support the project on the basis of the tax revenues it might generate, and some are concerned that the project may jeopardize revenues generated by the local wine industry.

35. For the preferred alternative (the Composite Route Alternative), as well as the other alternatives, the EIR requires that the Commission make a statement of overriding consideration with respect to construction-related ROG and NOx emissions in Sacramento County.

36. The EIR discusses the "no project" alternative. The plethora of environmental and safety concerns discussed and mitigated by the EIR would not be present if the "no project alternative" were followed. According to the EIR, "[n]ot building the proposed project would avoid the environmental impacts associated with the project. The proposed project itself is not needed to avoid any environmental impact."

37. Although the EIR states that air emissions from the proposed compressor station are sufficiently offset under CEQA by obtaining emission offsets within

San Joaquin County, this does not necessarily mitigate the actual or perceived effect of air emissions on the property adjacent or close to the project.

38. Offering temporary relocation assistance to individuals who are affected by nighttime construction-related noise, if all reasonable and practicable attempts to reduce noise have been attempted and nighttime noise still remains above the significance threshold, would mitigate the construction-related noise problem. This is one of the project's short-term impacts, but would still be disruptive to the individual landowners involved.

39. The EIR levee analysis, which places the decision on whether or not to permit placement of the pipeline under the levees in the hands of the State Lands Commission, the State Reclamation Board, or the local reclamation district, as appropriate, is sufficient analysis for purposes of the EIR. However, a further analysis of the risk of such an occurrence would have benefited our assessment of this project and its impact on the community, and the absence of such an analysis adds to our concerns that this project infringes on community values.

40. If we grant LGS' application, LGS will have the right to exercise the power of eminent domain with respect to property it believes is necessary to conduct the authorized gas storage operations, although LGS will have to comply with SB 177 before exercising this right. This is a sovereign right which lets the courts, and to the extent set forth in SB 177, the Commission, rather than the market, decide whether or not LGS can acquire certain landowners' property and at what price. This is a powerful negotiating tool in property acquisition.

41. Diminution in value of property lying near, but not on or under the proposed project, may not be compensable in a condemnation proceeding.

42. The record does not show a specific need for this project in the general Lodi community; that is, the citizens in the Lodi area have no greater need for this gas storage project than do any other Californians.

43. The EIR includes a detailed analysis of three alternative pipeline routes, which are technically feasible and acceptable to LGS, and were developed in response to public concerns during the scoping process regarding disruption of agriculture production and consistency with county and Delta Protection Commission policies regarding the consolidation of gas pipelines into transmission corridors.

44. The EIR determines that the Composite Route Alternative is the preferred alternative, largely because it has one less significant and unavoidable environmental impact than does the proposed project.

45. The EIR states that although use of the existing public right-of-way alternative may be preferable in some areas, in other areas this alternative route may run closer to residences than the original planned route.

46. East of Highway 5, the Existing Pipeline Corridor has greater impacts on private landowners because it does not follow the existing rights-of-way, as does the preferred alternative through most of that portion of the route.

47. LGS has stated that the Composite Route Alternative is now its preferred route and includes its preferred compressor facility location.

48. The EIR analyzes the environmental impacts, mitigation measures, and significance after mitigation under the following categories: (1) land use, planning, and agricultural resources; (2) population and housing; (3) geology, soil, and paleontology; (4) hydrology; (5) air quality; (6) transportation and circulation; (7) biological resources; (8) energy and mineral resources; (9) public health and safety; (10) noise; (11) public services and socioeconomics; (12) visual resources; and (13) cultural resources. The EIR determines that under its preferred alternative, all significant environmental impacts except one can be mitigated to a less than significant level. The EIR discusses the potential

environmental impacts at a project-wide level, but does not consider the project's impacts on specific individual landowners.

49. Although we deny the application, we do not do so on the basis of the adequacy of the EIR.

50. The EIR has been completed in compliance with CEQA.

51. The EIR reflects the Commission's independent judgment and analysis on the issues addressed in the EIR, and the Commission has reviewed and considered the information in the EIR before issuing this decision on the project.

52. By enacting SB 177, the Legislature placed conditions on the ability of certain public utilities to exercise the power of eminent domain for purposes of offering competitive services.

Conclusions of Law

1. We affirm the July 16, 1999 ALJ ruling denying the Williams' notice of intent to claim compensation on the grounds that the Williams are not a "customer" and therefore have not met the threshold test for eligibility for compensation in this proceeding under Pub. Util. Code § 1801 et seq.

2. The EIR, which consists of two separate documents, the Draft EIR and the Final EIR, should be certified.

3. Because CPCNs are still necessary to the extent required by law, LGS' application must still comply with, *inter alia*, Pub. Util. Code § 1002. Also, if LGS only relies on the Gas Storage Decision for a presumptive showing of need, it may be difficult for the Commission to determine whether or not there is evidence to support a finding of overriding consideration, if necessary, with respect to the EIR that CEQA requires in this case.

4. The record has established a general need for competitive gas storage services in California.

5. While we cannot conclude from the record that it is reasonable that the existence of this project in close vicinity with the area's emerging wine tourism will damage the public's perception of the area's winegrape growing reputation, neither can we guarantee that it will not occur.

6. Although we recognize that the project's construction-related ROG and NOx emissions in Sacramento County, which the EIR states cannot be mitigated to a less-than significant-level and thus, would require a statement of overriding consideration, is one small issue in a project of this complexity, and the EIR recommends a best maintenance practice to address this issue, we still cannot make the statement of overriding consideration for this issue in light of the project's impact on community values.

7. When weighing the factors set forth in Pub. Util. Code § 1002 against the need for the project, in exercising our discretion we conclude that LGS' application for a CPCN should be denied.

8. In weighing the factors set out in Pub. Util. Code § 1002 against the project's need, our conclusion might be different if LGS' ability to acquire property necessary for its project were solely limited to market constraints.

O R D E R

IT IS ORDERED that:

1. The Environmental Impact Report (EIR), which consists of two separate documents, the Draft EIR and the Final EIR, shall be certified.

2. Lodi Gas Storage, LLC's application for a certificate of public convenience and necessity to develop, construct, and operate an underground natural gas storage facility and ancillary pipeline and to provide firm and interruptible storage services at market-based rates, is denied.

3. The proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A
(3 pages)

ATTACHMENT B
(12 pages)

ATTACHMENT C
(22 pages)

ATTACHMENT D
(15 pages)

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