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SUBJECT:

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RESPONSE TO NRC REQUEST AND INDICATING APPLICANT'S POSITION WITH RESPECT TO
CONCERNS RAISED BY CA STATE OFFICE HISTORIC PRESERVATION RE LEVEL OF
COMPLIANCE BY NRC WITH THE REQUIREMENTS OF THE NATL HISTORIC PRESERVATION ACT
OF 1966 & REGULATIONS PROMULG

PLANT NAME: DIABLO CANYON - UNIT 1
DIABLO CANYON - UNIT 2

REVIEWER INITIAL: YJM
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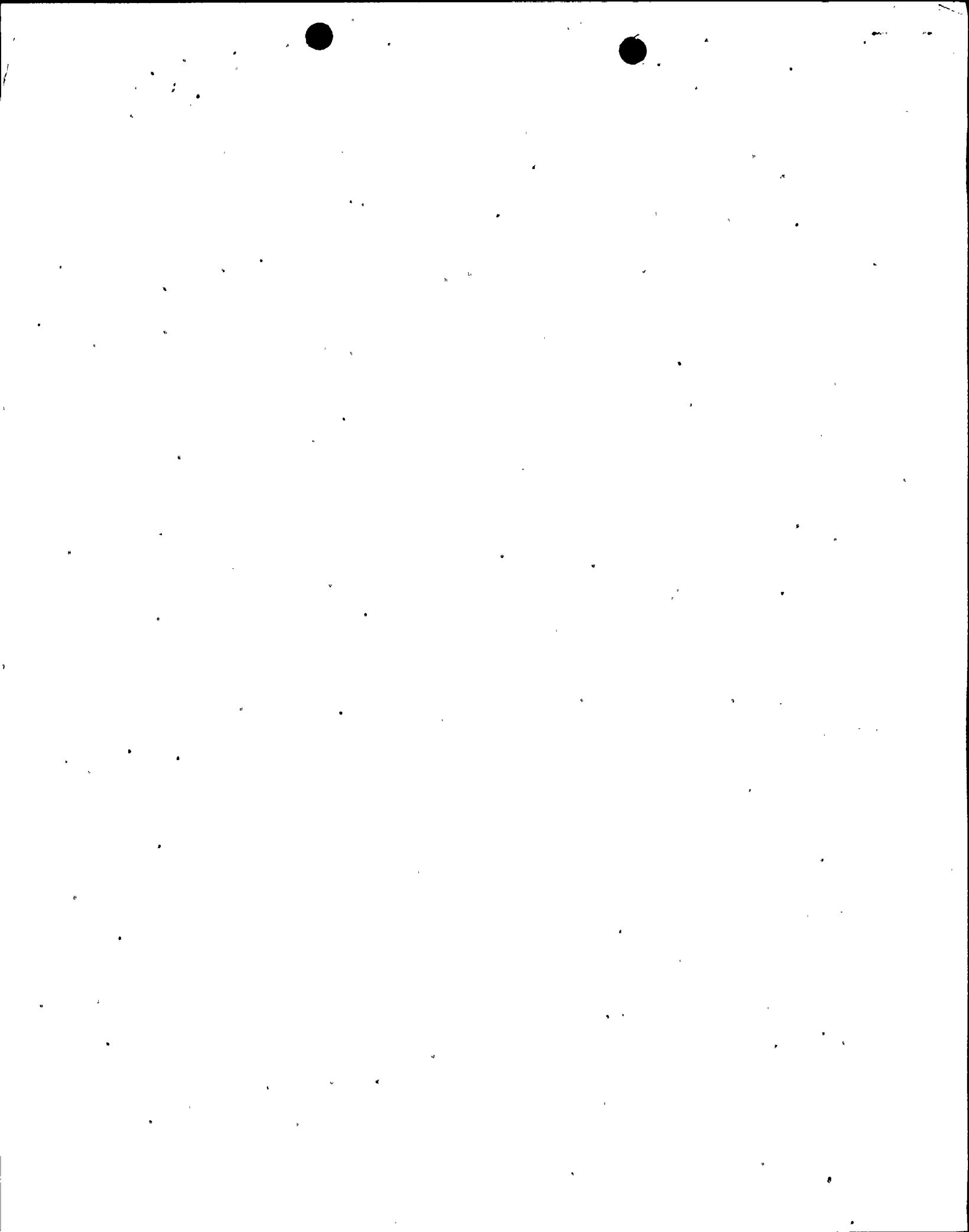
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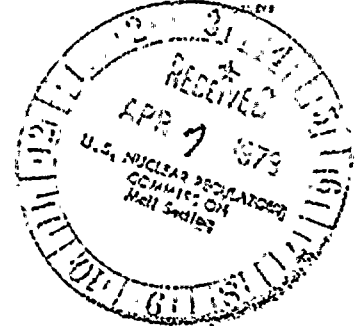
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April 3, 1978



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Nuclear Regulatory Commission
Washington, D. C. 20555

Dockets 50-275-OL, and 50-323-OL
Diablo Canyon Units 1 and 2

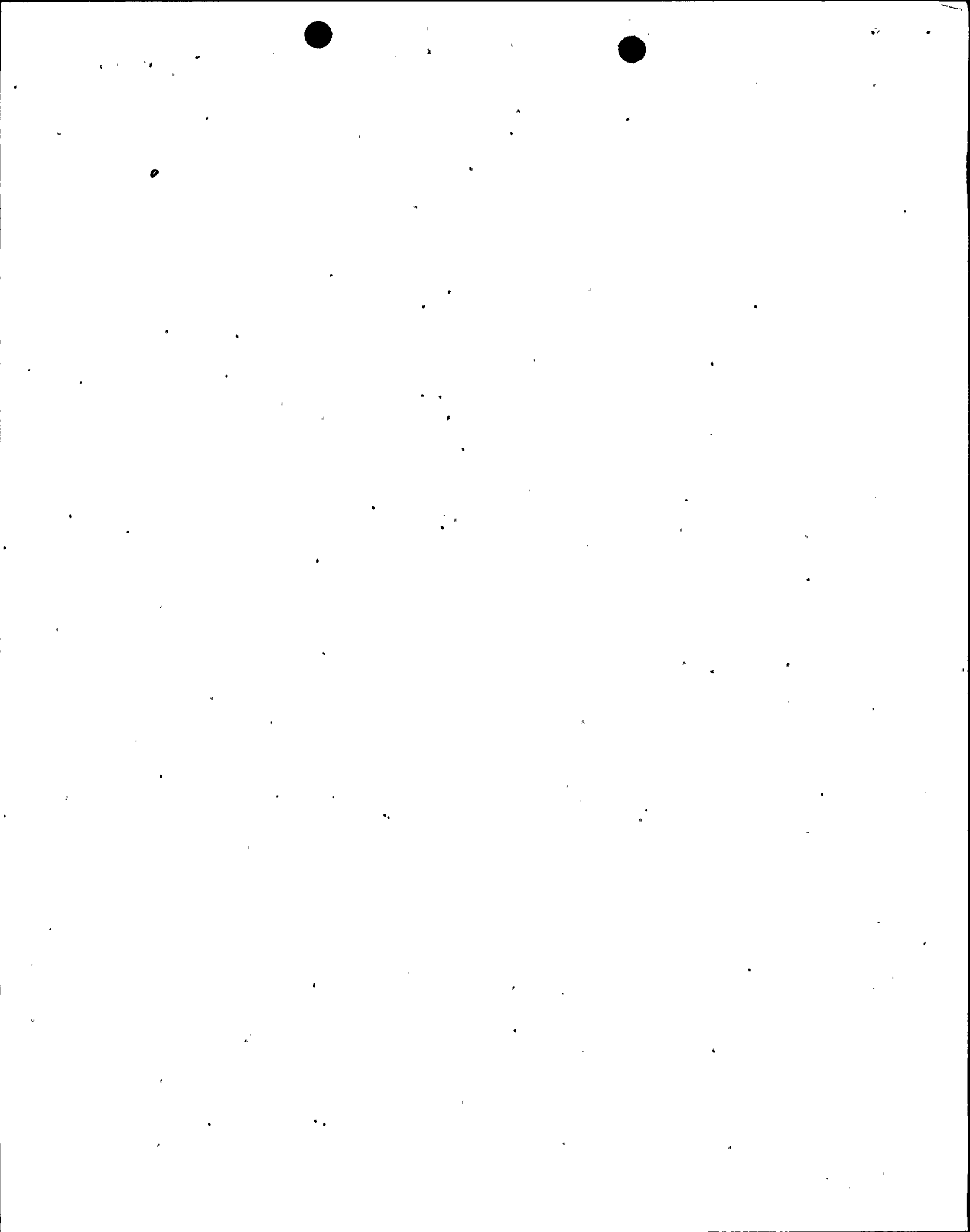
Dear Mr. Knighton:

The California State Office of Historic Preservation (SOHP) by a letter addressed to Daniel Muller, Deputy Director, Division of Site Safety and Environmental Analysis and dated January 23, 1978, has expressed a number of concerns relating to the level of compliance by the Nuclear Regulatory Commission (NRC) with the requirements of the National Historic Preservation Act of 1966 (Act) (16 U.S.C. 470f et seq.) and regulations promulgated in connection therewith (36 C.F.R. 63 and 800 et seq.). In your subsequent letter to me, you requested that the applicant provide information necessary to resolve the concerns raised by the January 23 letter and otherwise comment on the matters raised therein.

The purpose of this letter is to respond to your request and indicate the applicant's position with respect to the concerns expressed by SOHP.

Although the majority of the discussion which follows concerns the five points which in the opinion of SOHP remain unresolved and the SOHP recommendations as to the steps required to resolve those points, this letter will also serve to update the NRC on the status of the Native American concerns regarding Chumash artifacts and access to the plant site.

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Prior to responding to the specific aspects of the SOHP letter, however, I believe that it would be useful to outline the extent to which the applicant believes the 1966 Act impacts upon the pending application for operating licenses for Units 1 and 2. A clear understanding of the evolution of the scope of the Act will be of use in determining the extent to which prior authorized activity at the plant site tends to preclude a broad application of the procedures normally required by the Act.

The National Historic Preservation Act was enacted on October 15, 1966. As originally enacted, section 106 of the Act provided that the head of any federal department or independent agency "having authority to license any undertaking shall, . . . prior to the issuance of any license, . . . take into account the effect of the undertaking on any . . . site . . . or object that is included in the National Register" (emphasis added). By Executive Order No. 11593, dated May 13, 1971, President Nixon expanded the scope of responsibility of federal agencies, requiring them to locate, inventory and nominate sites within their jurisdiction that "appear to qualify" for listing. Said activity was to be completed by July 1, 1973. The obligation to consider all sites before licensing, which may be implied from Executive Order No. 11593 was formally enacted in 1976 by amendment to section 106 (Pub.L.94-422, Title II, § 201(3)). That section now requires that the appropriate federal agency take into account the effect of the undertaking on any site that "is included in or eligible for inclusion in the National Register" (emphasis added).

The applicant believes that it is essential to keep the progression cited above in mind when considering the application of the Act to this project. When the initial construction permits for Units 1 and 2 were issued in April 1968 and December 1970 respectively, there was absolutely no statutory obligation on the part of the NRC to consider the matters raised by the Act. At the time the Act only applied to undertakings which were included in the National Register of Historic Places. The Diablo Canyon plant site was not then, and is not now, included in the National Register. By the time that Executive Order No. 11593 was issued or the Advisory Council Procedures (36 C.F.R. 300) were even published in proposed form (38 Fed.Reg. 5388, Feb. 28, 1973), the earth-moving activities at the site had been completed and construction was well under way.

The foregoing discussion, although seemingly unrelated to the issue of the requirement of compliance with the Act prior to operational licensing, is in fact, we believe, critically related to that issue. As discussed more fully below, the fact that prior construction activity occurred at the site raises a very legitimate question as to whether any of the purported archeological sites in the area retain any integrity from an archeological or historical standpoint. Equally significant, the fact that the prior construction activity did occur in full compliance with the then existing Act in effect means that the



only question which the NRC must address in this regard is the extent to which operation of the plant will affect any historic sites, to the extent they existed and retain integrity, in any manner different than the prior construction activity already has affected those sites. With this framework in mind, it is appropriate to address the points initially raised by the January 23, 1978, letter from the SOHP.

1. Survey Of Total "area of environmental impact" - SOHP's assertion that the total area of environmental impact has not been surveyed is without support. In November 1966, applicant retained Mr. Francis A. Riddell, Chief Archeologist for the California Department of Parks and Recreation, to make an archeological survey of the Diablo Canyon area. Mr. Riddell's survey covered the plant site boundary as well as the area included in the proposed access road. In the course of this survey, Mr. Riddell identified 11 sites of archeological significance. Mr. Riddell's findings and recommendations for the further archeological study are contained in two reports submitted to applicant, dated November 1966 and February 1968. Copies of those reports as well as the survey boundary map were hand delivered to Jeremiah D. Jackson of your staff on February 27, 1978.

As a result of the survey conducted by Mr. Riddell, applicant entered into a contract with the Central California Archeological Foundation to provide for the excavation of those sites of archeological interest identified in the Riddell reports. Of particular concern was the excavation of the power plant and access road. This work was performed in 1968 and is covered in a report by Roberta S. Greenwood, dated 1972, and entitled "9,000 Years of Prehistory at Diablo Canyon, San Luis Obispo County, California." (San Luis Obispo County Archeological Society Occasional Paper No. 7.)

In light of the scope of the Riddell survey, the first point in the SOHP letter would seem unwarranted. The survey covered the full plant boundary as well as the area of the access road. To the extent that any chemical spraying, vehicular patrol or discing will occur in connection with operation of the plant, those activities will take place within the area surveyed.

In regard to the activities noted above, it might be helpful to note here that during operation of the plant the only areas within the plant site boundary or the area north of Diablo Canyon owned in fee by the applicant which is anticipated to be weed-controlled by spray are the 220 kv and 500 kv switchyards and a three foot wide strip along each side of the improved roadways. As to the switchyards, those areas will be sprayed in their entirety, plus a two foot strip outside the surrounding fences. The particular spray used is comprised of 8 lbs. simazine and 4 lbs. Amino-Trizole in 100 gallons of water applied at a rate of 100 gallons per acre.



It should also be noted with regard to the spraying activity that the areas of primary spraying -- the switchyards -- were the subject of prior excavation and were built up by filling. As such, they would apparently not be eligible sites as a result of this past alteration activity.

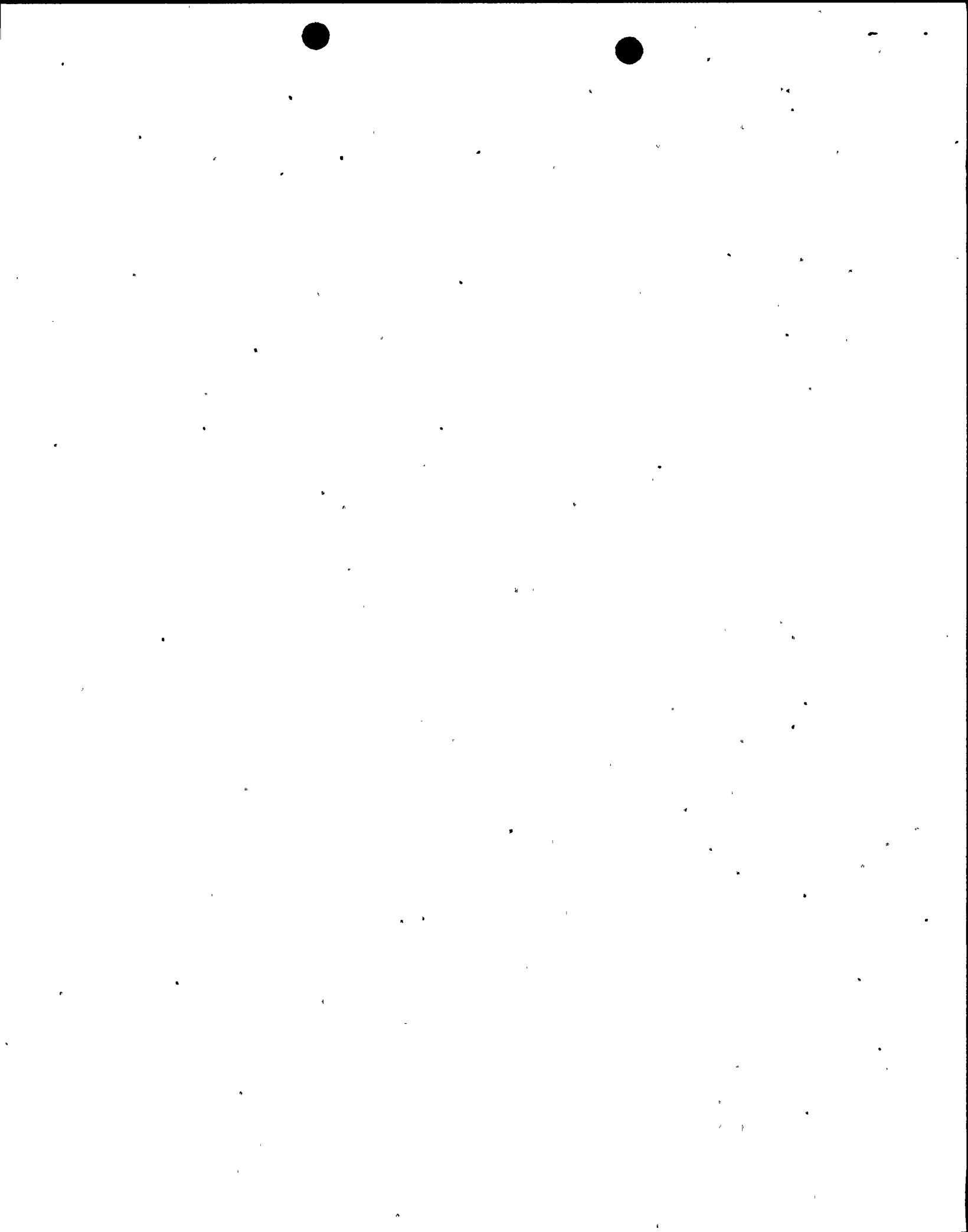
As to the other activities mentioned in point 1 of the SOHP letter, no discing operations are anticipated within the plant site boundary. To the extent that vehicular patrol will continue during operation it will occur on presently constructed improved roads. To the extent that any further construction is planned at the immediate site, such construction would occur in the immediate location of Units 1 and 2, which locations were scraped to bedrock during construction and thus were sterilized of historical artifacts.

2. Archeological Site Used As Storage Area - Although there are several areas where heavy equipment is being stored, these areas are not known significant archeological sites, as identified by Riddell or Greenwood. The storage area most likely being referred to by SOHP in point 2 is the area which lies north of Diablo Canyon. That location is northerly of the site referred to as "SLO-2" or "Site 1" in the Greenwood report. Site 1 is currently partially fenced off and is covered by a protective overburden of clay and soil of approximately 14 feet. Material excavated from the power plant site was deposited in this location to protect the underlying subsurface. After placement of the overburden, the area was used at various times for storage of construction materials. Operation of the plant will not, however, impact this site.

An additional laydown area is located on the coastal plateau just southwest of the plant proper. This area, which may coincide with Site 3 in the Riddell survey, is an archeological site only to the extent it was identified by Riddell. Following its identification, preliminary exploration by Greenwood indicated no significant cultural material beneath the surface.

In sum, no known archeological site is currently being used as a construction storage area. It may be relevant to note, however, that to the extent feasible, present construction storage sites not needed for future activity will be scheduled to be cleaned up as the Units move into operation.

3. Addressing Native American Values - To the extent that SOHP feels that the intent of the Act is to do anything other than identify and physically preserve, to the extent feasible, historical sites and structures, the applicant is unable to determine where in the Advisory Council's Procedures any such additional mission is set forth. Accordingly applicant is unable to supply information which might resolve this point. It may be appropriate to point out here, however, that to the extent that any assessment or addressing of such Native American



values is required. the Greenwood report would seem to have amply covered that matter.

4. Expansion Of Facilities - The particular concern set forth in SOHP's fourth point is totally irrelevant to the present concerns regarding compliance with the Act. It may be appropriate to stress here once again that the only concern which the NRC is required to address is the extent to which operation of Units 1 and 2 will affect areas not previously disrupted by construction activities. To the extent that applicant may choose to apply for licenses authorizing expansion of the present facility, those applications must naturally be considered in light of the requirements of the Act. Until such time, however, the issue raised in point 4 is not of concern.

5. National Register Sites - Although the determination of eligibility is a matter for the NRC, applicant would take this opportunity to comment on the matter raised by the fifth unresolved point in the SOHP letter inasmuch as it is also raised in SOHP recommendation 3.

The apparent SOHP position, as stated in the January 23, 1978, letter, is that a number of Native American archeological sites do appear to meet the criteria set forth in 36 C.F.R. 800.10. In particular, SOHP asserts that certain sites meet criteria one and two (36 C.F.R. 800.10 (a)(1),(2)) in that they are "(1) . . . associated with events that have made a significant contribution to the broad patterns of our history," or "(2) . . . associated with the lives of persons significant in our past."

Quite aside from the fact that applicant is unable to determine what makes the location in question any more distinctive and significant in our history than other numerous sites along the Pacific Coast which reveal similar Chumash and prehistoric settlement patterns, I question whether in fact the SOHP position is technically sound. As I read the criteria, not only must the location meet one of the four site characterizations, but, also, the site must demonstrate "the quality of significance in American . . . archeology, and culture" and "possess integrity of location, design, setting, materials, workmanship, feeling and association." In this regard, the applicant believes that as a result of the extensive construction activity in 1968-70 in the site areas, there are no areas which demonstrate the archeological integrity which is required for eligibility. The ultimate decision on this matter, however, rests with the NRC.

Having commented on, or otherwise responded to, the unresolved issues raised by SOHP in its January 23, 1978, letter, it would seem appropriate to also quickly consider the SOHP recommendations.

(1) Full Project Area Study - In light of the Riddell survey and the Greenwood excavation based thereon,



no further survey is required. If, based on these surveys, the NRC believes eligibility is present then NRC should so state.

(2) Native American Assistance - Inasmuch as no survey is warranted, the question of survey consultants is moot. Native American concerns will be more fully discussed below.

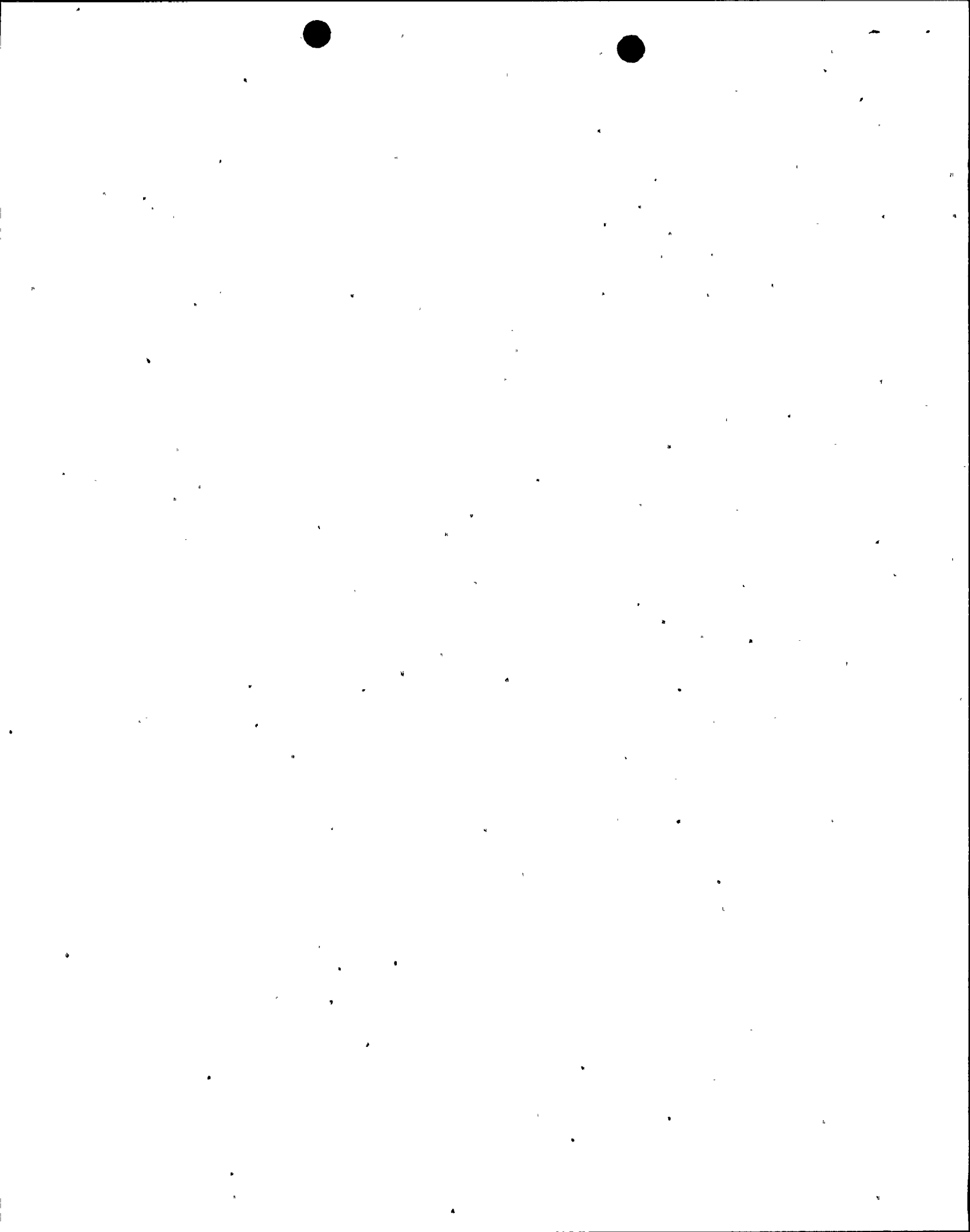
(3) Determination Of Eligibility - This is a matter for the NRC to decide. As stated above, applicant feels that there are serious questions as to whether any of the sites meet the eligibility criteria in light of extensive construction activity. As to the role of the SOHP in this endeavor, I note that in reference to the question of the clarification of roles, in the opinion of the National Park Service, "It must be emphasized that the federal agency is responsible for identifying historic properties and considering them in the federal planning process. The opinions of the State Historic Preservation Officer and his recommendations are advisory." (42 Fed.Reg. 47663, September 21, 1977.)

(4) Advisory Council's Procedures - Assuming that certain areas are deemed eligible and that the Act otherwise applies to this particular situation, the recommendation that the NRC comply with 36 C.F.R., Part 800, would seem appropriate. As stated previously, however, there remains to be resolved the extent to which the requirement of an effect determination has been mooted by previous construction. Applicant believes that no additional effect on any eligible property will occur as a result of operation of the plant.

With respect to ongoing effects in possible eligible areas, it is perhaps relevant to note here that Site 1 (SLO-2) has, since 1973, been the subject of extensive natural erosion. In this regard, a study undertaken by the consulting firm of Harding-Lawson Assoc. in 1973 at the request of PGandE revealed that said erosion was natural to the area and to be expected given the midden-rock formation. A copy of that report was hand delivered to Jeremiah D. Jackson of your staff on February 27, 1978.

(5), (6) Nomination/Cultural Resources Plan - Both recommendations assume facts not yet established. Until a determination has been made as to eligibility and effect any nomination or resources management plan would be premature and unwarranted.

Beyond a number of issues with respect to compliance with the National Historic Preservation Act, the SOHP letter also addressed a number of concerns which have been the subject of discussion between the applicant and the Native Americans of the



area. Although the concerns expressed do not relate directly to any activity which the SOHP has control of or jurisdiction over, nonetheless, in response to your request we will attempt to summarize the status of these discussions and our efforts to resolve the three Native American concerns.

Applicant's position with respect to the disposition of artifacts uncovered during the construction of the plant site has been detailed on a number of prior occasions. As was previously stated on January 12 in the course of a meeting with the NRC, SOHP, San Luis Obispo County Archeological Society (SLOCAS), the Native American Heritage Commission (NAHC) and Native American representatives, applicant does not feel that it is advisable or appropriate for it to act unilaterally in this matter. The question of what the appropriate disposition of Native American archeological artifacts should be is a question which must be addressed by the appropriate state agencies, professional archeologists, Native Americans and private landowners within the state. It is not an issue which applicant can or should resolve independently. Accordingly, the artifacts currently in applicant's possession shall remain with applicant until such time as an equitable and reasonable resolution has been agreed to by all affected parties. In this regard applicant would encourage the SOHP to assume the initiative in trying to reach an acceptable resolution to this issue between the Native Americans of this area and of the archeologists within this state.

As to those artifacts not in applicant's possession, applicant has no control over disposition. Accordingly, any question as to the disposition plans and policies must be taken up directly with the present caretaker parties.

Notwithstanding the disposition policy set forth above, applicant does recognize that certain aspects of applicant's public information display may be of concern to the Native American people. Accordingly, although applicant believes that the particular display is beneficial and provides visitors to the facility with an appreciation for the Native American culture, the applicant has requested that the Native Americans in the area identify those items which are of concern. Upon submission of descriptions of these items, applicant will consider whether and to what extent modifications in the manner of display would be desirable and feasible. As of this date, no such identification has been forthcoming from the Native Americans in the area. Until such concerns have been received, the display will remain unaltered.

The final concern expressed by the Native Americans is that they be allowed some form of access to the Native American archeological sites within the plant boundary. Although requests of this nature are generally not approved inasmuch as access to the areas within the immediate vicinity of the plant site possess security and operational problems, the applicant has agreed to allow a limited number (less than 10) of Native Americans to visit the area, provided at least 10 days advance notice be given



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and other security requirements are met. To this date no such prior notification and request has been received. Mr. Salvadore Ruiz, the designated spokesperson for the Native Americans at the January 12, 1978, meeting in Sacramento, was allowed, however, to visit the archeological sites in February. The purpose of this visit was to provide Mr. Ruiz with further information as to the nature of the sites in order that he might be able to assist the Native Americans in determining whether a visit to the site was desired. The applicant's offer to allow such a site visit to a broader group remains open.

The applicant feels that both as to the question of compliance with the National Historic Preservation Act and as to the question of the Native American concerns, it has acted responsibly and reasonably. The efforts undertaken in the period 1966-68 to discover and preserve the Native American archeological presence in the area remain to date one of the most significant contributions to the knowledge of the history and prehistory of the San Luis Obispo area. In light of this effort and the fact that practically speaking the area has lost much of its integrity as an archeological site and would not be further affected by operation of the plant, applicant believes that it is unnecessary and would be inappropriate for the NRC to undertake or require the applicant to undertake the scope of activity outlined in the January 23, 1978, letter to SOHP. The applicant recognizes, however, that the Act assigns to the federal agency with jurisdiction over the undertaking the ultimate responsibility for complying with the provisions of the Act. In this regard, it is hoped that the information and comments contained herein will be of assistance to the NRC staff in making the necessary determinations. However, should further information be deemed necessary, applicant will attempt to comply with any reasonable request.

Very truly yours,

ROGER J. PETERS

RJP:ec

cc: Service List



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