



# CITY OF MORRO BAY CITY COUNCIL AGENDA

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The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.

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## NOTICE OF SPECIAL MEETING

**Wednesday, June 9, 2021 – 5:00 P.M.  
Held Via Teleconference**

### ESTABLISH QUORUM AND CALL TO ORDER

### PUBLIC COMMENT FOR ITEMS ON THE AGENDA

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this Meeting will be conducted telephonically through Zoom and broadcast live on Cable Channel 20 and streamed on the City website (click [here](#) to view). Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Veterans' Hall will not be open for the meeting.

#### **Public Participation:**

In order to prevent and mitigate the effects of the COVID-19 pandemic, and limit potential spread within the City of Morro Bay, in accordance with Executive Order N-29-20, the City will not make available a physical location from which members of the public may observe the meeting and offer public comment. Remote public participation is allowed in the following ways:

- Community members are encouraged to submit agenda correspondence in advance of the meeting via email to the City Clerk's office at [cityclerk@morrobayca.gov](mailto:cityclerk@morrobayca.gov) prior to the meeting and will be published on the City website with a final update one hour prior to the meeting start time. Agenda correspondence received less than an hour before the meeting start time may not be posted until after the meeting.
- Members of the public may watch the meeting either on cable Channel 20 or as streamed on the City [website](#).
- Alternatively, members of the public may watch the meeting and speak on a specific agenda item by logging in to the Zoom webinar at the **beginning** of the meeting using the information provided below. Please use the "**raise hand**" feature to indicate your desire to provide public comment. Each speaker will be allowed three minutes to provide input.

Please click the link below to join the webinar:

- <https://us02web.zoom.us/j/82722747698?pwd=aWZpTzcwTHlRTk9xaTlmWVNWRFWFUQT09>  
Password: 135692
- Or Telephone Attendee: 1(408) 638-0968 or 1(669) 900-6833 or 1(346) 248-7799; Webinar ID: 827 2274 7698; Password: 135692; Press \* 9 to "**Raise Hand**" for Public Comment

SPECIAL MEETING AGENDA ITEM:

- I. BINDING MEMORANDUM OF UNDERSTANDING AGREEMENT BETWEEN THE CITY OF MORRO BAY AND VISTRA CORP TO PURCHASE NECESSARY WRF EASEMENTS FOR \$1, SETTLE EMINENT DOMAIN LAWSUIT, AMEND ENCUMBRANCE ON DEVELOPMENT OF SHUTTERED POWER PLANT SITE, AND ADDRESS POSSIBLE DEVELOPMENT; (CITY MANAGER)

**RECOMMENDATION**

**Approve, and authorize the Mayor to execute, the binding Memorandum of Understanding (MOU) agreement between the City and Vistra Corp which purchases necessary WRF easements for \$1, settles eminent domain lawsuit, amends encumbrances on development of shuttered Morro Bay Power Plant site, and addresses possible development.**

ADJOURNMENT

DATED: June 4, 2021



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John Headding, Mayor

**IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.**



AGENDA NO: I

MEETING DATE: June 9, 2021

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** June 4, 2021

**FROM:** Scott Collins, City Manager

**SUBJECT:** Binding Memorandum of Understanding Agreement between the City of Morro Bay and Vistra Corp to Purchase Necessary WRF Easements for \$1, Settle Eminent Domain Lawsuit, Amend Encumbrance on Development of Shuttered Power Plant Site, and Address Possible Development

## RECOMMENDATION

Approve, and authorize the Mayor to execute, the binding Memorandum of Understanding (MOU) agreement between the City and Vistra Corp which purchases necessary WRF easements for \$1, settles eminent domain lawsuit, amends encumbrances on development of shuttered Morro Bay Power Plant site, and addresses possible development.

## ALTERNATIVES

- 1) City Council may choose to not approve, and to not authorize the Mayor to sign, the MOU, and/or
- 2) City Council may choose to propose amendment of the MOU and direct staff to pursue further negotiations, and/or
- 3) provide other direction to staff.

## FISCAL IMPACT

Approval of this agreement (attachment #2) will save the City land acquisition expenses and legal expenses related to the Water Reclamation Facility (WRF) Program. The agreement provides for purchase by City of needed temporary construction and permanent easements on the Vistra Corp ("Vistra") 107 acre property at 1290 Embarcadero ("Vistra Property" / "Property") for one dollar (\$1). The City has valued the easements as worth \$200,000, while Vistra has claimed the easements are worth over \$6,000,000. The City is involved in litigation with Vistra over the easements, has secured prejudgment possession of the easements, and final trial dates have been set for 2022. The lawsuit would be dismissed if the agreement is approved (after escrow closes), then these legal expenses would cease, and the necessary WRF easements would be sold to City for one dollar (\$1).

The shuttered Morro Bay Power Plant ("MBPP") site is also located on the Property. At present the City has the option under a 2004 Agreement with Duke Energy (inherited by Vistra) of purchasing (most of) the Property for one dollar (\$1) if Vistra does not demolish the MBPP by October 1, 2033. (See below for discussion of problems associated with ownership of Property.) The agreement amends this Property encumbrance to provide instead that Vistra will pay the City \$3,000,000, if by January 1, 2028 the MBPP is not demolished.

Prepared By: SC

Dept Review: \_\_\_\_\_

City Manager Review: SC

City Attorney Review: CFN





Photo: Morro Bay Power Plant - Turbine Building and Exhaust Stacks

The site in theory has many advantages. It is located near the ocean and Morro Bay waterfront, which are visited by hundreds of thousands of people each year. The remaining structures, in particular the turbine building, seemingly present a blank canvas for incredible redevelopment ideas. It is no surprise then, that over the past 20 years many repurposing ideas for the remaining plant structures and surrounding area have been proposed. Those ideas included converting the turbine building into a museum, art piece, conference center, aquarium, alternative energy hub, university, hotel or scrapping the buildings all together for a park or mixed-use/housing development.

Despite the high level of interest and engagement from the community and developers, the turbine building and three stacks remain and no new purpose for the site has made it past the idea/concept stage. Time and experience have shown there are substantial hurdles to redevelopment of the site.

## **B. Why Hasn't the Power Plant Site Been Redeveloped?**

If the site appears to have so much value and opportunity, why does the site remain primarily unused? Staff believes there are several key reasons why the plant remains in its current state, despite years of consideration and speculation about reuse opportunities and numerous City and plant owner discussions with interested developers with eyes on reusing this unique coastal property.

Potential investors and redevelopers have passed over the Morro Bay Power Plant site (as discussed in more detail below) in part, according to analysis done by City staff, because: it has limited reuse options given a PG&E deed restriction; of the significant cleanup costs to make the site useable for non-industrial uses; the cost to purchase the land; the existing structures which have attracted redevelopment interest are seemingly not reusable without massive investment; and, a \$1 option encumbrance (see below) reasonably leaves investors concerned that whatever they may build there could be taken by the City in 2033 with a \$1 purchase of the power plant site.

### **1. PG&E Deed Restriction**

A substantial impediment to development is the land restrictions currently in place on the site. When PG&E sold the power plant to Duke Energy in 1998, they recorded a limited use covenant on the

property covering the entire power plant site (see attachment #4). That covenant forbids the plant owner from developing the property for lodging (hotels, motels), hospitals or other health care facilities, day care center for children, park, playground, or other recreational use.

The City's understanding is that covenant was placed on the site based upon potential contaminants related to the plant operations conducted there. Further the California Department of Toxic Substance Control (DTSC) has determined that portions of the site may be limited to industrial use due to shallow groundwater contamination and soil concerns (these issues do not impact the Water Reclamation Facility proposed operations on the plant site). A recent DTSC report is attached (see attachment #5). While precise numbers aren't available, it is believed that remediation costs necessary to remediate the site to the level where non-industrial uses could be considered are in the multi-million dollar range.

## **2. Shuttered Power Plant and Environmental Issues**

Further confounding potential redevelopers seemingly is the remaining power plant structures on the site, primarily the large turbine building and stacks. The turbine building, from the outside looking in, may seem like a wonderful redevelopment opportunity. However, given the PG&E restriction on the site and the vast amount of remediation required to clean it up to be reusable, it reasonably has a conditional and limited value.

In talking with the current owner, Vistra Corp, the turbine building has significant amounts of asbestos and other contaminants inside the facility. The clean-up needed to repurpose the building would likely exceed the value that could be gained from repurposing the facility. It's unclear even if significant funds were invested in the cleanup of the building if it could ever be reused. The same is true for the stacks. They have contamination issues like the turbine building and pose future liability concerns for the power plant site owner. According to Vistra, total demolition of the facilities is much less costly than restoration of the building.

Of course, the stacks also have a tie in with the community, as Morro Bay is often referred to by community members and visitors alike as "3 stacks and a rock."

That all being said, demolition of the building and the stacks (if so desired by the City) provides the power plant owner additional options to repurpose the site. If the turbine building and stacks were to remain in their current unused state, they seem to create impediments to maximizing the potential redevelopment opportunities on that portion of the site.

The stacks remaining could also serve as an impediment to redevelopment, though they certainly could remain as part of a future reuse of the site. However, to gain the greatest potential value from that portion of the property, the building and stacks would reasonably need to be torn down. The City does not have current estimates for tear down costs, but [did cite in 2014](#) that \$30 million would be needed to remove those facilities.

### 3. Development Encumbrance

The last major issue reasonably curtailing reuse of the plant site is the \$1 option the City currently holds on the property. As part of an agreement between the City and Duke Energy in 2004, the City retains the ability to purchase the power plant site (not including the PG&E owned parcel – switchyard area) in 2033 should the current plant owner fail to demolish the remaining power plant structures on the site. As noted above, a significant investment would be needed to tear down the remaining structure and stacks, and further investment would be needed to remediate the site to the level where non-industrial uses could be considered. An investment of that magnitude would require a very large return on investment on the future reuse to make it worth it.

In short, potential redevelopers are faced with significant remediation costs and future uncertainty with regard to ownership of the site. These factors appear to have stopped all redevelopment projects concepts in their tracks in the past.

#### C. Opportunity to Move Forward

Considering the above-mentioned issues, it is clear the power plant site remains an attractive yet challenging puzzle to solve for reuse opportunities. These challenges have resulted in apparently insurmountable barriers for previous potential developers in the early stages, including developers interested in using the facility to convert wave energy into power to connect to the grid, and others who wanted to tear down the remaining structures and build either housing or visitor serving accommodations. Those plans never moved forward apparently for the reasons given above.

However, the current power plant site owner, Vistra, has an idea that Vistra believes could untangle these issues and help address climate change. Vistra has submitted plans to the City to construct the world's largest lithium-ion battery storage project on the power plant site. It is important to note that the proposed battery project is **not** the subject of this Council agenda item. Council is expressly **not** being asked to weigh in on any permit decision, and Council is expressly **not** being asked to provide any approval or disapproval of this proposed project. However, the proposed project serves as a primary impetus for Vista to pursue the City's release of the \$1 Option (discussed above), so it's worth briefly outlining what the proposed project is and how it will be reviewed by the City in the future.

The Battery Energy Storage System (BESS) proposed by Vistra would consist of batteries capable of storing 600 megawatts of electric energy and discharging this electricity to the grid for a minimum of four hours. Power would be provided to utility customers by interconnecting to the existing Pacific Gas and Electric (PG&E) switchyard located directly adjacent to the power plant site. The BESS would be located on the 22-acre former tank farm portion of the power plant property. The contemplated project includes three, approximately thirty-foot tall buildings, each of which would house approximately 2,400 battery racks. Each building is proposed to be surrounded by sixty Power Conversion Systems that convert direct current to alternating current. A Vistra presentation on the BESS is available [here](#).

**The BESS description above is for information only and the Council will not be taking any action at this meeting in relation to the proposed project described above.** The proposed project will continue to be processed by the City's Community Development Department. The project

proposed by Vistra will eventually (if the proposed project continues to progress) need to be scheduled for public hearings by the Planning Commission and City Council, where they would consider and discuss, with community input at noticed public hearings, the proposed project, including a potential Coastal Development Permit and a potential Conditional Use Permit, and statutory compliance with CEQA requirements (presumably an Environmental Impact Report (EIR)).

The proposed battery project does not face the issues that appeared to have stopped previously proposed recreational and commercial redevelopment ideas. The proposed battery project is an industrial use; therefore, it should be consistent with the PG&E deed restrictions. Vistra is also currently going through the DTSC process to ensure the proposed battery project meets DTSC requirements.

At the same time, City has been working with Vistra to obtain easements for the Water Reclamation Facility (WRF) Program for the conveyance and injection well components of the program. The matter was referred to the local superior court in 2020 to help expedite the matter through eminent domain.

The City has valued the easements as worth \$200,000, while Vistra has claimed the easements are worth over \$6,000,000. The City at this time has secured *prejudgment* possession of the easements (allowing current use of the easements pending a final judgment), and the City has consistently won important pretrial motions. Final trial dates are set for 2022 to determine a final court-ordered monetary value of the easements (if a deal is not reached) and to resolve other legal issues. While the City is hopeful that the court will continue to rule in our favor, it is an expensive endeavor, the lawsuit is not over yet, and in the end a jury possibly could require the City to pay several million dollars for the needed easements.

## **DISCUSSION**

The remainder of the report below discusses a proposed legal agreement between the City of Morro Bay and Vistra Corp, which removes the last apparent significant hurdle for Vistra's reuse idea to move forward for further consideration by the City, and also secures the necessary WRF easements on the Vistra property for one dollar (\$1). The agreement could also bring forward potentially large benefits to the community and City as discussed below.

### **A. Proposed Binding MOU Agreement**

At its core, the agreement with Vistra does the following:

1. Vistra sells to City for one dollar (\$1) two necessary WRF easements on Vistra Property.
2. Amends 2004 Agreement between City and Duke Energy (the Agreement inherited by Vistra when they purchased the Property), to replace option of City to purchase Vistra Property for one dollar (\$1) if MBPP is not demolished by October 1, 2033, with guarantee that City receives \$3,000,000 from Vistra (with no strings attached) if MBPP is not demolished by January 1, 2028.

3. Settles the eminent domain lawsuit (San Luis Obispo County Superior Court Case No. 20CV-0127) with each side to bear its own costs and fees.
4. Establishes a good faith non-binding relationship between City and Vistra concerning future redevelopment of the Vistra Property at 1290 Embarcadero where shuttered MBPP is located, subject to Vistra Corp securing (with no predetermination of approval by City) any and all necessary land use entitlements and other governmental approvals.

Note that the MOU if signed by both parties will open a ninety day escrow to complete the transactions in the MOU. Until escrow closes the above items are not final.

### **B. Agreement Clears Way for Redevelopment of the Morro Bay Power Plant Site**

The proposed agreement also addresses a major challenge to future reuse of the power plant site by removing the option of City to purchase the Property for one dollar (\$1) if the MBPP is not demolished by October 1, 2033, replaced with a guarantee that City receives \$3,000,000 from Vistra if the MBPP is not demolished by January 1, 2028.

As noted above, it is believed Vistra's proposed battery project is not substantially inhibited by the PG&E deed restriction and contamination issues, as it is an industrial use. The proposed agreement also acknowledges Vistra and City's interest in tearing down the old turbine building given its contamination and safety issues, and the significant cost required to repurpose the structure. Striking a deal with Vistra accelerates from 2033 to 2028 the potential dismantling of the turbine building and stacks (leaving open the possibility of the stacks remaining), making the future redevelopment of that portion of the plant site more likely than if the structures remain.

Further, the proposed agreement removes the \$1 purchase option for the City, which is a major encumbrance on the plant site (according to many developers) and impediment to Vistra (according to Vistra) investing the \$400 million to \$600 million to construct the proposed battery project. Vistra, or any other interested developer, seeks as much certainty as possible to make an investment of this size to reuse the property. From the vantage point of any developer, the \$1 purchase option potentially creates a threshold of uncertainty to reasonably preclude that investment from being made.

If this proposed agreement does not move forward, the City will have the ability to purchase said property for \$1 in 2033. While that may sound like a good deal, the City has limited ability to fund the necessary cleanup of the site to redevelop it for non-industrial uses, and the City does not at present have a clear source of funds to tear down the turbine building and stacks. What would occur in that scenario potentially is no redevelopment would take place on the plant site, and the City could potentially take the liability of the turbine building and stacks, as well as the contamination on the overall site.

Under the proposed agreement, Vistra will need to tear down the turbine building (and stacks if the City desires) by the end of 2028, **or** the City will receive \$3 million. Vistra has stated their interest in tearing down remaining structures, because of contamination, liability and safety concerns. Tear down also opens up the opportunity for future development opportunities in that location.

This proposed deal provides an opportunity for City Council to have Vistra tear down the remaining power plant facilities at Vistra's expense and have community dialogue about the stacks, given their iconography and community connection. And, if the remaining plant structures are not demolished by 2028, the City receives \$3,000,000 free and clear.

### **C. Agreement Can Lead to Community Benefits**

The proposed MOU presents an opportunity for significant community benefit:

1. This deal would end the legal challenges with Vistra related to the WRF program. The City would obtain temporary construction easements and permanent easements to build and operate Indirect Potable Reuse (IPR) system and install pipeline through portions of the Vistra property. The agreement also allows City to complete this important easement purchase for the WRF program for one dollar (compared to City valuation of \$200,000, all the way to Vistra's claim of a value of over \$6,000,000).
2. **This City Council agenda item does not consider approval or denial of permit(s) to construct a BESS at the MBPP site.** However, the proposed agreement with Vistra removes hurdles inherent with the power plant site for *any* future reuse, whatever that future use may be. At present, Vistra Corp has submitted plans to the City for the battery project, which is in the early stages of review, and also the CEQA process has been initiated. The community can learn more about the proposed battery project by visiting the City's "projects of interest" webpage: <https://www.morro-bay.ca.us/842/Current-Planning-Projects>. A potential battery project in Morro Bay, of the size desired by Vistra, would power up to 450,000 homes, addressing intermittency/reliability issues related to the electric grid, and help accomplish State of California green energy goals. Pursuant to SB 100, California is required to achieve a 100% clean, zero carbon and renewable energy system for California's electric system by 2045. This could help reduce the impacts of climate change, a particularly critical issue for a coastal community like Morro Bay. The proposed project could also potentially connect with and help facilitate future offshore wind opportunities on the Central Coast.
3. Morro Bay specific community benefit – based on the size of the investment of the proposed battery project and some zoning and planning issues that are anticipated, the City and Vistra contemplate going through a statutory development agreement (DA) process if the proposed project proceeds. In short, a DA opens the door for a wide range of community benefits (which could include things like waterfront infrastructure improvements). That is in addition to increased property tax revenues inherent with the proposed battery project – to SLO County, SLO Coastal School District and the City of Morro Bay. City is projected to receive an additional \$400K - \$500K per year in increased property tax revenues from Vistra if the proposed battery project is developed.

### **D. Agreement Provides Opportunity for Community Outreach and Engagement**

Given the importance of the power plant site to our community, staff is proposing multiple opportunities for the community to engage. Morro Bay has a rich history of community engagement on a wide range of topics, including the power plant. Staff envision a robust outreach effort related

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to the reuse of the plant and a potential battery project. There are a lot of moving pieces with this new technology, and legitimate concerns in the community about impacts, such as public safety and visual impairments, to name a few.

The purpose of conducting a robust outreach effort is to make it easy for the community to understand the proposal and engage in a variety of ways to provide input. There is the normal CEQA process for the proposed battery project and a potential tear down of existing facilities, which would involve the Planning Commission, City Council, and the California Coastal Commission. Further, the City will engage with residents to understand their interest in either tearing down or retaining the stacks (if the potential demolition were to proceed), and other potential reuse of the areas around the turbine building and stacks. Here is a breakdown of community engagement opportunities:

1. Community benefit outreach – in exchange for land use/zoning certainty in a statutory development agreement (if the battery project or other project moved forward), Vistra would provide benefits to the City. Thus, community benefits could be generated from the proposed BESS project under a potential DA. If a DA were pursued, the City will seek input from the community on potential benefits, such as programmatic funding, and/or needed waterfront and transportation infrastructure improvements and preservation of cultural resources, to name a few possibilities.
2. What to do with stacks outreach – we know many members of the community have significant reservations with the stacks staying up, including concerns about safety, visual impacts, and the high cost to maintain them. There are also potentially a large number of residents who feel nostalgia for the stacks. Staff recommends creating a process that provides understanding of the stacks – what they are worth, cost to support them long-term, contamination and safety concerns, etc., and what value they have in remaining to the community. According to the proposed agreement, if Vistra demolishes the MBPP, then Vistra will move forward with tear down of the stacks, unless told otherwise by the City by December 2022.
3. Future use of the remainder parcel outreach – what types of uses should be considered for the rest of the Vistra site? Staff recommends creating opportunities for the community to provide input about the feasibility of various options and work closely with Vistra to understand their interest through the process as well.
4. Engagement in the proposed battery project planning/zoning process – the proposed project (if it continues to move forward) will follow the regular planning development review process, which includes environmental review and public hearings by the Planning Commission and City Council. Community members are encouraged to participate in the process and can follow the review progress by regularly visiting the [project webpage](#).
5. Lastly, given the relatively new technology involved with battery storage and concerns identified by the community, staff recommends that the following considerations help guide the outreach efforts with regard to that potential development and any other future potential redevelopment of the site: community safety, quality of life, economic vitality, environmental

sustainability, the City's financial sustainability, local Native American heritage considerations, balancing community benefits and impacts, and ensuring all interested voices are heard.

### **CONCLUSION**

The proposed agreement between the City of Morro Bay and Vistra provides benefit to the community while also opening the door for redevelopment of the old power plant site. The City will conduct, in concert with Vistra, a robust engagement effort to involve the community in discussing important aspects of the power plant site and future potential redevelopment opportunities. Therefore, staff recommends that City Council approve the MOU.

### **ATTACHMENTS**

1. PowerPoint Presentation
2. Memorandum of Understanding between Vistra Corp. and the City of Morro Bay
3. Morro Bay Power Plant major event's timeline
4. PG&E Restrictive Covenant
5. DTSC December 2020 report on the Morro Bay Power Plant
6. Link to Vistra proposed lithium battery project presentation – <https://www.morro-bay.ca.us/CivicAlerts.aspx?AID=2607>
7. Link to Planning Page for the Proposed Battery Project – <https://www.morro-bay.ca.us/842/Current-Planning-Projects>
8. Frequently Asked Questions

# Unlocking opportunities for our community

*proposed* City of Morro Bay – Vistra Agreement

June 9, 2021



# Important things to know about Morro Bay Power Plant site

- Deed restrictions and CA Dept. of Toxic Substances Control preclude use of parcel for other than industrial uses
- Old structures (turbine building and stacks) are worn out, contaminated and expensive to reuse
- While City has option to purchase site for \$1 in 2033 if plant is not demolished or repowered, estimated cost to remediate site is \$30 million or more.



Result: ~~Hotel~~

~~Conference center~~

~~Museum~~

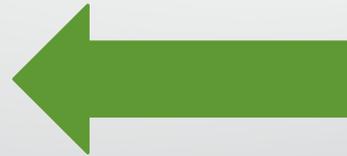
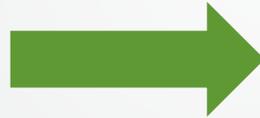
# Agreement in brief

1. Gains easements City needs to complete Water Reclamation Facility project
2. Removes obstacles stymying reuse of Morro Bay Power Plant parcel
3. Creates opportunity to position City as a leader in battery storage and benefits
4. Provides pathway to remove shuttered Morro Bay Power Plant structures
5. Offers multiple opportunities for public input and discussion in planning process

# 1. Gains easements needed for WRF

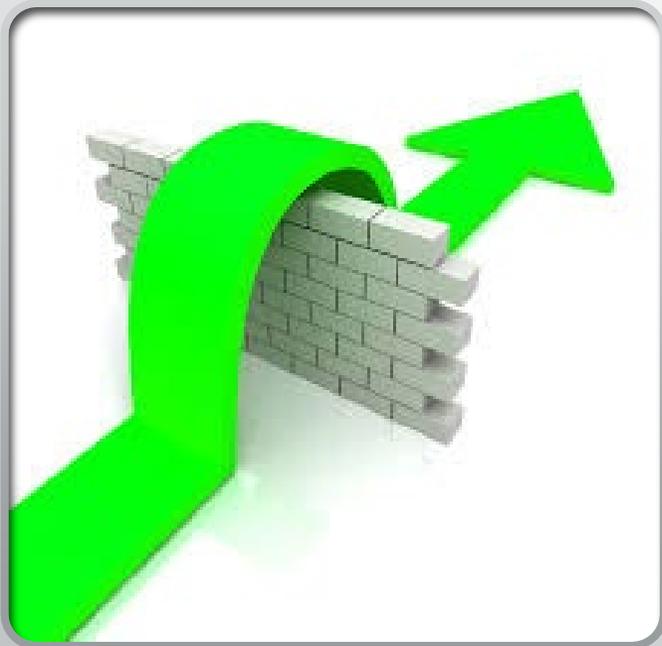


\$1.00



Two necessary easements for WRF pipeline (City values at \$200,000, and Vistra values at over \$6 million)

## 2. Removes obstacles stymying reuse of parcel



- While the term the City negotiated with Duke to take over the parcel if the power plant wasn't demolished or repowered by 2033 may sound good, it seems to have precluded potential developers from reasonable ability to finance and develop a project.
- The proposed agreement with Vistra can yield significant City benefits, and the \$1 purchase option can reasonably be lifted.

### 3. Creates opportunity to position City in Environmental Sustainability



Variable renewables



**Battery Energy Storage System**



PG&E Morro Bay Switch Yard



Reliable electricity supply

Transmission position of Morro Bay is a vital asset.

# Multiple opportunities for community benefits

## Property Taxes

based on value, benefit:

- Schools
- County services
- City services

**Other Community Benefits**  
(improved views and others to be determined)

**Local Economy multipliers**  
cycling of wages and purchases through residents and businesses



*Healthy,  
sustainable,  
and enjoyable  
community*

## 4. Provides pathway to remove shuttered Morro Bay Power Plant structures

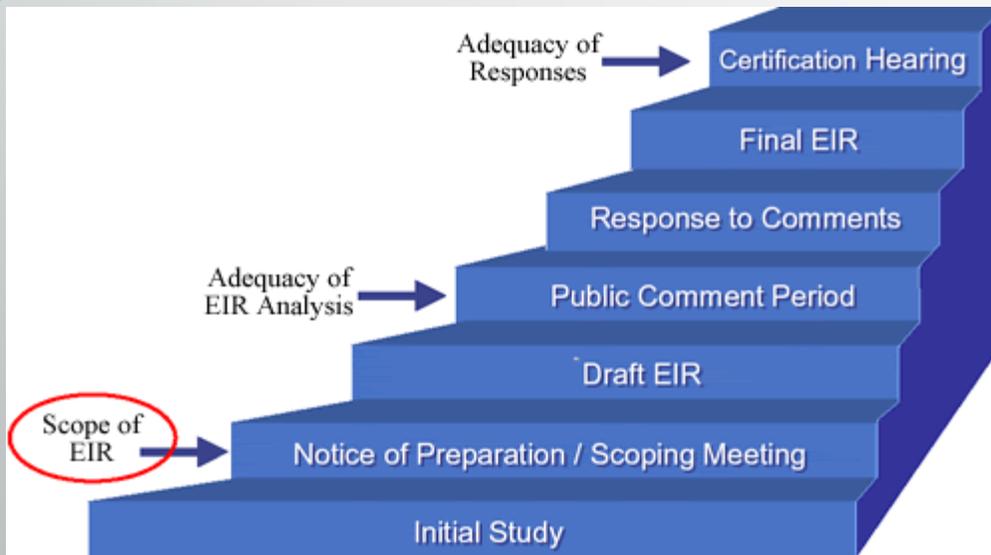


Removal of stacks, if City desires

Removal of turbine building

If not completed by 2028, Vistra pays City **\$3 million.**

# 5. Offers multiple opportunities for public input and discussion in planning process



Informal opportunities: website, online, in-person workshops (as health restrictions allow), etc.

Formal processes for permits, development agreements, etc.:  
Commissions ( for example, Planning Commission),  
City Council



Coastal Use Permit process

# Some key criteria for community outreach

- Community safety
- Community quality of life
- Support for a vibrant and diverse local economy
- Contribution to City's financial sustainability
- Contribution to environmental sustainability
- Overall balance of benefits and impacts, including tradeoffs
- Consideration of local Native American heritage and cultural resources
- Meaningful public engagement for information and input



# Staff Recommendation

- Approve, and authorize the Mayor to execute, the binding Memorandum of Understanding (MOU) agreement between the City and Vistra Corp which purchases necessary WRF easements for \$1, settles eminent domain lawsuit, amends encumbrances on development of shuttered Morro Bay Power Plant site, and addresses possible development.

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF MORRO BAY,  
MORRO BAY POWER COMPANY LLC &  
VISTRA CORP.**

**THIS MEMORANDUM OF UNDERSTANDING (“MOU”)** is entered into as of the \_\_\_ day of \_\_\_\_\_, 2021, by and between (i) the CITY OF MORRO BAY, a California municipal corporation (“**City**”), (ii) MORRO BAY POWER COMPANY, LLC, a Delaware limited liability company (“**MBPC**”), formerly known as Dynegy Morro Bay, LLC, and (iii) as to the Recitals, and all Sections (except 1, 2, 3, 4, 7, 8, 9, and 10 only), VISTRA CORP., a Delaware corporation (“**VST**”); (VST, together with MBPC, referred to collectively as “**Vistra**”). City, MBPC and VST are sometimes (depending on context) jointly referred to as “**parties**” and individually (depending on context) as a “**party**.”

**RECITALS**

**A.** City is constructing a state-of-the-art water reclamation facility (the “**WRF Project**”);

**B.** City commenced an eminent domain action (San Luis Obispo County Superior Court Case No. 20CV-0127) (“**Acquisition Action**”) to acquire temporary and permanent easements for the WRF Project (collectively, the “**Easements**”) in, on, under and over portions of the 107-acre site owned by Vistra, located on 1290 Embarcadero, in the City of Morro Bay, County of San Luis Obispo, California, Assessor’s Parcel Number 066-331-046 (“**Plant Parcel**”), upon which Plant Parcel sits the existing retired Morro Bay Power Plant (“**Plant**”);

**C.** Located on the Plant Parcel when the Plant was retired are: (1) three (3) separate 450-foot exhaust stacks (“**Stacks**”), (2) a 160-foot high, 500 foot long turbine-boiler building that houses four boilers, generators, condensers and turbines, and other associated machinery (the “**Building**”), and (3) six (6) oil storage tanks located North of the turbine boiler building (all of which were previously demolished), all of which were previously used for the Plant (“**Improvements**”);

**D.** Vistra desires to demolish the Building.

**E.** Vistra desires to construct an Energy Storage System, upon a portion of the Plant Parcel, that includes up to 600-megawatt battery storage facilities (“**Battery Storage Units**”).

**F.** Pursuant to and subject to the terms and conditions of that certain Agreement to Lease and Agreement Regarding Power Plant Modernization dated November 15, 2004 (the “**Plant Agreement**”), City has an option to purchase the Plant Parcel for \$1 if the Improvements are not demolished on or before October 1, 2033 (the “**\$1 Option**”); and

**G.** City and Vistra desire to settle the Acquisition Action, remove the \$1 Option from the Plant Parcel, and establish an ongoing relationship regarding the Battery Storage Units and the future use of the entire Plant Parcel.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual promises and covenants made by the parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the City, in accordance with the approval of City's Council in a recorded vote, and MBPC & VST (as to those provisions noted above only), agree to all the following:

**1. Easement Deeds.** A temporary easement deed and a permanent easement deed, substantially similar to **Exhibits A** and **B** ("**Easement Deeds**"), which are attached hereto and incorporated herein by this reference, shall be executed and acknowledged by MBPC and delivered to Escrow Holder (as defined in Section 6) and City will deliver a Certificate of Acceptance for each which Escrow Holder will attach, all pursuant to Section 6. Upon the closing of Escrow, Escrow Holder shall have the Easement Deeds (including the Certificates of Acceptance) recorded in the Official Records of San Luis Obispo County ("**Official Records**"). Upon recordation, Escrow Holder shall deliver conformed copies of the recorded documents to parties ("**Confirmation of Recording**"). Vistra shall obtain subordination agreements from all lenders having security rights in the properties over which the Easements run in a form satisfactory to City's title company to issue an ALTA non-extended owner's policy to the City insuring the Easements subject to such exceptions as approved by City ("**Title Policy**"). The cost of the Title Policy shall be paid by City.

**2. Mutual Consideration.** City shall deliver to Escrow Holder, pursuant to Section 6, for payment to Vistra, One Dollar (\$1.00), as consideration for the Easement Deeds, and the parties further agree that the obligations of the parties are consideration for their respective rights under this MOU.

**3. Security.** As security for Vistra's obligations with regard to Demolition (as hereinafter defined in Section 7) of the Improvements, Vistra shall provide to City, by delivery to Escrow Holder pursuant to Section 6, an irrevocable nontransferable unconditional standby letter of credit in a form acceptable to City, issued by a major U.S. commercial bank or a U.S. branch of a foreign bank with a credit rating of at least "A-" by Standard and Poor's Ratings Services, Inc., or its successor ("**S&P**") or "A3" by Moody's Investor Services, Inc., or its successor ("**Moody's**"), such as JP Morgan or Citibank ("**Issuer**") in a form approved by the City's Finance Director and City Attorney, in the amount of Three Million Dollars (\$3,000,000) ("**LOC**"), which shall be for a period of one (1) year from date of its issuance. As set forth in the LOC, it shall automatically renew unless the Issuer provides written notice to City at least thirty (30) days prior to its expiration that it will not be renewing the LOC ("**Non-Renewal Notice**"). If the Issuer sends a Non-Renewal Notice, Vistra may provide a substitute letter of credit identical in form to the existing LOC which must be: i) issued by a financial institution (as approved in writing by City) comparable to the financial strength and reputation as the original Issuer; and, ii) delivered to City not less than twenty (20) days prior to the LOC expiration date ("**Substitute LOC**"). If the Substitute LOC is not delivered to City within the specified time period, City shall have the unconditional right to draw on the LOC prior to expiration date and the funds shall be maintained in a bank account in City's name separate from its general funds ("**Funds**"). Issuance and terms of the LOC shall be the subject of a separate letter of credit agreement to be negotiated by the parties in cooperation with the Issuer and subject to this Section. The LOC shall be maintained by Vistra through at least February 29, 2028, and shall include provisions that allow City to draw down that entire amount, by means of facsimile or email

notification only, simply upon the Issuer's receipt prior to that date but no earlier than December 31, 2027, of a certification signed by City's City Manager that Vistra has not satisfactorily completed Demolition by December 31, 2027. The LOC shall be delivered by Vistra to Escrow Holder pursuant to Section 6. In the event the LOC, for any reason (other than pursuant to this Section 3), is no longer effective, Vistra shall promptly replace the LOC upon the terms set forth herein. If the Demolition is completed prior to December 31, 2027, City shall promptly return the LOC to Vistra or, if the City has drawn on the LOC, City shall return the Funds to Vistra. If the Demolition is not completed by December 31, 2027, City shall have the unconditional right to draw down the LOC and/or keep the funds already drawn down, and the funds shall be the sole property of City pursuant to this Section 3. If for any reason the LOC shall expire or terminate, without being drawn by City even though City may have done so pursuant to this MOU, and the Demolition has not been satisfactorily completed by December 31, 2027, Vistra shall promptly pay the \$3,000,000 to City in lieu of the City drawing down the LOC, pursuant to a written request by City no later than March 31, 2028.

**4. Plant Agreement Amendment.** City and Vistra shall execute, and have notarized and acknowledged, an amendment to the Plant Agreement, substantially similar to **Exhibit C** ("**Plant Agreement Amendment**"), which is attached hereto and incorporated herein by this reference, and deliver two (2) such original copies of the Plant Agreement Amendment to Escrow Holder pursuant to Section 6.

**5. Dismissal of Acquisition Action.** Within two (2) business days of receipt of Confirmation of Recording, City shall submit to the San Luis Obispo County Superior Court for filing a request to dismiss with prejudice the Acquisition Action, provide proof of same to Vistra, and thereupon City and Vistra each agree to bear their own costs and attorneys' fees in regards to the Acquisition Action.

**6. Escrow.** All matters to be delivered pursuant to this MOU shall be accomplished through Fidelity National Title Insurance Company ("**Escrow Holder**"). The parties shall cooperate with Escrow Holder with respect to all documentation required by Escrow Holder to consummate the transaction set forth in this MOU specifically as set forth in Sections 1 through 4, inclusive. City and Vistra shall each bear fifty percent (50%) of the escrow fees to be paid to Escrow Holder. Escrow Holder shall hold all documents specified in this MOU for full performance of this MOU, until both final receipt by Escrow Holder of all such documents, as well as all necessary approvals of such documents, including City's approval of the LOC. Escrow must close on or before ninety (90) days from the date of execution of this MOU by the last of the three parties necessary for full execution of this MOU ("**Escrow Closing Date**"). If Escrow does not close by the Escrow Closing Date, then any party shall have the right to terminate the Escrow and this MOU upon written notice to the other parties and Escrow Holder. Upon receipt of such cancellation notice, Escrow Holder shall return all documents to the party which deposited same, none of the documents submitted to Escrow Holder shall have any legal effect, and all such documents shall be null and void.

**7. Demolition.** On or before December 31, 2027, at Vistra's sole cost and expense and in accordance with all applicable City and other governmental agency (including, but not limited to, the California Department of Toxic Substances Control (DTSC)) permits and approvals, Vistra shall demolish the Building and the Stacks ("**Demolition**") (with exception of, at City's written request, which must be made on or before December 31, 2022, the Stacks shall remain on the Property and not be demolished. If City makes no such request, then the Stacks shall be demolished along with the Building). Demolition

shall include, but not be limited to: destruction of the Building and the Stacks; removal from the Property of the Building and the Stacks, all contents contained within the Building and the Stacks, and all debris caused by that destruction; remediation of the Property, to the extent required, by DTSC and other government agencies; and, removal of all visual obstruction caused by the Building and the Stacks. Without any predetermination of approval, City shall in good faith assist Vistra (to the same extent City assists any and all applicants seeking similar City permits or approvals) in the processing of all City approvals necessary for the Demolition.

**8. Battery Storage Facilities.** Vistra shall continue, in good faith, to seek all necessary land use entitlements and other governmental approvals for the Battery Storage Units (substantially similar to the project proposed by plans submitted by Vistra to City on December 22, 2020), with the goal of that project being eligible for a certificate of occupancy from City, acting in its government capacity, on or before November 2, 2024, with the possibility of necessary extensions due to no fault of Vistra. City shall, without any predetermination of approval, assist Vistra (to the same extent City assists any and all applicants seeking similar City permits or approvals), in good faith, with the processing of relevant City land use entitlements and other City approvals.

**9. Mutual Cooperation.** Vistra and the City shall cooperate to provide reliable energy to the Central California Coast, and meet California's renewable energy mandate of sourcing fifty percent (50%) of its electricity sales from clean, renewable energy sources by 2030, through the anticipated (though not predetermined) construction by Vistra of the Battery Storage Units, contingent upon securing (with no predetermination of approval by City) all necessary land use entitlements and other governmental approvals.

**10. Development Agreement.** City and Vistra shall, in good faith but without any predetermination of approval by City, negotiate a statutory development agreement (in full accordance with Government Code section 65864, *et seq.*) with regard to the development and operation of the Battery Storage Units.

**11. Amendment or Modification.** This MOU may only be amended or modified in writing and shall be made only with the mutual written consent of all of the parties to this MOU.

**12. Miscellaneous.** The parties agree each has had an opportunity to have their counsel review this MOU. Any rule of construction to the effect ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this MOU or any amendments or exhibits thereto. The captions of the sections, if any, are for convenience and reference only, and are not intended to be construed to define or limit the provisions to which they relate.

**13. Authority.** The parties hereby represent that the individuals executing this MOU are expressly authorized to do so on behalf of the parties.

**14. Enforcement.** If any provision of this MOU is held by a court of competent jurisdiction or by a legislative or rule making act to be either invalid, void or unenforceable, then the remaining provisions of this MOU shall remain in full force and effect, unimpaired by the holding, legislation or rule.

**15. Notice.** Except as otherwise expressly provided by law, any and all notices or other

communications required or permitted by this MOU or by law to be served on or given to any party to this MOU shall be in writing and shall be deemed duly served and given when personally delivered or in lieu of such personal service when deposited in the United States mail, first class postage prepaid to the following address for each respective party:

**With Copy To:**

**City:** City of Morro Bay  
Attn: City Manager  
595 Harbor Street  
Morro Bay, CA 93442

City of Morro Bay  
Attn: City Attorney  
595 Harbor Street  
Morro Bay, CA 93442

**Vistra:** Vistra Corp.  
6555 Sierra Drive  
Irving, TX 75039  
Attn: Claudia Morrow

Morro Bay Power Company LLC  
6555 Sierra Drive  
Irving, TX 75039  
Attn: General Counsel (Real Estate)

**16. Assignment.** No party (nor any member, shareholder or owner of Vistra) may assign this MOU or any rights herein without the written consent of the other parties. Furthermore, any transfer of more than 50% of the ownership interests in any member, shareholder or owner of Vistra shall constitute a transfer or assignment in violation of this provision. This MOU shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this section shall be construed as consent by City to any assignment of this MOU or any interest in this MOU.

**17. Applicable Law.** This MOU and all matters relating to this MOU shall be governed by the laws of the State of California in force at the time any need for the interpretation of this MOU or any decision or holding concerning this MOU arises. Venue for any legal action by any of the parties against any of the others related to this MOU shall be a court of competent jurisdiction in San Luis Obispo County, State of California; provided, that any party may seek a change of venue, either pursuant to California Code of Civil Procedure section 394, or otherwise pursuant to applicable law, but the parties expressly agree only to a court of competent jurisdiction in Los Angeles County, State of California.

**18. Attorney's Fees.** In the event of any litigation or other legal proceeding arising from this MOU, the prevailing party will be entitled to recover, in addition to any other relief awarded or granted, its reasonable costs and expenses, including reasonable attorney's fees and expert witness fees, incurred in the proceeding.

**19. Force Majeure.** Except as otherwise expressly provided for in this MOU, if the performance of any act required by this MOU to be performed by any party is prevented or delayed by reason of any act of nature, pandemic, strike, lockout, labor trouble, inability to secure materials, or any substantially similar cause, the time for performance of the act will be extended for a period of time equivalent to the period of delay and performance of the act during the period of delay will be excused; provided, however, that nothing contained in this section shall exclude the prompt payment by any party as required by this MOU or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

**20. Waiver.** The waiver of any breach by any party of any provision of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach of this MOU.

**21. Effective Date.** This MOU shall be effective as of the date executed by the last of the three parties necessary for full execution of this MOU (“**Effective Date**”).

**22. Counterpart.** This MOU may be executed in counterparts by the parties and each of such counterparts shall be deemed an original for all purposes, but all of such counterparts shall constitute, collectively, one agreement.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS, whereof the parties do hereby set forth their signatures:

**CITY:**

CITY OF MORRO BAY, a municipal corporation

By: \_\_\_\_\_

John Headding, Mayor

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Dana Swanson, City Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_

Chris F. Neumeyer, City Attorney

Date: \_\_\_\_\_

MORRO BAY POWER COMPANY LLC, a  
Delaware limited liability company

VISTRA CORP., a Delaware corporation  
(as to only the provisions noted in the  
paragraph at the beginning of this MOU)

By: Stephen J. Muscato

Name: Stephen J. Muscato  
Title: EVP and Chief Commercial Officer  
Date: 5-26-21

By: Stephen J. Muscato

Name: Stephen J. Muscato  
Title: EVP and Chief Commercial Officer  
Date: 5-26-21



Accepted by Escrow Holder this \_\_\_\_ day of \_\_\_\_\_, 2021.

FIDELITY NATIONAL TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

01181.0001/717198.1

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MORRO BAY,  
MORRO BAY POWER COMPANY LLC & VISTRA CORP.**

**EXHIBIT A**  
**TEMPORARY EASEMENT DEED**  
**(Immediately behind this page)**

**FREE RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442  
Attn: Dana Swanson, City Clerk

(Space Above This Line for Recorder's Office Use Only)  
(Exempt from Recording Fee per Gov. Code § 6103)

**GRANT OF TEMPORARY CONSTRUCTION EASEMENTS**

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, VISTRA CORP., a Delaware corporation, and MORRO BAY POWER COMPANY LLC, a Delaware limited liability company (jointly "**Grantor**"), hereby grant(s) to the CITY OF MORRO BAY, a municipal corporation, and its authorized agents, contractors and subcontractors ("**Grantee**"), temporary construction easements in the following portions of the real property located at 1290 Embarcadero, in the City of Morro Bay, County of San Luis Obispo, California, Assessor's Parcel Number (APN) 066-331-046 and legally described on Exhibit A which is the servient tenement ("**Property**"):

**Temporary Construction Easements (TCEs):**

(1) A temporary construction easement consisting of approximately 93,218 square feet (2.14 acres), described as Parcel Two in Exhibit B-1 and depicted in Exhibit C-1, each exhibit attached hereto and incorporated herein by this reference. The term of this TCE shall be a period of thirteen (13) months, commencing from the date of written notice to Grantor. In no event will the TCE expire later than May 1, 2022 ("**13 Month TCE**").

(2) A temporary construction easement consisting of approximately 192,971 square feet (4.43 acres), described in Exhibit B-2 and depicted in Exhibit C-2, each exhibit attached hereto and incorporated herein by this reference. The term of this TCE shall be a period of nineteen (19) months commencing on the date of written notice to Grantor. In no event will the TCE expire later than January 31, 2023 ("**19 Month TCE**").

Hereinafter the 13 Month TCE and the 19 Month TCE may be individually referred to as a "**TCE**" and jointly as the "**TCEs**".

**Dominant Tenement:** The TCEs are appurtenant to the real property described in Exhibit D (the "**Dominant Tenement**"), such exhibit attached hereto and incorporated herein by this reference.

**Effective Date:** This Grant of TCEs shall be effective upon recordation in the Official Records of San Luis Obispo County ("**Official Records**").

**Project:** Grantee's use of the TCEs shall be solely in connection with the construction and maintenance of Grantee's water/wastewater project consisting of the following: (i) the

decommissioning of the existing wastewater treatment plant (“**WWTP**”); (ii) construction of a new water reclamation facility (“**WRF**”) on the Dominant Tenement; (iii) construction of new pipelines and pump stations for the conveyance of wastewater from the existing sewer system to the new WRF and the conveyance of treated recycled water to new injection wells; and (iv) construction of infrastructure for groundwater injection/replenishment and potable water reuse (collectively, the “**Project**”).

Grantee shall not have the right to bury, install, maintain, or operate any power or electrical transmission lines within the TCEs other than that which is to be used exclusively for the Project, and Grantee further covenants that the TCEs will not be used for the production or generation of electricity in any form, nor will it be used for the siting of a commercial power station or energy storage facility of any kind, whether sited on the Property or any adjacent property. This covenant restricting any use of the TCEs to commercially generate, produce or store electricity or to otherwise site a power station or energy storage facility, in any form or of any kind, shall be a covenant running with, touching, and encumbering the TCEs, binding upon the Grantee and all successors in interest or title, transferees, vendees, lessees, mortgagees, and assigns who are owners and/or users of the Property.

**Trees:** Within the TCEs, trees not marked for removal which are over six (6) inches in Diameter Breast Height (“**DBH**”) will be protected in place and may be trimmed per the Project arborist’s recommendations. Trees in the TCEs which are smaller than six (6) inches in DBH may be removed as part of the clearing and grubbing operations within the TCE in coordination with the Project biologist and arborist. After completion of construction of the pipelines and wells, Grantee shall replace, as reasonably as feasible, all removed trees.

**Vegetation:** Upon activation notice for each TCE and thereafter during the term, Grantee shall clear and grub vegetation within the TCE limits as necessary during construction, as well as restore to a substantially same condition to those conditions existing prior to the commencement of work, all areas damaged by erosion, construction activities, or other causes, and hydroseed those areas to promote growth of native vegetation. Restoration shall include filling depressions and gullies, establishing level grades and slopes, and compacting soils to prevent wind erosion. Only native fill shall be used for restoration.

**Fencing:** Grantee shall at all times during use of the TCEs secure the Property via temporary fencing at the outer limits of the TCEs. Prior to the removal of the existing fence, Grantee will provide temporary security fencing at least equal to the existing chain link and barbed wire fencing to protect the existing facilities and structures.

**Damages & Indemnification:** Grantee shall be liable to Grantor for any damages to Grantor incurred as a result of Grantee’s failure to properly secure the Property during construction.

Grantee shall, indemnify, defend and hold harmless Grantor and their officers, directors, employees, agents, representatives, affiliates, subsidiaries, successors and assigns from and against any and all claims, liabilities, losses, damages, demands, lawsuits, causes of action, (including, but not limited to, (a) claims for personal injuries, death, damages to property; (b) fines, penalties, or damages resulting from or assessed upon Grantor by any federal, state, or local regulatory agency or body; (c) any damages to the Property as a direct result of any soil disturbance by Grantee or

any employee, contractor, subcontractor, vendor, consultant, agent, supplier or other party engaged by Grantee (collectively, “**Grantee Parties**”), (d) any damages to the Property as a direct result of any spills of hazardous substances, accidental discharge of hazardous substances, or dispersal of hazardous substances on the Property (“**Hazardous Substance Conditions**”), except to the extent such Hazardous Substance Conditions existed on the Property prior to the date of this Grant of TCEs, and are not caused nor exacerbated on the Property as the result of the acts or omissions of the Grantee Parties; and, (e) all other claims or demands and costs and expenses, including reasonable attorney's fees, costs of litigation and/or investigation or other reasonable costs associated therewith), arising out of, resulting from, caused by, or in any way related to (1) the entry or presence, pursuant to the TCEs, upon the Property by Grantee Parties, (2) activities, pursuant to the TCEs, by any Grantee Parties, (3) any breach of this Grant of TCEs, and (4) the negligence or misconduct, pursuant to the TCEs, of any Grantee Parties, save and except to the extent any such liability pursuant to this “Damages & Indemnification” section results from the intentional conduct, or negligence, of Grantor or any of their officers, directors, employees, agents, representatives, affiliates, subsidiaries, successors or assigns.

Grantee agrees to support its obligations under this Grant of TCEs, including without limitation its agreement to indemnify, defend, and hold harmless Grantor pursuant to the subsection above, by purchasing and maintaining at all times during the term hereof insurance coverage in the following types and amounts: (a) statutory Workers' Compensation insurance (statutory limits) covering all personnel engaged in furnishing services related to Grantee's operations on the Property; (b) Employers' Liability Insurance with limits no less than (i) \$1,000,000 bodily injury by accident, (ii) \$500,000 bodily injury by disease each person, and (iii) \$500,000 bodily injury by disease policy limit; (c) Commercial General Liability Insurance including but not limited to, contractual liability, personal and advertising injury, products liability and premises/completed operations liability with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, including death and property damage, and products and completed operations liability, and containing no exclusion for XCU (explosion, collapse and underground); (d) comprehensive automobile liability coverage for One Million Dollars (\$1,000,000) per occurrence for vehicles owned or utilized by City's personnel or its contractor's personnel; and (e) Excess Liability Insurance in excess of the underlying insurance described in (b) – (d) above in an amount not less than \$15,000,000 per occurrence; (f) Contractors Pollution Legal Liability, during the course of construction, written on an Occurrence Form including but not limited to property damage, bodily injury, cleanup, defense cost, new pollution events, non-owned disposal site liability, sudden, accidental and gradual pollution in an amount not less than \$5,000,000 per occurrence; (g) Fixed Site Pollution Legal Liability, after construction prior to the commencement of operations, including coverage for onsite and offsite 1<sup>st</sup> party and 3<sup>rd</sup> party bodily injury and property damage, testing, monitoring and cleanup, defense cost, new pollution events, non-owned disposal site liability (NODS), and natural resource damages (NRDs), covering sudden, accidental and gradual pollution in an amount not less than Five Million Dollars (\$5,000,000) per accident or occurrence. The required limits of insurance can be satisfied by any combination of primary and excess coverage. At Grantee's option, Grantee shall obtain such coverage from either (1) the California Joint Powers Insurance Authority (“**CJPIA**”) or other similar joint powers agency providing coverage to governmental agencies in the State of California, or (2) an insurance company or companies having an A.M. Best Company rating of A- , VII or better. Each of the required policies (except for worker's compensation coverage), if

written on a claims-made basis, will be maintained in full force and effect for three (3) years after final acceptance or the completion of the Work, whichever is later and: 1) shall name Grantor as an Additional Insured or Protected Party under a Limited Protected Contract for on-going and completed operations; 2) shall include waivers of subrogation in Grantor's favor; and, 3) shall be primary and non-contributory regardless of the insurance available to Grantor. Certificates of insurance for each policy and required coverages must show Vistra Corp., Vistra Intermediate Company LLC, Vistra Operations Company LLC, Luminant Power LLC, Luminant Power Generation Inc., and Morro Bay Power Company LLC, and their successors (collectively, the "**Certificate Holders**") as the certificate holder. At Grantee's written request, Grantor shall annually provide to Grantee an updated list of Certificate Holders within seven (7) days of receipt of such request but no more than once per calendar year. Such certificates shall be delivered to Grantor on or before the execution of this Grant of TCEs and on or prior to each annual anniversary of the Effective Date, and shall be endorsed with an acknowledgment that the policy shall not be cancelled or terminated, nor shall the policy form be changed, without written notice to Grantor. Each Grantee policy shall contain an agreement by the insurer that such policy or policies shall not be canceled or non-renewed without at least 30 days' prior written notice to Grantor. The requirements contained herein as to the types and limits of all insurance to be maintained by Grantee are not intended to and will not, in any manner, limit or qualify the liabilities and obligations assumed by Grantee under this Agreement.

Further, Grantee will make good faith efforts to require (though not guarantee) any contractor, subcontractor, vendor, consultant, agent, supplier or other party engaged by Grantee to perform services under this Grant of TCEs: to also name Grantor as additional insured, provide to Grantor a waiver of subrogation and primary noncontributory status of the following minimum coverages: (a) Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage; (b) comprehensive automobile liability coverage for One Million Dollars (\$1,000,000) per occurrence for vehicles owned or utilized by such contractor's personnel; and (c) additional coverages as Grantee may, in its discretion, to require based on the scope of work to be performed by such contractor. To the extent Grantee does not require, or the vendor/subcontractor does not obtain such coverage, Grantee agrees to indemnify and hold the Additional Insureds harmless from all claims, demands, losses, expenses and judgments to which said coverages would have applied. The foregoing shall in no way limit the entire indemnity obligations of Grantee. Nothing contained herein relating to coverage or amounts of insurance shall operate as a limitation of Grantee's liability in tort, contract, or otherwise. Failure of Grantor to request evidence of any such insurance shall not constitute a waiver of Grantor's requirements therefor. Any actions, errors or omissions that may invalidate coverage for Grantee shall not invalidate or prohibit coverage available to the Additional Insureds. Receipt by Vistra Corp. of a certificate of insurance, endorsement or policy of insurance which is more restrictive than the contracted for insurance shall not be construed as a waiver or modification of the insurance requirements above or an implied agreement to modify same, nor is any verbal agreement to modify same permissible or binding. If Grantee fails (such failure expressly not including insurance requirements, nor certificates or evidence of coverage, from any entity other than specifically from the City of Morro Bay) to comply with the foregoing Grantee insurance requirements or to deliver to Grantor the certificates or evidence of coverage required herein, Grantor, in addition to any other remedy available pursuant to this Grant of TCEs or otherwise, may, but shall not be obligated to, obtain such insurance on Grantee's behalf, and

Grantee shall pay to Grantor on demand the premium costs thereof, plus an administrative fee of 15% of such premium costs.

**Notice:** Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of Grantee, to the City Manager, City of Morro Bay, 595 Harbor Street, Morro Bay, CA 93442 and in the case of Grantor, to the person(s) at Vistra Corp., 6555 Sierra Drive, Irving, TX 75039, Attention: Claudia Morrow. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided herein.

**Severability:** In the event that part of this Grant of TCEs shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Grant of TCEs which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder.

**Interpretation:** The terms of this Grant of TCEs shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Grant of TCEs or any other rule of construction which might otherwise apply.

**Applicable Law.** This Grant of TCEs and all matters relating to this Grant of TCEs shall be governed by the laws of the State of California in force at the time any need for the interpretation of this Grant of TCEs or any decision or holding concerning this Grant of TCEs arises. Venue for any legal action by any of the parties against any of the others related to this Grant of TCEs shall be a court of competent jurisdiction in San Luis Obispo County, State of California; provided, that any party may seek a change of venue, either pursuant to California Code of Civil Procedure section 394, or otherwise pursuant to applicable law, but the parties expressly agree only to a court of competent jurisdiction in Los Angeles County, State of California.

**Attorney's Fees.** In the event of any litigation or other legal proceeding arising from this Grant of TCEs, the prevailing party will be entitled to recover, in addition to any other relief awarded or granted, its reasonable costs and expenses, including reasonable fees and costs for any attorney (including in-house counsel), accountant, expert witness, or consultant, incurred in the proceeding.

**Representations and Warranties.** Each entity comprising Grantor represent and warrant that (i) they own the Property; (ii) there are no liens on the Property; and (iii) the persons executing this Grant of TCEs have full authority to execute on behalf of the respective entity.

**Exhibits.** Exhibits A, B-1, B-2, C-1, C-2 & D attached hereto are incorporated herein by reference.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, Grantor has caused this Grant of TCEs to be executed on their behalf by their respective officers or agents hereunto as of the date set forth below each signature.

**GRANTOR:**

MORRO BAY POWER COMPANY LLC,  
a Delaware limited liability company

VISTRA CORP.,  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

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Date: \_\_\_\_\_

Date: \_\_\_\_\_

# EXHIBIT A

# EXHIBIT "A"

## Legal Description

**For APN/Parcel ID(s): 066-331-046**

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

The parcel of land shown as Lot 1 on that certain Lot Line Adjustment designated Case No. LL 01-97 recorded February 26, 1998 as Document No. 1998-010270 of Official Records of San Luis Obispo County (the "Lot Line Adjustment") and more particularly described as follows:

All that certain real property situated in Section 25, Township 29 South, Range 10 East, Mount Diablo Base and Meridian, in the City of Morro Bay, County of San Luis Obispo, State of California, described as follows:

Commencing at a point of intersection of the Northerly right-of-way line of Surf Street (formerly known as Ninth Street) with the centerline of Scott Street (formerly known as "S" Street), as said streets are delineated and so designated on the Map of Atascadero Beach, recorded July 2, 1917 in Book 2, Page 15 of Maps, in the office of the County Recorder of said County, said point also being the point of beginning of the 48.7 acre parcel of land set forth in the quitclaim deed from the County of San Luis Obispo to the Pacific Gas and Electric Company, a corporation (P.G.&E.), recorded September 25, 1951, in the office of the County Recorder of said County in Book 628 at Page 342 of Official Records; thence along the centerline of Scott Street North 8°07'26" West, 126.01 feet to the Northeasterly corner of that certain parcel of land described in the deed from P.G. & E. to the County of San Luis Obispo recorded July 28, 1953 in Book 720 at Page 69 of Official Records, in the office of the County Recorder of said County, said point also being the True Point of Beginning; thence leaving said centerline of Scott Street, along the Northerly line of the land described in last said deed South 88°19'28" West 269.38 feet to a point on the centerline of Mesa Drive as said Drive is delineated on said Map of Atascadero Beach, said point also being the Northwesterly corner of the lands described in last said deed, and being a point on the boundary line of said 48.7 acre parcel; thence along said boundary line South 87°15'33" West 182.67 feet; thence South 20°48'10" East 122.10 feet to a point on the Northerly right-of-way line of said Surf Street and the Southerly boundary line of said 48.7 acre parcel; thence along said Northerly right-of-way line and said Southerly boundary line South 89°11'34" West 362.73 feet to the Southeasterly terminus of that certain course in the Southwesterly boundary line of said 48.7 acre parcel, said course showing a bearing and distance of "North 53°45' West 884.13 feet" (North 53°52'05" West 884.13 feet for the purposes of this description), said point also being the most Easterly corner of the parcel of land described in the deed from the County of San Luis Obispo to P.G. & E., recorded January 26, 1956 in Book 833 at Page 525 of Official Records, in the Office of the County Recorder of said County; thence at right angles to last said course South 36°07'55" West 190.66 feet to a point on the Southwesterly boundary line of Tide Lands Survey No. 14, recorded in Book 4 at Page 11 of Record of Surveys, in the Office of the County Recorder of said County; thence along said Southwesterly boundary North 59°39'45" West 201.03 feet; thence leaving said Southwesterly boundary North 36°07'55" East 210.96 feet to a point on the Southwesterly boundary line of said 48.7 acre parcel, said point being distant North 53°52'05" West 200.00 feet along said boundary line from said Southeasterly terminus of the Southwesterly boundary line of the 48.7 acre parcel; thence along the Southwesterly boundary of said 48.7 acre parcel North 53°52'05" West 684.13 feet; thence at right angles South 36°07'55" West 369.55 feet to a point on the Southwesterly boundary line of the parcel of land quitclaimed to the County of San Luis Obispo by deed recorded August 1, 1949, in Book 530 at Page 214 of Official Records of said County; thence along last said Southwesterly boundary North 75°37'05" West 215.33 feet; thence North 36°07'55" East 449.34 feet; thence North 53°52'05" West 286.04 feet; thence North 30°58'19" West 175.66 feet; thence North 21°19'19" West 543.47 feet to a point on the centerline of 79th Street, as said 79th Street is shown on said Map of Atascadero Beach; thence leaving the boundary of said 48.7 acre parcel, along the centerline of said 79th Street South 81°03'50" West 42.89 feet to a point of intersection with the centerline of "C" Street, as said centerline is so delineated on said Map; thence along the centerline of said "C" Street North 8°56'10" West 1379.64 feet to a point of intersection with the centerline of 70th Street, said 70th Street being so delineated on said Map, thence along the centerline of said 70th Street North 81°03'50" East 736.36 feet to the Southwesterly corner of Lot 27 of Block 28D of said Map, thence along the Westerly line of said Lot 27 and Lot 20 of said Block 28D North 8°56'10" West 149.96 feet to a point on the centerline of 69th Street, said 69th Street being so delineated on said Map, said point also being the Northwesterly corner of said Lot 20; thence along said centerline of 69th Street North 81°03'50" East 175.26 feet to a point of intersection with the centerline of "J" Street, said "J" Street being so delineated on said Map; thence along said centerline of "J" Street South 8°56'10" East 10.00 feet to a point of intersection with the Westerly prolongation of the Northerly line of Lot 6 of Block 27 of said Map; thence along said Westerly prolongation and the Northerly line of Lot 6 and the Easterly prolongation thereof North 81°03'50" East 750.88 feet to the Northwesterly corner of the parcel of land described in the deed from P.G.&E. to

## EXHIBIT "A"

### Legal Description

the State of California recorded October 7, 1960 in Book 1087 at Page 277 of Official Records, in the office of the County Recorder of said County, said Northwesterly corner also being a point on the Westerly right-of-way line of California State Highway 1 as shown on the California Department of Transportation's Right-of-Way Map Sheets designated as postmile 29.6 and postmile 30.1 (sheets 27 and 28 of 33) on file in the office of California Department of Transportation District 5 Right-of-Way Engineering Department in the City of San Luis Obispo, State of California; thence along said Westerly right-of-way line South 20°06'36" East 550.31 feet; thence continuing along said Westerly right-of-way line South 23°32'35" East 307.51 feet to the beginning of a non-tangent curve concave Easterly having a radius of 4080.00 feet, to which a radial line bears South 67°54'00" West; thence continuing along said Westerly right-of-way line Southeasterly along said curve through a central angle of 7°10'01" an arc distance of 510.35 feet; thence continuing along said Westerly right-of-way line South 27°12'08" East, 628.32 feet; thence continuing along said Westerly right-of-way line South 44°10'05" East 44.29 feet to a point of intersection with the Easterly boundary line of the parcel of land described in the deed from the State of California to P.G.&E. recorded October 7, 1960, in the Office of the County Recorder of said County, in Book 1087 at Page 273 of Official Records; thence leaving said Westerly right-of-way line of Highway 1 along last said Easterly boundary line South 17°19'03" East 136.90 feet; thence continuing along said Easterly boundary line South 45°31'03" East 508.65 feet; thence South 34°07'03" East 181.13 feet to the most Easterly corner of Lot 39 of Block 31 of said Map of Atascadero Beach; thence along the Southeasterly line of said Lot 39, last said line also being the Northeasterly prolongation of the centerline of Scott Street, South 55°57'03" West 289.42 feet to the beginning of a tangent curve concave Southeasterly, having a radius of 175.72 feet; thence continuing along said centerline of Scott Street Southwesterly along said curve through a central angle of 39°18'10" an arc distance of 120.54 feet; thence continuing along said centerline South 16°38'53" West 0.26 feet to the beginning of a tangent curve concave Northwesterly, having a radius of 404.66 feet; thence continuing along said centerline Southwesterly along said curve through a central angle of 43°16'54" an arc distance of 305.68 feet; thence continuing along said centerline South 59°55'47" West 15.07 feet to the beginning of a tangent curve concave Southeasterly having a radius of 95.71 feet; thence continuing along said centerline Southwesterly and Southerly along said curve through a central angle of 68°03'13" an arc distance of 113.68 feet to the True Point of Beginning.

Excepting therefrom that portion described as follows:

Commencing at the most Easterly corner of Lot 39 of Block 31 of said Map of Atascadero Beach, said corner also being a point on the Easterly boundary line of said deed recorded October 7, 1960; thence along said Easterly boundary line North 34°07'03" West 181.13 feet; thence continuing along said Easterly boundary line North 45°31'03" West 300.40 feet to the True Point of Beginning; thence leaving said Easterly boundary line North 82°25'56" West 51.99 feet; thence North 80°32'04" West 49.03 feet; thence North 72°44'42" West 35.29 feet; thence South 89°09'33" West 47.97 feet; thence South 78°00'52" West 65.65 feet; thence South 56°11'46" West 49.82 feet; thence at right angles to that certain course in said Southwesterly boundary line of said 48.7 acre parcel, said course showing a bearing and distance of "North 53°45' West 884.13 feet" (North 53°52'05" West 884.13 feet for the purposes of this description), South 36°07'55" West 473.15 feet; thence at right angles North 53°52'05" West 148.76 feet; thence at right angles North 36°07'55" East 75.05 feet; thence at right angles North 53°52'05" West 837.90 feet; thence at right angles South 36°07'55" West 97.53 feet; thence at right angles North 53°52'05" West 176.60 feet; thence North 19°35'23" East 254.47 feet; thence North 8°25'31" East 80.98 feet; thence North 19°47'04" East 209.64 feet; thence at right angles to said Southwesterly boundary line North 36°07'55" East 159.02 feet; thence North 75°19'23" East 421.36 feet; thence South 85°42'10" East 271.06 feet to the beginning of a non-tangent curve concave Northeasterly having a radius of 4080.00 feet, to which a radial line bears South 62°51'50" West, said beginning point also being on said Westerly right-of-way line of said California State Highway 1; thence continuing along said Westerly right-of-way line Southeasterly along said curve through a central angle of 2°07'51" an arc distance of 151.74 feet; thence continuing along said Westerly right-of-way line South 27°12'08" East 628.32 feet; thence continuing along said Westerly right-of-way line South 44°10'05" East 44.29 feet to a point of intersection with the Easterly boundary line of the parcel of land described in said deed dated October 7, 1960; thence leaving said Westerly right-of-way line of Highway 1 along last said Easterly boundary line South 17°19'03" East 136.90 feet; thence continuing along said Easterly boundary line South 45°31'03" East 208.25 feet to the True Point of Beginning.

Also excepting therefrom all minerals and oil, in, under, or upon that portion formerly described as Lot 15 in Block 29 of Atascadero Beach, in the City of Morro Bay, County of San Luis Obispo, State of California, according to map recorded July 2, 1917 in Book 2, Page 15 of Maps.

Also excepting therefrom all interests and facilities as reserved by P.G. & E in Grant Deed dated June 30, 1998, recorded July 2, 1998 as Document No. 1998-040835 of Official Records, in the office of the County Recorder of said County.

**EXHIBIT "A"**  
Legal Description

Also excepting therefrom that portion conveyed to the City of Morro Bay by deed recorded May 3, 2007 as Document No. 2007030485 of Official Records.

Also excepting therefrom that portion conveyed to the City of Morro Bay by deed recorded May 6, 2015 as Document No. 2015021548 of Official Records.

# EXHIBIT B-1

## EXHIBIT B-1

City of Morro Bay WRF Offsite Pipeline Project  
Vistra Energy - APN 066-331-040  
August 2019  
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Those portions of Lot 1, Lot Line Adjustment 01-97, Case MBAL 97-239, in the City of Morro Bay, County of San Luis Obispo, State of California, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010270 of Official Records of said County, and as shown on the map filed in Book 77, Page 26 of Record of Surveys in the office of the County Recorder of said County, described as follows:

### Parcel One

A Twenty (20.00) foot wide strip of land, the centerline of which is described as follows:

Commencing at the southeast corner of Lot 2, Lot Line Adjustment 01-97, Case MBAL 97-239, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010271 of Official Records of said County, being the point common to said Lot 1, said Lot 2, and State Highway 1;

Thence, along the easterly line of said Lot 1, S45°31'03"E, a distance of 16.65 feet, more or less to a point on a line parallel with, and lying 20.00 feet southeasterly of, the southeasterly line of said Lot 2;

Thence 1<sup>st</sup>, along said parallel line, N82°25'56"W, a distance of 65.46 feet;

Thence 2<sup>nd</sup>, continuing along said parallel line, N80°32'04"W, a distance of 49.88 feet;

Thence 3<sup>rd</sup>, continuing along said parallel line, N72°44'42"W, a distance of 34.38 feet;

Thence 4<sup>th</sup>, continuing along said parallel line, S89°09'33"W, a distance of 45.40 feet;

Thence 5<sup>th</sup>, continuing along said parallel line, S78°00'52"W, a distance of 62.75 feet;

Thence 6<sup>th</sup>, continuing along said parallel line, S56°11'46"W, a distance of 46.12 feet;

Thence 7<sup>th</sup>, continuing along said parallel line, S36°07'55"W, a distance of 420.02 feet;

Thence 8<sup>th</sup>, leaving said parallel line, S13°43'22"W, a distance of 38.91 feet;

Thence 9<sup>th</sup>, S36°13'22"W, a distance of 173.37 feet;

Thence 10<sup>th</sup>, S81°13'22"W, a distance of 11.73 feet;

Thence 11<sup>th</sup>, N53°46'38"W, a distance of 36.26 feet;

Thence 12<sup>th</sup>, S81°13'22"W, a distance of 62.19 feet;

Thence 13<sup>th</sup>, S69°58'22"W, a distance of 17.65 feet;

Thence 14<sup>th</sup>, S81°13'22"W, a distance of 25.35 feet;

Thence 15<sup>th</sup>, N75°48'02"W, a distance of 22.56 feet;

Thence 16<sup>th</sup>, N87°03'02"W, a distance of 26.51 feet;

## EXHIBIT B-1

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Thence 17<sup>th</sup>, S81°06'34"W, a distance of 85.11 feet;

Thence 18<sup>th</sup>, S58°36'34"W, a distance of 51.83 feet;

Thence 19<sup>th</sup>, S36°06'34"W, a distance of 17.87 feet, more or less, to a line parallel with, and lying 10.00 feet northeasterly of, the easterly line of the land quitclaimed to the City of Morro Bay in the Quitclaim Deed recorded May 6, 2015 as Document Number 2015021548 of Official Records of said County, and as shown on the map filed in Book 111, Page 30 of Record of Surveys in the office of the County Recorder of said County;

Thence 20<sup>th</sup>, along said parallel line, S24°13'11"E, a distance of 548.20 feet, more or less, to the southerly line of said Lot 1, being also a point of the north line of Surf Street.

The sidelines of said twenty foot wide strip shall be lengthened or shortened to terminate easterly on said easterly line of Lot 1 and to terminate southerly on said southerly line of Lot 1.

Containing 0.85 acres, more or less.

### Parcel Two

Beginning at the southeast corner of Lot 2, Lot Line Adjustment 01-97, Case MBAL 97-239, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010271 of Official Records of said County, being the point common to said Lot 1, said Lot 2, and State Highway 1;

Thence 1<sup>st</sup>, along the easterly line of said Lot 1, S45°31'03"E, a distance of 60.30 feet;

Thence 2<sup>nd</sup>, leaving said easterly line, S84°14'59"W, a distance of 264.15 feet;

Thence 3<sup>rd</sup>, S45°44'02"W, a distance of 75.30 feet;

Thence 4<sup>th</sup>, S32°43'13"E, a distance of 100.68 feet;

Thence 5<sup>th</sup>, S32°18'05"W, a distance of 97.01 feet;

Thence 6<sup>th</sup>, N55°54'38"W, a distance of 153.01 feet, more or less, to the southeasterly line of Parcel One described above;

Thence 7<sup>th</sup>, along said southeasterly line, S36°07'55"W, a distance of 51.24 feet;

Thence 8<sup>th</sup>, leaving said southeasterly line, S53°28'45"E, a distance of 28.38 feet;

Thence 9<sup>th</sup>, S38°43'47"W, a distance of 203.62 feet;

Thence 10<sup>th</sup>, S53°39'33"E, a distance of 108.10 feet;

Thence 11<sup>th</sup>, S48°11'51"W, a distance of 128.37 feet;

## EXHIBIT B-1

### City of Morro Bay WRF Offsite Pipeline Project

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Thence 12<sup>th</sup>, N87°54'46"W, a distance of 365.86 feet, more or less, to a point on the southerly line of Parcel One described above;

Thence 13<sup>th</sup>, leaving said southerly line, S42°44'53"W, a distance of 57.37 feet;

Thence 14<sup>th</sup>, S27°24'45"E, a distance of 551.72 feet, more or less, to the southerly of said Lot 1;

Thence 15<sup>th</sup>, along last said southerly line, S89°11'34"W, a distance of 64.81 feet, more or less, to the southeasterly corner of the land quitclaimed to the City of Morro Bay in the Quitclaim Deed recorded May 6, 2015 as Document Number 2015021548 of Official Records of said County, and as shown on the map filed in Book 111, Page 30 of Record of Surveys in the office of the County Recorder of said County;

Thence 16<sup>th</sup>, along said easterly line and its northwesterly prolongation, N24°13'11"W, a distance of 489.11 feet;

Thence 17<sup>th</sup>, leaving said easterly line, N53°38'01"W, a distance of 75.08 feet;

Thence 18<sup>th</sup>, N38°37'27"E, a distance of 50.00 feet;

Thence 19<sup>th</sup>, S53°38'01"E, a distance of 20.25 feet, more or less, to the northwesterly line of Parcel One described above;

Thence 20<sup>th</sup>, along said northwesterly line, N36°06'34"E, a distance of 5.46 feet to an angle point therein;

Thence 21<sup>st</sup>, continuing along said northwesterly line, N58°36'34"E, a distance of 55.81 feet to an angle point therein;

Thence 22<sup>nd</sup>, leaving said northwesterly line, N35°51'31"E, a distance of 167.15 feet;

Thence 23<sup>rd</sup>, S54°08'29"E, a distance of 211.37 feet;

Thence 24<sup>th</sup>, N36°04'14"E, a distance of 155.98 feet;

Thence 25<sup>th</sup>, N27°35'18"E, a distance of 45.89 feet, more or less, to an angle point in the northwesterly line of Parcel One described above, being also a point on the southeasterly line of said Lot 2;

Thence 26<sup>th</sup>, along said southeasterly line, N36°07'55"E, a distance of 423.77 feet;

Thence 27<sup>th</sup>, continuing along said southeasterly line, N56°11'46"E, a distance of 49.82 feet to an angle point therein;

Thence 28<sup>th</sup>, continuing along said southeasterly line, N78°00'52"E, a distance of 65.65 feet to an angle point therein;

Thence 29<sup>th</sup>, continuing along said southeasterly line, N89°09'33"E, a distance of 47.97 feet to an angle point therein;

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City of Morro Bay WRF Offsite Pipeline Project

Visra Energy - APN 066-331-040

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Thence 30<sup>th</sup>, continuing along said southeasterly line, S72°44'42"E, a distance of 35.29 feet to an angle point therein;

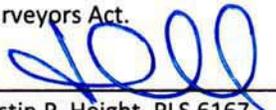
Thence 31<sup>st</sup>, continuing along said southeasterly line, S80°32'04"E, a distance of 49.03 feet to an angle point therein;

Thence 32<sup>nd</sup>, continuing along said southeasterly line, S82°25'56"E, a distance of 51.98 feet to the Point of Beginning.

Excepting therefrom all of Parcel One described above.

Containing 2.14 acres, more or less.

This description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

  
Justin P. Height, PLS 6167

2-21-2020  
Date



# EXHIBIT B-2

EXHIBIT B-2

City of Morro Bay WRF Offsite Pipeline Project  
Vistra Energy - APN 066-331-040  
August 2019  
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That portion of Lot 1, Lot Line Adjustment 01-97, Case MBAL 97-239, in the City of Morro Bay, County of San Luis Obispo, State of California, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010270 of Official Records of said County, and as shown on the map filed in Book 77, Page 26 of Record of Surveys in the office of the County Recorder of said County, described as follows:

Commencing at the northeast corner of Lot 2, Lot Line Adjustment 01-97, Case MBAL 97-239, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010271 of Official Records of said County, being the point common to said Lot 1, said Lot 2, and State Highway 1;

Thence, along the northerly line of said Lot 2, N85°42'10"W, a distance of 81.78 feet, more or less, to a point on a line parallel with, and lying 70.00 feet westerly of, said easterly line of Lot 1, said point being the beginning of a non-tangent curve to the right, concave easterly, the radial center of which bears N63°27'10"E, a distance of 4150.00 feet;

Thence, along said parallel line, and along said curve, through a central angle of 01°35'42", an arc distance of 115.53 feet, more or less, to a point on a line parallel with, and lying 100.00 feet northerly of, the northerly line of said Lot 2, said point being the True Point of Beginning;

Thence 1<sup>st</sup>, continuing along the line parallel with the easterly line of Lot 1, and continuing northerly along said curve, through a central angle of 02°50'24", an arc distance of 205.71 feet;

Thence 2<sup>nd</sup>, continuing along last said parallel line, N23°32'35"W, a distance of 308.73 feet

Thence 3<sup>rd</sup>, continuing along last said parallel line, N20°06'36"W, a distance of 117.27 feet;

Thence 4<sup>th</sup>, leaving last said parallel line, S69°53'24"W, a distance of 20.00 feet;

Thence 5<sup>th</sup>, S24°53'25"W, a distance of 253.12 feet;

Thence 6<sup>th</sup>, S66°27'25"W, a distance of 247.68 feet, more or less, to a line parallel with, and lying 450.00 westerly of, the 2<sup>nd</sup> course described herein;

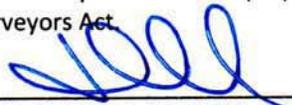
Thence 7<sup>th</sup>, along last said parallel line, S23°32'35"E, a distance of 345.79 feet, more or less, to a line parallel with, and lying 100.000 feet northerly of, the northerly line of said Lot 2;

Thence 8<sup>th</sup>, along last said line parallel line, N75° 19' 23"E, a distance of 322.82 feet;

Thence 9<sup>th</sup>, continuing along last said parallel line, S85° 42' 10"E, a distance of 148.14 feet to the True Point of Beginning.

Containing 4.43 acres, more or less.

This description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act

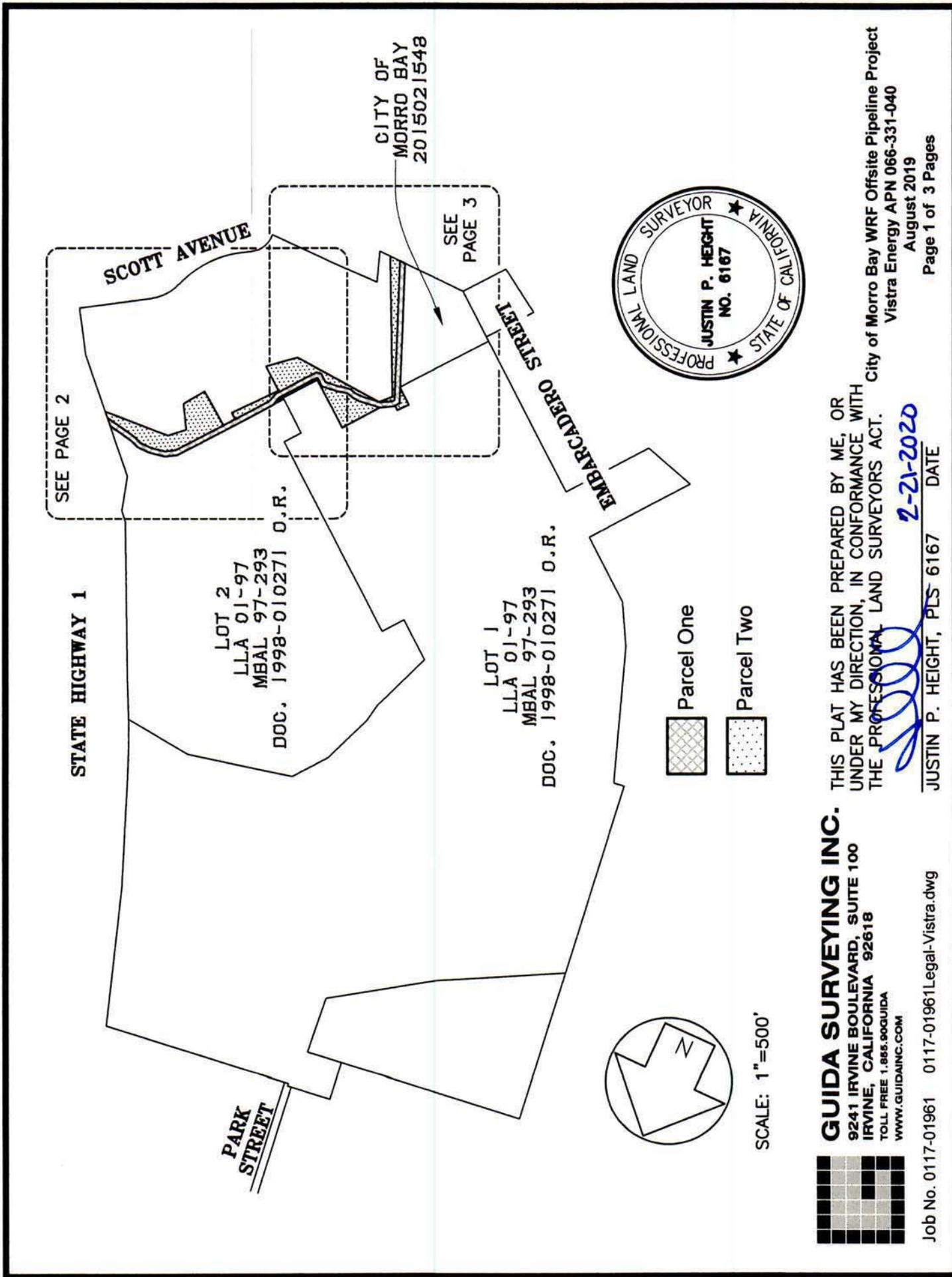
  
Justin P. Height, PLS 6167

2-21-2020

Date



# EXHIBIT C-1



STATE HIGHWAY 1

SEE PAGE 2

SCOTT AVENUE

LOT 2  
LLA 01-97  
MBAL 97-293  
DOC. 1998-010271 D.O.R.

LOT 1  
LLA 01-97  
MBAL 97-293  
DOC. 1998-010271 D.O.R.

PARK STREET

CITY OF MORRO BAY  
2015021548

SEE PAGE 3

EMBARCADERO STREET

Parcel One  
Parcel Two



SCALE: 1"=500'

**GUIDA SURVEYING INC.**  
9241 IRVINE BOULEVARD, SUITE 100  
IRVINE, CALIFORNIA 92618  
TOLL FREE 1.855.909GUIDA  
WWW.GUIDAINC.COM

THIS PLAT HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

*Justin P. Height*  
2-21-2020

JUSTIN P. HEIGHT, PLS 6167 DATE

City of Morro Bay WRF Offsite Pipeline Project  
Vistra Energy APN 066-331-040  
August 2019  
Page 1 of 3 Pages

Job No. 0117-01961 0117-01961Legal-Vistra.dwg

**PARCEL ONE (CENTERLINE)**

- (A) S45°31'03"E 16.65
- (1) N82°25'56"W 65.46
- (2) N80°32'04"W 49.88
- (3) N72°44'42"W 34.38
- (4) S89°09'33"W 45.40
- (5) S78°00'52"W 62.75
- (6) S56°11'46"W 46.12
- (7) S36°07'55"W 420.02
- (8) S13°43'22"W 38.91
- (9) S36°13'22"W 173.37
- (10) S81°13'22"W 11.73
- (11) N53°46'38"W 36.26

LOT 2  
LLA 01-97  
MBAL 97-293  
DOC. 1998-010271 O.R.

SOUTHEASTERLY  
LINE OF LOT 2

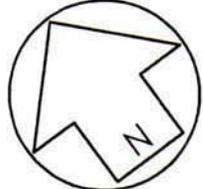
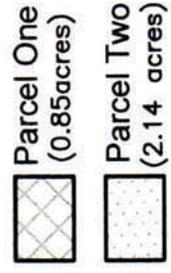
LOT 1  
LLA 01-97  
MBAL 97-293  
DOC. 1998-010271 O.R.

- (A) S.E. COR. LOT 2  
POINT OF COMMENCEMENT PARCEL ONE
- (B) TRUE P.O.B. PARCEL ONE
- (C) S.E. COR. LOT 2  
P.O.B. PARCEL TWO

City of Morro Bay WRF Offsite Pipeline Project  
Vistra Energy APN 066-331-040  
August 2019  
Page 2 of 3 Pages

**PARCEL TWO**

- 1 S45°31'03"E 60.30
- 2 S84°14'59"W 264.15
- 3 S45°44'02"W 75.30
- 4 S32°43'13"E 100.68
- 5 S32°18'05"W 97.01
- 6 N55°54'38"W 153.01
- 7 S36°07'55"W 51.24
- 8 S53°28'45"E 28.38
- 9 S38°43'47"W 203.62
- 10 S53°39'33"E 108.10
- 11 S48°11'51"W 128.37
- 12 N87°54'46"W 365.86
- 22 N35°51'31"E 167.15
- 23 S54°08'29"E 211.37
- 24 N36°04'14"E 155.98
- 25 N27°35'18"E 45.89
- 26 N36°07'55"E 423.77
- 27 N56°11'46"E 49.82
- 28 N78°00'52"E 65.65
- 29 N89°09'33"E 47.97
- 30 S72°44'42"E 35.29
- 31 S80°32'04"E 49.03
- 32 S82°25'56"E 51.98



SCALE: 1"=100'

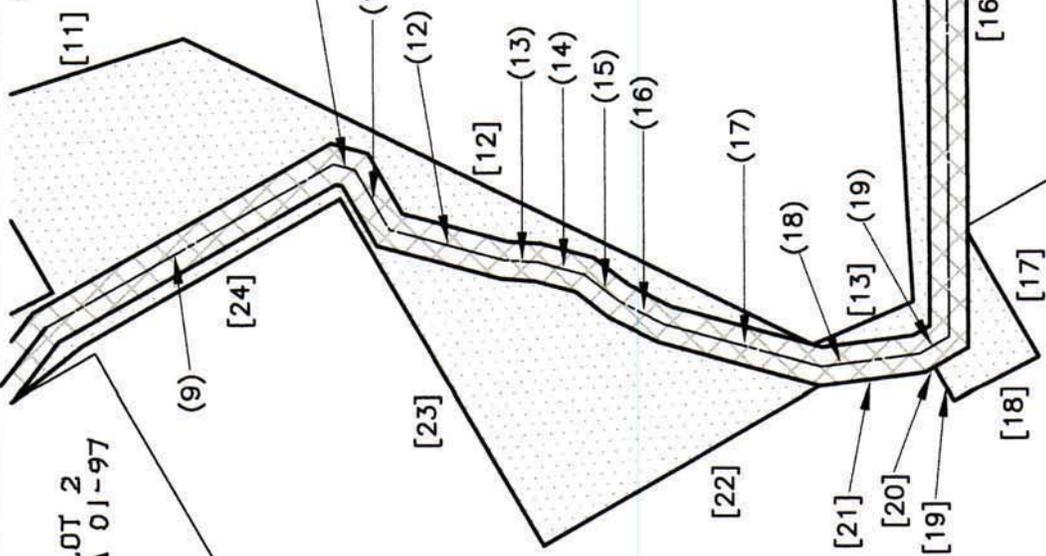
CONTINUED ON PAGE 3

PARCEL TWO	PARCEL ONE (CENTERLINE)
[11] S48°11'51"W 128.37	(9) S36°13'22"W 173.37
[12] N87°54'46"W 365.86	(10) S81°13'22"W 11.73
[13] S42°44'53"W 57.37	(11) N53°46'38"W 36.26
[14] S27°24'45"E 551.72	(12) S81°13'22"W 62.19
[15] S89°11'34"W 64.81	(13) S69°58'22"W 17.65
[16] N24°13'11"W 489.11	(14) S81°13'22"W 25.35
[17] N53°38'01"W 75.08	(15) N75°48'02"W 22.56
[18] N38°37'27"E 50.00	(16) N87°03'02"W 26.51
[19] S53°38'01"E 20.25	(17) S81°06'34"W 85.11
[20] N36°06'34"E 5.46	(18) S58°36'34"W 51.83
[21] N58°36'34"E 55.81	(19) S36°06'34"W 17.87
[22] N35°51'31"E 167.15	(20) S24°13'11"E 548.20
[23] S54°08'29"E 211.37	
[24] N36°04'14"E 155.98	

CONTINUED ON PAGE 2

LOT 2  
LLA 01-97

LOT 1  
LLA 01-97  
MBAL 97-293  
DOC. 1998-010271 O.R.



SCALE: 1"=100'

**GUIDA SURVEYING INC.**  
9241 IRVINE BOULEVARD, SUITE 100  
IRVINE, CALIFORNIA 92618  
TOLL FREE 1.855.90GUIDA  
WWW.GUIDAINC.COM

 Parcel One  
(0.85 acres)

 Parcel Two  
(2.14 acres)

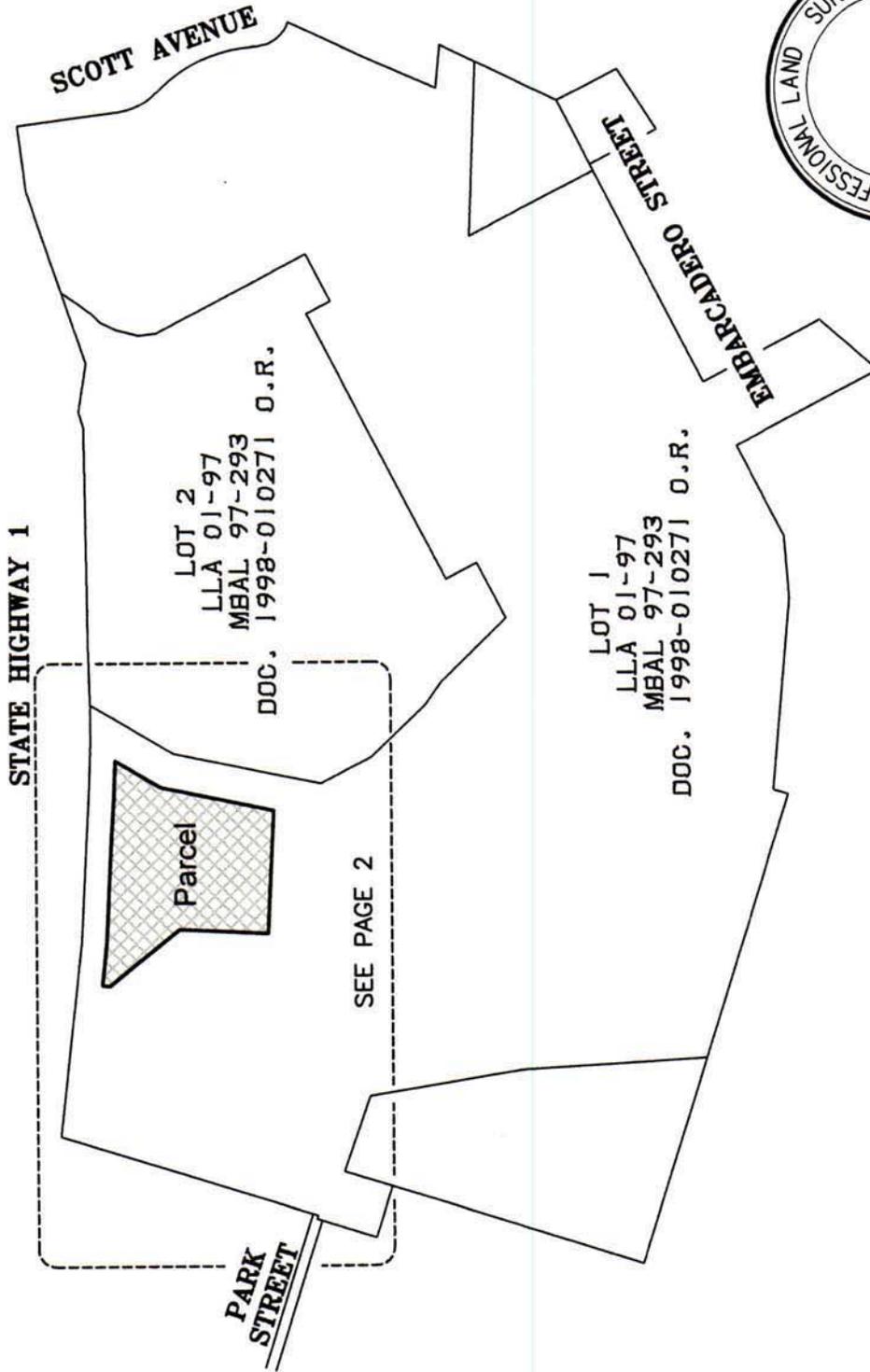
City of Morro Bay WRF Offsite Pipeline Project  
Vistra Energy APN 066-331-040  
August 2019  
Page 3 of 3 Pages

Job No. 0117-01961 0117-01961Legal-Vistra.dwg

# EXHIBIT C-2



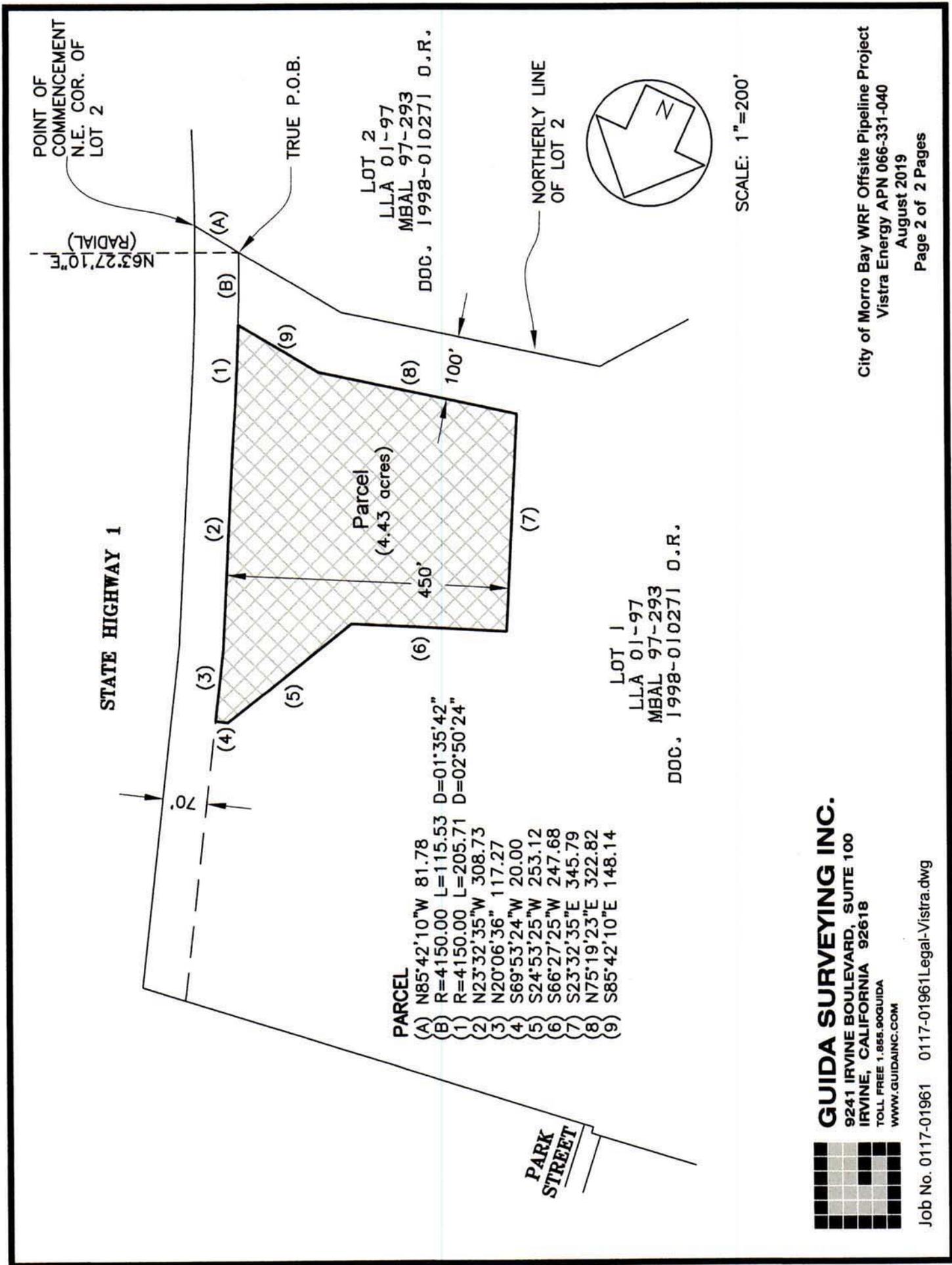
SCALE: 1"=500'



**GUIDA SURVEYING INC.**  
 9241 IRVINE BOULEVARD, SUITE 100  
 IRVINE, CALIFORNIA 92618  
 TOLL FREE 1.855.90GUIDA  
 WWW.GUIDAINC.COM

THIS PLAT HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT. City of Morro Bay WRF Offsite Pipeline Project  
 Vistra Energy APN 066-331-040  
 August 2019

*Justin P. Height*  
 JUSTIN P. HEIGHT, PLS 6167 DATE 2-21-2020



POINT OF COMMENCEMENT  
N.E. COR. OF  
LOT 2

STATE HIGHWAY 1

TRUE P.O.B.

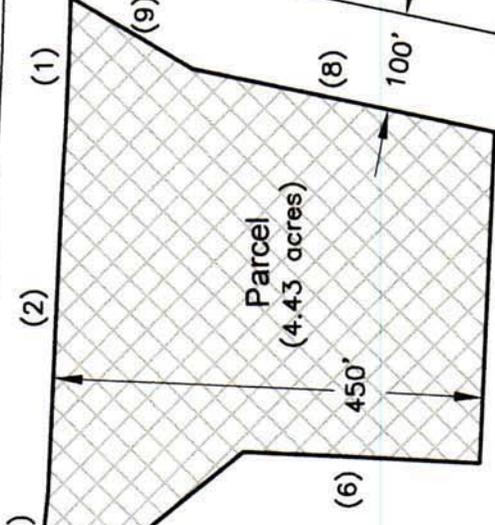
LOT 2  
LLA 01-97  
MBAL 97-293  
DOC. 1998-010271 O.R.

NORTHERLY LINE  
OF LOT 2



SCALE: 1"=200'

70'



Parcel  
(4.43 acres)

**PARCEL**

- (A)  $N85^{\circ}42'10''W$  81.78
- (B)  $R=4150.00$   $L=115.53$   $D=01^{\circ}35'42''$
- (1)  $R=4150.00$   $L=205.71$   $D=02^{\circ}50'24''$
- (2)  $N23^{\circ}32'35''W$  308.73
- (3)  $N20^{\circ}06'36''$  117.27
- (4)  $S69^{\circ}53'24''W$  20.00
- (5)  $S24^{\circ}53'25''W$  253.12
- (6)  $S66^{\circ}27'25''W$  247.68
- (7)  $S23^{\circ}32'35''E$  345.79
- (8)  $N75^{\circ}19'23''E$  322.82
- (9)  $S85^{\circ}42'10''E$  148.14

LOT 1  
LLA 01-97  
MBAL 97-293  
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PARK STREET

**GUIDA SURVEYING INC.**  
9241 IRVINE BOULEVARD, SUITE 100  
IRVINE, CALIFORNIA 92618  
TOLL FREE 1.855.90GUIDA  
WWW.GUIDAINC.COM

City of Morro Bay WRF Offsite Pipeline Project  
Vistra Energy APN 066-331-040  
August 2019  
Page 2 of 2 Pages

Job No. 0117-01961 0117-01961Legal-Vistra.dwg

# EXHIBIT D

**EXHIBIT D**  
**LEGAL DESCRIPTION OF DOMINANT TENEMENT**

That certain real property in the County of San Luis Obispo, State of California, described in a Grant Deed recorded as Document Number 2020003622 on January 24, 2020 in the Office of the Recorder for said County, and further identified as "WRF Parcel" on Exhibit D-2 below, identified with "19" on Exhibit D-3 below, and legally described as follows:

APN 073-101-019

A portion of Parcel 2 of Parcel Map No. CO/MB 89-363 in the County of San Luis Obispo, State of California, as shown on map recorded in Book 48, at Page 13 of Parcel Maps in the Office of the San Luis Obispo County Recorder, described as follows:

Beginning at a point on the south line of said Parcel 2, distant thereon N 56°43'00" W, 93.00 feet from a 1-1/2" iron pipe at the southeast corner of said Parcel as shown on said map;

thence, leaving said south line, N 21°25'57" E, 408.00 feet;

thence N 15°10'57" E, 291.24 feet;

thence N 34°55'57" E, 195.04 feet;

thence N 0°00'57" E, 256.79 feet;

thence N 19°34'03" W, 702.95 feet;

thence S 70°25'57" W, 229.10 feet;

thence S 49°47'18" W, 698.48 feet;

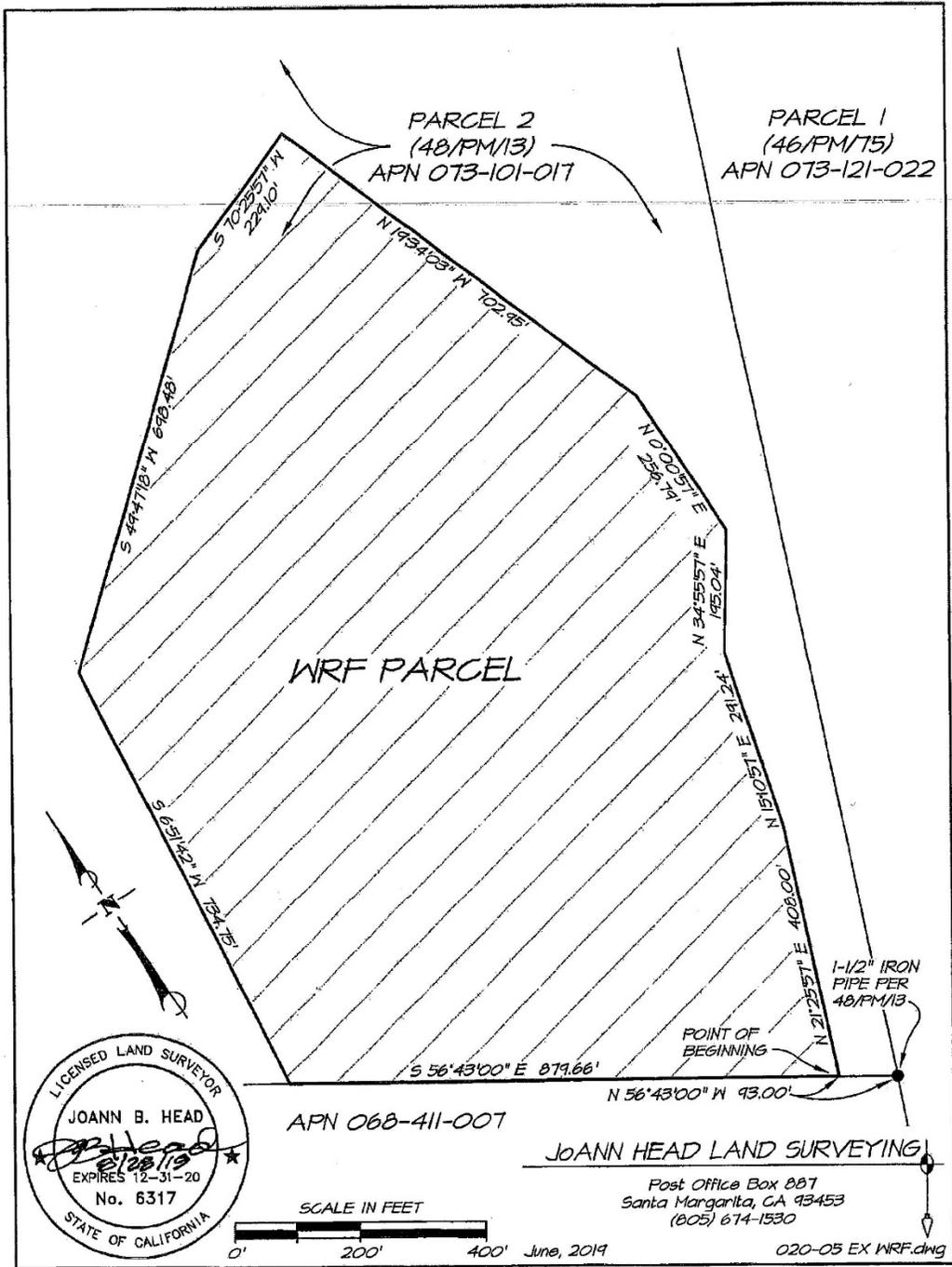
thence S 6°51'42" W, 734.75 feet to the south line of said Parcel 2;

thence, along said south line, S 56°43'00" E, 879.66 feet to the Point of Beginning.

End of Description.

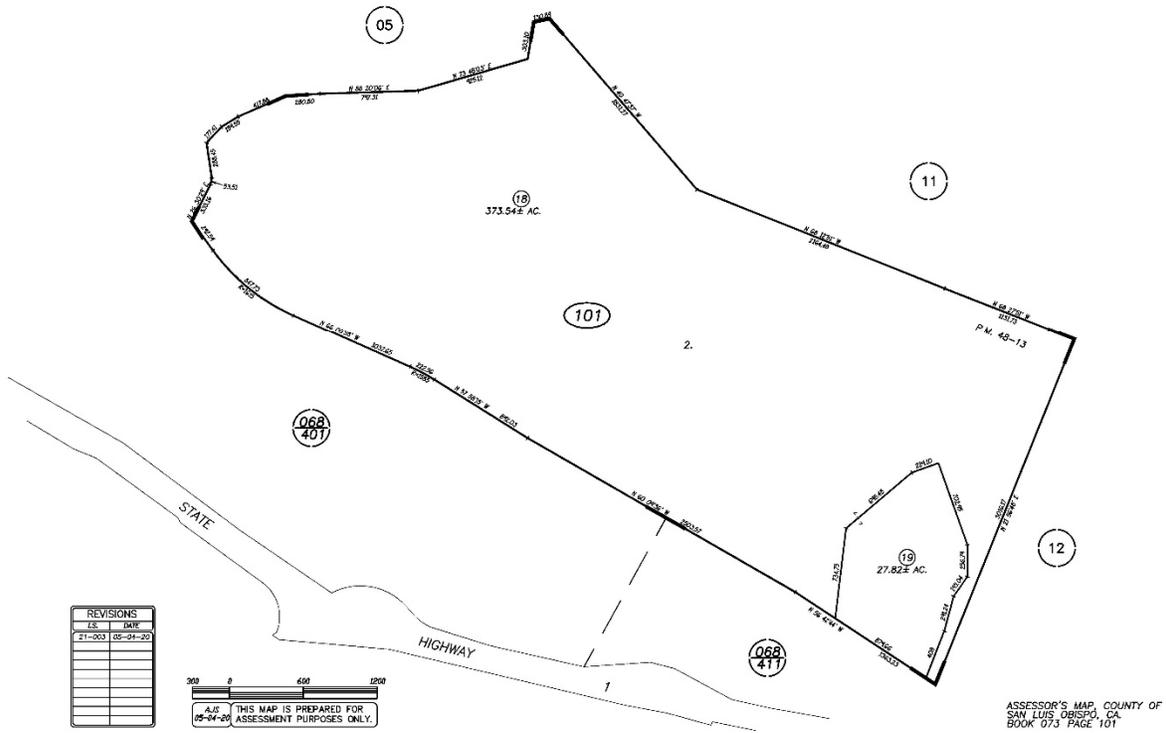
  
JoAnn B. Head





Assessor Parcel Map

073-10



## CERTIFICATE OF ACCEPTANCE

Pursuant to Government Code Section 27281 this is to certify that the interest in real property conveyed by VISTRA CORP. and MORRO BAY POWER COMPANY LLC by Grant of Temporary Construction Easements to the CITY OF MORRO BAY is hereby accepted by the undersigned officer and agent of the CITY OF MORRO BAY pursuant to the authority conferred by that certain Memorandum of Understanding approved by the City Council of the CITY OF MORRO BAY dated \_\_\_\_\_, 202\_, and that the CITY OF MORRO BAY consents to the recording of the Grant of Temporary Construction Easements.

Executed in Morro Bay, California on \_\_\_\_\_, 2021.

**“GRANTEE”**

CITY OF MORRO BAY

By: \_\_\_\_\_  
Scott Collins, City Manager

**EXHIBIT B**  
**PERMANENT EASEMENT DEED**  
**(Immediately behind this page)**

**FREE RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442  
Attn: Dana Swanson, City Clerk

(Space Above This Line for Recorder's Office Use Only)  
(Exempt from Recording Fee per Gov. Code § 6103)

**GRANT OF PERMANENT EASEMENTS**

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, VISTRA CORP., a Delaware corporation, and MORRO BAY POWER COMPANY LLC, a Delaware limited liability company (collectively, "**Grantor**"), hereby grant(s) to the CITY OF MORRO BAY, a municipal corporation ("**Grantee**"), permanent easements in the following portions of the real property located at 1290 Embarcadero, in the City of Morro Bay, County of San Luis Obispo, California, Assessor's Parcel Number (APN) 066-331-046 legally described on Exhibit A which is the servient tenement ("**Property**"):

(1) A permanent pipeline easement consisting of approximately 37,026 square feet (0.85 acres), legally described as Parcel One in Exhibit B-1 and depicted in Exhibit C-1, each exhibit attached hereto and incorporated herein by this reference ("**Easement 1**").

(2) A permanent pipeline easement consisting of approximately 84,506 square feet (1.94 acres), legally described as Parcel One in Exhibit B-2 and depicted in Exhibit C-2, each exhibit attached hereto and incorporated herein by this reference ("**Easement 2**").

(3) A permanent pipeline and injection well easement consisting of approximately 166,399 square feet (3.82 acres), legally described as Parcel Two in Exhibit B-2 and depicted in Exhibit C-2, each exhibit attached hereto and incorporated herein by this reference ("**Easement 3**").

Easement 1, Easement 2 and Easement 3 are hereinafter collectively referred to as the "**Easements**" and individually as an "**Easement**."

**Dominant Tenement:** The Easements are appurtenant to the real property described in Exhibit D (the "**Dominant Tenement**"), such exhibit attached hereto and incorporated herein by this reference.

This Grant of Permanent Easements shall be effective upon recordation in the Official Records of San Luis Obispo County ("**Official Records**").

Grantee's use of the Easements shall be solely in connection with the construction, maintenance and operation of Grantee's water/wastewater project consisting of the following: (i) the decommissioning of the existing wastewater treatment plant ("**WWTP**"); (ii) construction of a

new water reclamation facility (“**WRF**”) on the Dominant Tenement; (iii) construction of new pipelines and pump stations for the conveyance of wastewater from the existing sewer system to the new WRF and the conveyance of treated recycled water to new injection wells; and (iv) construction of infrastructure for groundwater injection/replenishment and potable water reuse (collectively, “**Project**”).

Grantee shall not have the right to bury, install, maintain, or operate any power or electrical transmission lines within the Easements other than that which is to be used exclusively for the Project, and Grantee further covenants that the Easements will not be used for the production or generation of electricity in any form, nor will the Easements be used for the siting of a commercial power station or energy storage facility of any kind, whether sited on the Property or any adjacent property. This covenant restricting any use of the Easements to commercially generate, produce or store electricity or to otherwise site a power station or energy storage facility, in any form or of any kind, shall be a covenant running with, touching, and encumbering the Easements, binding upon the Grantee and all successors in interest or title, transferees, vendees, lessees, mortgagees, and assigns who are owners and/or users of the Property.

Grantee, and its authorized agents, contractors and subcontractors, shall have the right to enter upon the Easements for purposes related to and for the construction, operation, maintenance and repair of the Project in accordance with the plans and specifications for the Project and as follows:

### **Pump Testing/Injection Wells**

a. Construct, operate, maintain and repair injection well and perform pilot injection testing, provided that Grantee dispose of all of water generated from completion of the well and/or procured from the pilot injection testing in an off-site location, subject to compliance with all applicable requirements promulgated by either the California Regional Water Quality Control Board, Central Coast Region 3 (“**RWQCB**”) or any other local, state or federal agency;

b. Construct, operate, maintain and repair approximately four to five injection wells and ancillary facilities (e.g., facilities for the provision of electrical power) to support the injection well within the injection well easement;

c. Construct, maintain and repair fencing around the injection wells and ancillary equipment;

### **Trenching/Laying Pipes/Landscaping**

d. Perform construction activities for the installation of pipelines and wells, including trench work, laying pipes, installing well equipment, and other construction related to the Project, to be performed in accordance with Grantee’s existing plans and specifications for the Project; provided that Grantee shall give Grantor written notice of any material changes or material amendments to the plans and specifications for the Project within 30 days after Grantee’s decision to make the material change or material amendment;

e. Remove trees that will impact the construction of the pipelines and wells, pursuant to Grantee’s existing construction plans and specifications; provided that Grantee shall give

Grantor written notice of any material changes or material amendments to the plans and specifications for the Project within 30 days after Grantee's decision to make the material change or material amendment. After construction of the pipelines and wells, Grantee shall replace, as reasonably feasible, all removed trees;

### **Fencing**

f. Replace in-place and in-kind the current fencing and access gates along western shoulder of Grantee-maintained bike path. Grantee intends to move the fence line to the edge of the 70' offset from the State's right of way to produce a clear corridor which will be maintained by Grantee. Except as otherwise specified, easement areas will not be permanently fenced along their entire perimeter; however, commercially reasonable protective fencing will be placed and maintained around injection wells and related equipment, at all times, and for the duration of the existence of the Easements;

g. Replace in-kind any interior site fencing removed during construction. Grantee shall be liable to Grantor for any damages to Grantor incurred as a result of Grantee's failure to properly secure the Property during any construction, and for the duration of the existence of the Easements;

### **Soil Testing/Disturbance**

h. Monitor and evaluate subsurface soil conditions encountered in project excavations pursuant to the California Department of Toxic Substances Control soil management plan, if any. Material removed from the excavations that does not conform to the requirements for fill or is in excess of that required for backfill shall be hauled away from the work site and disposed of in compliance with all applicable ordinances, codes, laws and regulations;

### **Spill Prevention Control**

i. Spill prevention and containment will be performed pursuant to a Stormwater Pollution Prevention Plan (SWPP) prepared in accordance with the requirements of the certified environmental impact report (EIR) and Biological Opinion for the Project and approved by Grantor;

### **Other Activities and Conditions**

j. For any future maintenance or repair within the Easements, Grantee shall restore to substantially the same to conditions existing prior to Grantee's work;

k. All activities will be undertaken in compliance with the Mitigation Monitoring and Reporting Plan adopted by Grantee for the Project as part of the process of complying with the California Environmental Quality Act;

l. All permits required for construction or activities to be conducted in the Easements which are required by law, including permits that must be obtained from any local, state or federal agency and permitting authorities other than Grantee, shall be obtained and copies of the same provided to Grantor prior to commencement of the activity subject to the permit;

m. Grantee requires that no permanent structures be placed on the surface of the area subject to permanent easements described above. However, Grantee will restore the surface of permanent Easement areas to a substantially same condition to conditions existing prior to the commencement of work in the manner described above. The surface area of the Easements that is not within a fence or subject to uses permitted pursuant to other existing easements (e.g., the bike path) may be used by Grantor for parking, roadways and landscaping;

n. Grantee shall, indemnify, defend and hold harmless Grantor and their officers, directors, employees, agents, representatives, affiliates, subsidiaries, successors and assigns from and against any and all claims, liabilities, losses, damages, demands, lawsuits, causes of action, (including, but not limited to, (a) claims for personal injuries, death, damages to property; (b) fines, penalties, or damages resulting from or assessed upon Grantor by any federal, state, or local regulatory agency or body; (c) any damages to the Property as a direct result of any soil disturbance by Grantee or any employee, contractor, subcontractor, vendor, consultant, agent, supplier or other party engaged by Grantee (collectively, “**Grantee Parties**”), (d) any damages to the Property as a direct result of any spills of hazardous substances, accidental discharge of hazardous substances, or dispersal of hazardous substances on the Property (“**Hazardous Substance Conditions**”), except to the extent such Hazardous Substance Conditions existed on the Property prior to the date of this Grant of Permanent Easements, and are not caused nor exacerbated on the Property as the result of the acts or omissions of the Grantee Parties; and, (e) all other claims or demands and costs and expenses, including reasonable attorney's fees, costs of litigation and/or investigation or other reasonable costs associated therewith), arising out of, resulting from, caused by, or in any way related to (1) the entry or presence, pursuant to the Easements, upon the Property by Grantee Parties, (2) activities, pursuant to the Easements, by any Grantee Parties, (3) any breach of this Grant of Permanent Easements, and (4) the negligence or misconduct, pursuant to the Easements, of any Grantee Parties, save and except to the extent any such liability pursuant to this section n. results from the intentional conduct, or negligence, of Grantor or any of their officers, directors, employees, agents, representatives, affiliates, subsidiaries, successors or assigns;

o. Grantee agrees to support its obligations under this Grant of Permanent Easements, including without limitation its agreement to indemnify, defend, and hold harmless Grantor pursuant to subsection n above, by purchasing and maintaining at all times during the term hereof insurance coverage in the following types and amounts: (a) statutory Workers' Compensation insurance (statutory limits) covering all personnel engaged in furnishing services related to Grantee's operations on the Property; (b) Employers' Liability Insurance with limits no less than (i) \$1,000,000 bodily injury by accident, (ii) \$500,000 bodily injury by disease each person, and (iii) \$500,000 bodily injury by disease policy limit; (c) Commercial General Liability Insurance including but not limited to, contractual liability, personal and advertising injury, products liability and premises/completed operations liability with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, including death and property damage, and products and completed operations liability, and containing no exclusion for XCU (explosion, collapse and underground); (d) comprehensive automobile liability coverage for One Million Dollars (\$1,000,000) per occurrence for vehicles owned or utilized by City's personnel or its contractor's personnel; and (e) Excess Liability Insurance in excess of the underlying insurance described in (b) – (d) above in an amount not less than \$15,000,000 per occurrence; (f) Contractors Pollution Legal Liability, during the course of construction, written on an Occurrence Form including but not limited to property damage, bodily injury, cleanup, defense cost, new pollution

events, non-owned disposal site liability, sudden, accidental and gradual pollution in an amount not less than \$5,000,000 per occurrence; (g) Fixed Site Pollution Legal Liability, after construction prior to the commencement of operations, including coverage for onsite and offsite 1st party and 3rd party bodily injury and property damage, testing, monitoring and cleanup, defense cost, new pollution events, non-owned disposal site liability (NODS), and natural resource damages (NRDs), covering sudden, accidental and gradual pollution in an amount not less than Five Million Dollars (\$5,000,000) per accident or occurrence. The required limits of insurance can be satisfied by any combination of primary and excess coverage. At Grantee's option, Grantee shall obtain such coverage from either (1) the California Joint Powers Insurance Authority ("CJPIA") or other similar joint powers agency providing coverage to governmental agencies in the State of California, or (2) an insurance company or companies having an A.M. Best Company rating of A-, VII or better. Each of the required policies (except for worker's compensation coverage), if written on a claims-made basis, will be maintained in full force and effect for three (3) years after final acceptance or the completion of the Work, whichever is later and: 1) shall name Grantor as an Additional Insured or Protected Party under a Limited Protected Contract for on-going and completed operations; 2) shall include waivers of subrogation in Grantor's favor; and, 3) shall be primary and non-contributory regardless of the insurance available to Grantor. Certificates of insurance for each policy and required coverages must show Vistra Corp., Vistra Intermediate Company LLC, Vistra Operations Company LLC, Luminant Power LLC, Luminant Power Generation Inc., and Morro Bay Power Company LLC, and their successors (collectively, the "Certificate Holders") as the certificate holder. At Grantee's written request, Grantor shall annually provide to Grantee an updated list of Certificate Holders within seven (7) days of receipt of such request but no more than once per calendar year. Such certificates shall be delivered to Grantor on or before the execution of this Grant of Permanent Easements and on or prior to each annual anniversary of the Effective Date, and shall be endorsed with an acknowledgment that the policy shall not be cancelled or terminated, nor shall the policy form be changed, without written notice to Grantor. Each Grantee policy shall contain an agreement by the insurer that such policy or policies shall not be canceled or non-renewed without at least 30 days' prior written notice to Grantor. The requirements contained herein as to the types and limits of all insurance to be maintained by Grantee are not intended to and will not, in any manner, limit or qualify the liabilities and obligations assumed by Grantee under this Agreement. Further, Grantee will make good faith efforts to require (though not guarantee) any contractor, subcontractor, vendor, consultant, agent, supplier or other party engaged by Grantee to perform services under this Grant of Permanent Easements: to also name Grantor as additional insured, provide to Grantor a waiver of subrogation and primary noncontributory status of the following minimum coverages: (a) Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage; (b) comprehensive automobile liability coverage for One Million Dollars (\$1,000,000) per occurrence for vehicles owned or utilized by such contractor's personnel; and (c) additional coverages as Grantee may, in its discretion, to require based on the scope of work to be performed by such contractor. To the extent Grantee does not require, or the vendor/subcontractor does not obtain such coverage, Grantee agrees to indemnify and hold the Additional Insureds harmless from all claims, demands, losses, expenses and judgments to which said coverages would have applied. The foregoing shall in no way limit the entire indemnity obligations of Grantee. Nothing contained herein relating to coverage or amounts of insurance shall operate as a limitation of Grantee's liability in tort, contract, or otherwise. Failure of Grantor to request evidence of any such insurance

shall not constitute a waiver of Grantor's requirements therefor. Any actions, errors or omissions that may invalidate coverage for Grantee shall not invalidate or prohibit coverage available to the Additional Insureds. Receipt by Vistra Corp. of a certificate of insurance, endorsement or policy of insurance which is more restrictive than the contracted for insurance shall not be construed as a waiver or modification of the insurance requirements above or an implied agreement to modify same, nor is any verbal agreement to modify same permissible or binding. If Grantee fails (such failure expressly not including insurance requirements, nor certificates or evidence of coverage, from any entity other than specifically from the City of Morro Bay) to comply with the foregoing Grantee insurance requirements or to deliver to Grantor the certificates or evidence of coverage required herein, Grantor, in addition to any other remedy available pursuant to this Grant of Permanent Easements or otherwise, may, but shall not be obligated to, obtain such insurance on Grantee's behalf, and Grantee shall pay to Grantor on demand the premium costs thereof, plus an administrative fee of 15% of such premium costs.

p. Grantor may make application, and Grantee will in good faith cooperate with such application, to the governmental authority authorized to determine the assessed valuation of the Property for property tax purposes, seeking a reduction in the assessed valuation of the Property through either a lower assessment or the creation of a separate assessor's parcel for the Easements, commensurate with the impact of the Easements on the Property.

**Notice:** Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of Grantee, to the City Manager, City of Morro Bay, 595 Harbor Street, Morro Bay, CA 93442 and in the case of Grantor, to the person(s) at Vistra Corp., 6555 Sierra Drive, Irving, TX 75039, Attention: Claudia Morrow. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided herein.

**Severability:** In the event that part of this Grant of Permanent Easements shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Grant of Permanent Easements which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder.

**Interpretation:** The terms of this Grant of Permanent Easements shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Grant of Permanent Easements or any other rule of construction which might otherwise apply.

**Applicable Law.** This Grant of Permanent Easements and all matters relating to this Grant of Permanent Easements shall be governed by the laws of the State of California in force at the time any need for the interpretation of this Grant of Permanent Easements or any decision or holding concerning this Grant of Permanent Easements arises. Venue for any legal action by any of the parties against any of the others related to this Grant of Permanent Easements shall be a court of competent jurisdiction in San Luis Obispo County, State of California; provided, that any party may seek a change of venue, either pursuant to California Code of Civil Procedure section 394, or

otherwise pursuant to applicable law, but the parties expressly agree only to a court of competent jurisdiction in Los Angeles County, State of California.

**Attorney's Fees.** In the event of any litigation or other legal proceeding arising from this Grant of Permanent Easements, the prevailing party will be entitled to recover, in addition to any other relief awarded or granted, its reasonable costs and expenses, including all its reasonable fees and costs for any attorney (including in-house counsel), accountant, expert witness, or consultant, incurred in the proceeding.

**Representations and Warranties.** Each entity comprising Grantor represent and warrant that (i) they own the Property; (ii) there are no liens on the Property, except as disclosed on a current title report; and (iii) the persons executing this Grant of Permanent Easement have full authority to execute on behalf of the respective entity.

**Exhibits.** Exhibits A, B-1, B-2, C-1, C-2 and D attached hereto are incorporated herein by reference.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, Grantor has caused this Grant of Permanent Easements to be executed on their behalf by their respective officers or agents hereunto as of the date set forth below each signature.

**GRANTOR:**

MORRO BAY POWER COMPANY LLC,  
a Delaware limited liability company

VISTRA CORP.,  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# EXHIBIT A

# EXHIBIT "A"

## Legal Description

**For APN/Parcel ID(s): 066-331-046**

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

The parcel of land shown as Lot 1 on that certain Lot Line Adjustment designated Case No. LL 01-97 recorded February 26, 1998 as Document No. 1998-010270 of Official Records of San Luis Obispo County (the "Lot Line Adjustment") and more particularly described as follows:

All that certain real property situated in Section 25, Township 29 South, Range 10 East, Mount Diablo Base and Meridian, in the City of Morro Bay, County of San Luis Obispo, State of California, described as follows:

Commencing at a point of intersection of the Northerly right-of-way line of Surf Street (formerly known as Ninth Street) with the centerline of Scott Street (formerly known as "S" Street), as said streets are delineated and so designated on the Map of Atascadero Beach, recorded July 2, 1917 in Book 2, Page 15 of Maps, in the office of the County Recorder of said County, said point also being the point of beginning of the 48.7 acre parcel of land set forth in the quitclaim deed from the County of San Luis Obispo to the Pacific Gas and Electric Company, a corporation (P.G.&E.), recorded September 25, 1951, in the office of the County Recorder of said County in Book 628 at Page 342 of Official Records; thence along the centerline of Scott Street North 8°07'26" West, 126.01 feet to the Northeasterly corner of that certain parcel of land described in the deed from P.G. & E. to the County of San Luis Obispo recorded July 28, 1953 in Book 720 at Page 69 of Official Records, in the office of the County Recorder of said County, said point also being the True Point of Beginning; thence leaving said centerline of Scott Street, along the Northerly line of the land described in last said deed South 88°19'28" West 269.38 feet to a point on the centerline of Mesa Drive as said Drive is delineated on said Map of Atascadero Beach, said point also being the Northwesterly corner of the lands described in last said deed, and being a point on the boundary line of said 48.7 acre parcel; thence along said boundary line South 87°15'33" West 182.67 feet; thence South 20°48'10" East 122.10 feet to a point on the Northerly right-of-way line of said Surf Street and the Southerly boundary line of said 48.7 acre parcel; thence along said Northerly right-of-way line and said Southerly boundary line South 89°11'34" West 362.73 feet to the Southeasterly terminus of that certain course in the Southwesterly boundary line of said 48.7 acre parcel, said course showing a bearing and distance of "North 53°45' West 884.13 feet" (North 53°52'05" West 884.13 feet for the purposes of this description), said point also being the most Easterly corner of the parcel of land described in the deed from the County of San Luis Obispo to P.G. & E., recorded January 26, 1956 in Book 833 at Page 525 of Official Records, in the Office of the County Recorder of said County; thence at right angles to last said course South 36°07'55" West 190.66 feet to a point on the Southwesterly boundary line of Tide Lands Survey No. 14, recorded in Book 4 at Page 11 of Record of Surveys, in the Office of the County Recorder of said County; thence along said Southwesterly boundary North 59°39'45" West 201.03 feet; thence leaving said Southwesterly boundary North 36°07'55" East 210.96 feet to a point on the Southwesterly boundary line of said 48.7 acre parcel, said point being distant North 53°52'05" West 200.00 feet along said boundary line from said Southeasterly terminus of the Southwesterly boundary line of the 48.7 acre parcel; thence along the Southwesterly boundary of said 48.7 acre parcel North 53°52'05" West 684.13 feet; thence at right angles South 36°07'55" West 369.55 feet to a point on the Southwesterly boundary line of the parcel of land quitclaimed to the County of San Luis Obispo by deed recorded August 1, 1949, in Book 530 at Page 214 of Official Records of said County; thence along last said Southwesterly boundary North 75°37'05" West 215.33 feet; thence North 36°07'55" East 449.34 feet; thence North 53°52'05" West 286.04 feet; thence North 30°58'19" West 175.66 feet; thence North 21°19'19" West 543.47 feet to a point on the centerline of 79th Street, as said 79th Street is shown on said Map of Atascadero Beach; thence leaving the boundary of said 48.7 acre parcel, along the centerline of said 79th Street South 81°03'50" West 42.89 feet to a point of intersection with the centerline of "C" Street, as said centerline is so delineated on said Map; thence along the centerline of said "C" Street North 8°56'10" West 1379.64 feet to a point of intersection with the centerline of 70th Street, said 70th Street being so delineated on said Map, thence along the centerline of said 70th Street North 81°03'50" East 736.36 feet to the Southwesterly corner of Lot 27 of Block 28D of said Map, thence along the Westerly line of said Lot 27 and Lot 20 of said Block 28D North 8°56'10" West 149.96 feet to a point on the centerline of 69th Street, said 69th Street being so delineated on said Map, said point also being the Northwesterly corner of said Lot 20; thence along said centerline of 69th Street North 81°03'50" East 175.26 feet to a point of intersection with the centerline of "J" Street, said "J" Street being so delineated on said Map; thence along said centerline of "J" Street South 8°56'10" East 10.00 feet to a point of intersection with the Westerly prolongation of the Northerly line of Lot 6 of Block 27 of said Map; thence along said Westerly prolongation and the Northerly line of Lot 6 and the Easterly prolongation thereof North 81°03'50" East 750.88 feet to the Northwesterly corner of the parcel of land described in the deed from P.G.&E. to

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### Legal Description

the State of California recorded October 7, 1960 in Book 1087 at Page 277 of Official Records, in the office of the County Recorder of said County, said Northwesterly corner also being a point on the Westerly right-of-way line of California State Highway 1 as shown on the California Department of Transportation's Right-of-Way Map Sheets designated as postmile 29.6 and postmile 30.1 (sheets 27 and 28 of 33) on file in the office of California Department of Transportation District 5 Right-of-Way Engineering Department in the City of San Luis Obispo, State of California; thence along said Westerly right-of-way line South 20°06'36" East 550.31 feet; thence continuing along said Westerly right-of-way line South 23°32'35" East 307.51 feet to the beginning of a non-tangent curve concave Easterly having a radius of 4080.00 feet, to which a radial line bears South 67°54'00" West; thence continuing along said Westerly right-of-way line Southeasterly along said curve through a central angle of 7°10'01" an arc distance of 510.35 feet; thence continuing along said Westerly right-of-way line South 27°12'08" East, 628.32 feet; thence continuing along said Westerly right-of-way line South 44°10'05" East 44.29 feet to a point of intersection with the Easterly boundary line of the parcel of land described in the deed from the State of California to P.G.&E. recorded October 7, 1960, in the Office of the County Recorder of said County, in Book 1087 at Page 273 of Official Records; thence leaving said Westerly right-of-way line of Highway 1 along last said Easterly boundary line South 17°19'03" East 136.90 feet; thence continuing along said Easterly boundary line South 45°31'03" East 508.65 feet; thence South 34°07'03" East 181.13 feet to the most Easterly corner of Lot 39 of Block 31 of said Map of Atascadero Beach; thence along the Southeasterly line of said Lot 39, last said line also being the Northeasterly prolongation of the centerline of Scott Street, South 55°57'03" West 289.42 feet to the beginning of a tangent curve concave Southeasterly, having a radius of 175.72 feet; thence continuing along said centerline of Scott Street Southwesterly along said curve through a central angle of 39°18'10" an arc distance of 120.54 feet; thence continuing along said centerline South 16°38'53" West 0.26 feet to the beginning of a tangent curve concave Northwesterly, having a radius of 404.66 feet; thence continuing along said centerline Southwesterly along said curve through a central angle of 43°16'54" an arc distance of 305.68 feet; thence continuing along said centerline South 59°55'47" West 15.07 feet to the beginning of a tangent curve concave Southeasterly having a radius of 95.71 feet; thence continuing along said centerline Southwesterly and Southerly along said curve through a central angle of 68°03'13" an arc distance of 113.68 feet to the True Point of Beginning.

Excepting therefrom that portion described as follows:

Commencing at the most Easterly corner of Lot 39 of Block 31 of said Map of Atascadero Beach, said corner also being a point on the Easterly boundary line of said deed recorded October 7, 1960; thence along said Easterly boundary line North 34°07'03" West 181.13 feet; thence continuing along said Easterly boundary line North 45°31'03" West 300.40 feet to the True Point of Beginning; thence leaving said Easterly boundary line North 82°25'56" West 51.99 feet; thence North 80°32'04" West 49.03 feet; thence North 72°44'42" West 35.29 feet; thence South 89°09'33" West 47.97 feet; thence South 78°00'52" West 65.65 feet; thence South 56°11'46" West 49.82 feet; thence at right angles to that certain course in said Southwesterly boundary line of said 48.7 acre parcel, said course showing a bearing and distance of "North 53°45' West 884.13 feet" (North 53°52'05" West 884.13 feet for the purposes of this description), South 36°07'55" West 473.15 feet; thence at right angles North 53°52'05" West 148.76 feet; thence at right angles North 36°07'55" East 75.05 feet; thence at right angles North 53°52'05" West 837.90 feet; thence at right angles South 36°07'55" West 97.53 feet; thence at right angles North 53°52'05" West 176.60 feet; thence North 19°35'23" East 254.47 feet; thence North 8°25'31" East 80.98 feet; thence North 19°47'04" East 209.64 feet; thence at right angles to said Southwesterly boundary line North 36°07'55" East 159.02 feet; thence North 75°19'23" East 421.36 feet; thence South 85°42'10" East 271.06 feet to the beginning of a non-tangent curve concave Northeasterly having a radius of 4080.00 feet, to which a radial line bears South 62°51'50" West, said beginning point also being on said Westerly right-of-way line of said California State Highway 1; thence continuing along said Westerly right-of-way line Southeasterly along said curve through a central angle of 2°07'51" an arc distance of 151.74 feet; thence continuing along said Westerly right-of-way line South 27°12'08" East 628.32 feet; thence continuing along said Westerly right-of-way line South 44°10'05" East 44.29 feet to a point of intersection with the Easterly boundary line of the parcel of land described in said deed dated October 7, 1960; thence leaving said Westerly right-of-way line of Highway 1 along last said Easterly boundary line South 17°19'03" East 136.90 feet; thence continuing along said Easterly boundary line South 45°31'03" East 208.25 feet to the True Point of Beginning.

Also excepting therefrom all minerals and oil, in, under, or upon that portion formerly described as Lot 15 in Block 29 of Atascadero Beach, in the City of Morro Bay, County of San Luis Obispo, State of California, according to map recorded July 2, 1917 in Book 2, Page 15 of Maps.

Also excepting therefrom all interests and facilities as reserved by P.G. & E in Grant Deed dated June 30, 1998, recorded July 2, 1998 as Document No. 1998-040835 of Official Records, in the office of the County Recorder of said County.

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Also excepting therefrom that portion conveyed to the City of Morro Bay by deed recorded May 3, 2007 as Document No. 2007030485 of Official Records.

Also excepting therefrom that portion conveyed to the City of Morro Bay by deed recorded May 6, 2015 as Document No. 2015021548 of Official Records.

# EXHIBIT B-1

## EXHIBIT B-1

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Those portions of Lot 1, Lot Line Adjustment 01-97, Case MBAL 97-239, in the City of Morro Bay, County of San Luis Obispo, State of California, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010270 of Official Records of said County, and as shown on the map filed in Book 77, Page 26 of Record of Surveys in the office of the County Recorder of said County, described as follows:

### Parcel One

A Twenty (20.00) foot wide strip of land, the centerline of which is described as follows:

Commencing at the southeast corner of Lot 2, Lot Line Adjustment 01-97, Case MBAL 97-239, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010271 of Official Records of said County, being the point common to said Lot 1, said Lot 2, and State Highway 1;

Thence, along the easterly line of said Lot 1, S45°31'03"E, a distance of 16.65 feet, more or less to a point on a line parallel with, and lying 20.00 feet southeasterly of, the southeasterly line of said Lot 2;

Thence 1<sup>st</sup>, along said parallel line, N82°25'56"W, a distance of 65.46 feet;

Thence 2<sup>nd</sup>, continuing along said parallel line, N80°32'04"W, a distance of 49.88 feet;

Thence 3<sup>rd</sup>, continuing along said parallel line, N72°44'42"W, a distance of 34.38 feet;

Thence 4<sup>th</sup>, continuing along said parallel line, S89°09'33"W, a distance of 45.40 feet;

Thence 5<sup>th</sup>, continuing along said parallel line, S78°00'52"W, a distance of 62.75 feet;

Thence 6<sup>th</sup>, continuing along said parallel line, S56°11'46"W, a distance of 46.12 feet;

Thence 7<sup>th</sup>, continuing along said parallel line, S36°07'55"W, a distance of 420.02 feet;

Thence 8<sup>th</sup>, leaving said parallel line, S13°43'22"W, a distance of 38.91 feet;

Thence 9<sup>th</sup>, S36°13'22"W, a distance of 173.37 feet;

Thence 10<sup>th</sup>, S81°13'22"W, a distance of 11.73 feet;

Thence 11<sup>th</sup>, N53°46'38"W, a distance of 36.26 feet;

Thence 12<sup>th</sup>, S81°13'22"W, a distance of 62.19 feet;

Thence 13<sup>th</sup>, S69°58'22"W, a distance of 17.65 feet;

Thence 14<sup>th</sup>, S81°13'22"W, a distance of 25.35 feet;

Thence 15<sup>th</sup>, N75°48'02"W, a distance of 22.56 feet;

Thence 16<sup>th</sup>, N87°03'02"W, a distance of 26.51 feet;

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Thence 17<sup>th</sup>, S81°06'34"W, a distance of 85.11 feet;

Thence 18<sup>th</sup>, S58°36'34"W, a distance of 51.83 feet;

Thence 19<sup>th</sup>, S36°06'34"W, a distance of 17.87 feet, more or less, to a line parallel with, and lying 10.00 feet northeasterly of, the easterly line of the land quitclaimed to the City of Morro Bay in the Quitclaim Deed recorded May 6, 2015 as Document Number 2015021548 of Official Records of said County, and as shown on the map filed in Book 111, Page 30 of Record of Surveys in the office of the County Recorder of said County;

Thence 20<sup>th</sup>, along said parallel line, S24°13'11"E, a distance of 548.20 feet, more or less, to the southerly line of said Lot 1, being also a point of the north line of Surf Street.

The sidelines of said twenty foot wide strip shall be lengthened or shortened to terminate easterly on said easterly line of Lot 1 and to terminate southerly on said southerly line of Lot 1.

Containing 0.85 acres, more or less.

#### Parcel Two

Beginning at the southeast corner of Lot 2, Lot Line Adjustment 01-97, Case MBAL 97-239, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010271 of Official Records of said County, being the point common to said Lot 1, said Lot 2, and State Highway 1;

Thence 1<sup>st</sup>, along the easterly line of said Lot 1, S45°31'03"E, a distance of 60.30 feet;

Thence 2<sup>nd</sup>, leaving said easterly line, S84°14'59"W, a distance of 264.15 feet;

Thence 3<sup>rd</sup>, S45°44'02"W, a distance of 75.30 feet;

Thence 4<sup>th</sup>, S32°43'13"E, a distance of 100.68 feet;

Thence 5<sup>th</sup>, S32°18'05"W, a distance of 97.01 feet;

Thence 6<sup>th</sup>, N55°54'38"W, a distance of 153.01 feet, more or less, to the southeasterly line of Parcel One described above;

Thence 7<sup>th</sup>, along said southeasterly line, S36°07'55"W, a distance of 51.24 feet;

Thence 8<sup>th</sup>, leaving said southeasterly line, S53°28'45"E, a distance of 28.38 feet;

Thence 9<sup>th</sup>, S38°43'47"W, a distance of 203.62 feet;

Thence 10<sup>th</sup>, S53°39'33"E, a distance of 108.10 feet;

Thence 11<sup>th</sup>, S48°11'51"W, a distance of 128.37 feet;

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Thence 12<sup>th</sup>, N87°54'46"W, a distance of 365.86 feet, more or less, to a point on the southerly line of Parcel One described above;

Thence 13<sup>th</sup>, leaving said southerly line, S42°44'53"W, a distance of 57.37 feet;

Thence 14<sup>th</sup>, S27°24'45"E, a distance of 551.72 feet, more or less, to the southerly of said Lot 1;

Thence 15<sup>th</sup>, along last said southerly line, S89°11'34"W, a distance of 64.81 feet, more or less, to the southeasterly corner of the land quitclaimed to the City of Morro Bay in the Quitclaim Deed recorded May 6, 2015 as Document Number 2015021548 of Official Records of said County, and as shown on the map filed in Book 111, Page 30 of Record of Surveys in the office of the County Recorder of said County;

Thence 16<sup>th</sup>, along said easterly line and its northwesterly prolongation, N24°13'11"W, a distance of 489.11 feet;

Thence 17<sup>th</sup>, leaving said easterly line, N53°38'01"W, a distance of 75.08 feet;

Thence 18<sup>th</sup>, N38°37'27"E, a distance of 50.00 feet;

Thence 19<sup>th</sup>, S53°38'01"E, a distance of 20.25 feet, more or less, to the northwesterly line of Parcel One described above;

Thence 20<sup>th</sup>, along said northwesterly line, N36°06'34"E, a distance of 5.46 feet to an angle point therein;

Thence 21<sup>st</sup>, continuing along said northwesterly line, N58°36'34"E, a distance of 55.81 feet to an angle point therein;

Thence 22<sup>nd</sup>, leaving said northwesterly line, N35°51'31"E, a distance of 167.15 feet;

Thence 23<sup>rd</sup>, S54°08'29"E, a distance of 211.37 feet;

Thence 24<sup>th</sup>, N36°04'14"E, a distance of 155.98 feet;

Thence 25<sup>th</sup>, N27°35'18"E, a distance of 45.89 feet, more or less, to an angle point in the northwesterly line of Parcel One described above, being also a point on the southeasterly line of said Lot 2;

Thence 26<sup>th</sup>, along said southeasterly line, N36°07'55"E, a distance of 423.77 feet;

Thence 27<sup>th</sup>, continuing along said southeasterly line, N56°11'46"E, a distance of 49.82 feet to an angle point therein;

Thence 28<sup>th</sup>, continuing along said southeasterly line, N78°00'52"E, a distance of 65.65 feet to an angle point therein;

Thence 29<sup>th</sup>, continuing along said southeasterly line, N89°09'33"E, a distance of 47.97 feet to an angle point therein;

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Thence 30<sup>th</sup>, continuing along said southeasterly line, S72°44'42"E, a distance of 35.29 feet to an angle point therein;

Thence 31<sup>st</sup>, continuing along said southeasterly line, S80°32'04"E, a distance of 49.03 feet to an angle point therein;

Thence 32<sup>nd</sup>, continuing along said southeasterly line, S82°25'56"E, a distance of 51.98 feet to the Point of Beginning.

Excepting therefrom all of Parcel One described above.

Containing 2.14 acres, more or less.

This description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

  
Justin P. Height, PLS 6167

2-21-2020  
Date



# EXHIBIT B-2

**EXHIBIT B-2**  
**City of Morro Bay WRF Offsite Pipeline Project**  
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Those portions of Lot 1, Lot Line Adjustment 01-97, Case MBAL 97-239, in the City of Morro Bay, County of San Luis Obispo, State of California, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010270 of Official Records of said County, and as shown on the map filed in Book 77, Page 26 of Record of Surveys in the office of the County Recorder of said County, described as follows:

**Parcel One**

A seventy (70.00) foot wide strip of land, more particularly described as follows:

Beginning at the northeasterly corner of said Lot 1, being also a point on the westerly line of State Highway 1 as shown on said Record of Survey;

Thence 1<sup>st</sup>, along the easterly line of said Lot 1, S20°06'26"E, a distance of 550.31 feet to an angle point therein,

Thence 2<sup>nd</sup>, continuing along last said easterly line, S23°32'35"E, a distance of 307.51 feet to an angle point therein, being the beginning of a non-tangent curve to the left, concave easterly, the radial center of which bears N67°54'00"E, a distance of 4080.00 feet;

Thence 3<sup>rd</sup>, continuing along last said easterly line, and along said curve through a central angle of 05°02'10", an arc distance of 358.61 feet to the northeast corner of Lot 2, Lot Line Adjustment 01-97, Case MBAL 97-239, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010271 of Official Records of said County, being the point common to said Lot 1, said Lot 2, and said State Highway 1;

Thence 4<sup>th</sup>, along the northerly line of said Lot 2, N85°42'10"W, a distance of 81.78 feet, more or less, to a point on a line parallel with, and lying 70.00 feet westerly of, said easterly line of Lot 1, said point being the beginning of a non-tangent curve to the right, concave easterly, the radial center of which bears N63°27'10"E, a distance of 4150.00 feet;

Thence 5<sup>th</sup>, along said parallel line, and long said curve through a central angle of 04°26'06", an arc distance of 321.24 feet;

Thence 6<sup>th</sup>, continuing along said parallel line, N23°32'35"W, a distance of 308.73 feet;

Thence 7<sup>th</sup>, continuing along said parallel line, N20°06'36"W, a distance of 566.24, more or less, to the northerly line of said Lot 1;

Thence 8<sup>th</sup>, along said northerly line, N81°03'50"E, a distance of 71.35 feet to the Point of Beginning.

Containing 1.94 acres, more or less.

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### Parcel Two

Commencing at the northeast corner of Lot 2, Lot Line Adjustment 01-97, Case MBAL 97-239, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010271 of Official Records of said County, being the point common to said Lot 1, said Lot 2, and said State Highway 1;

Thence, along the northerly line of said Lot 2, N85°42'10"W, a distance of 81.78 feet, more or less, to a point on a line parallel with, and lying 70.00 feet westerly of, said easterly line of Lot 1, said point being the True Point of Beginning;

Thence 1<sup>st</sup>, continuing along said northerly line of Lot 2, N85° 42' 10"W, a distance of 189.28 feet to an angle point therein;

Thence 2<sup>nd</sup>, continuing along said northerly line of Lot 2, S75° 19' 23"W, a distance of 421.36 feet to an angle point therein;

Thence 3<sup>rd</sup>, leaving said northerly line of Lot 2, N59° 01' 01"W, a distance of 131.30 feet;

Thence 4<sup>th</sup>, N55° 22' 26"W, a distance of 295.99 feet;

Thence 5<sup>th</sup>, N53° 44' 39"W, a distance of 87.99 feet;

Thence 6<sup>th</sup>, N87° 18' 25"W, a distance of 31.08 feet;

Thence 7<sup>th</sup>, S78° 49' 13"W, a distance of 357.71 feet;

Thence 8<sup>th</sup>, S73° 34' 24"W, a distance of 328.38 feet;

Thence 9<sup>th</sup>, S69° 36' 40"W, a distance of 173.29 feet, more or less, to a point on the westerly line of said Lot 1,

Thence 10<sup>th</sup>, along said westerly line of Lot 1, N08° 56' 10"W, a distance of 30.61 feet, more or less, to a line parallel with, and lying 30.00 feet northerly of, the 9<sup>th</sup> course described herein;

Thence 11<sup>th</sup>, along last said parallel line, N69° 36' 40"E, a distance of 168.25 feet, more or less, to a line parallel with, and lying 30.00 feet northerly of, the 8<sup>th</sup> course described herein;

Thence 12<sup>th</sup>, along last said parallel line, N73° 34' 24"E, a distance of 321.25 feet;

Thence 13<sup>th</sup>, N11° 10' 47"W, a distance of 70.87 feet, more or less, to a line parallel with, and lying 100.00 feet northerly of, the 7<sup>th</sup> course described herein;

Thence 14<sup>th</sup>, along last said parallel line, N78° 49' 13"E, a distance of 380.76 feet, more or less, to a line parallel with, and lying 100.00 feet northerly of, the 6<sup>th</sup> course described herein;

Thence 15<sup>th</sup>, along last said parallel line, S87° 18' 25"E, a distance of 73.41 feet, more or less, to a line parallel with, and lying 100.00 feet northeasterly of, the 5<sup>th</sup> course described herein;

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Thence 16<sup>th</sup>, along last said parallel line, S53° 44' 39"E, a distance of 116.72 feet, more or less, to a line parallel with, and lying 100.00 feet northeasterly of, the 4<sup>th</sup> course described herein;

Thence 17<sup>th</sup>, along last said parallel line, S55° 22' 26"E, a distance of 291.38 feet, more or less, to a line parallel with, and lying 100.00 feet northeasterly of, the 3<sup>rd</sup> course described herein;

Thence 18<sup>th</sup>, along last said parallel line, S59° 01' 01"E, a distance of 59.00 feet,

Thence 19<sup>th</sup>, N87° 10' 50"E, a distance of 94.04 feet, more or less, to the intersection of a line parallel with, and lying 100.00 feet northerly of, the 2<sup>nd</sup> course described herein, and a line parallel with, and lying 450.00 westerly of, the 6<sup>th</sup> course of Parcel One described above;

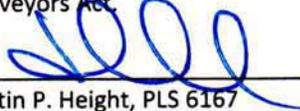
Thence 20<sup>th</sup>, along said line parallel with the 2<sup>nd</sup> course described herein, N75° 19' 23"E, a distance of 322.82 feet, more or less, to a line parallel with, and lying 100.00 feet northerly of, the 1<sup>st</sup> course described herein;

Thence 21<sup>st</sup>, along last said parallel line, S85° 42' 10"E, a distance of 148.14 feet, more or less, to a point on a line parallel with, and lying 70.00 feet westerly of, said easterly line of Lot 1, said point being the beginning of a non-tangent curve to the left, concave easterly, the radial center of which bears N65°02'52"E, a distance of 4150.00 feet;

Thence 22<sup>nd</sup>, along last said parallel line, and long said curve through a central angle of 01°35'42", an arc distance of 115.53 feet to the True Point of Beginning.

Containing 3.82 acres, more or less.

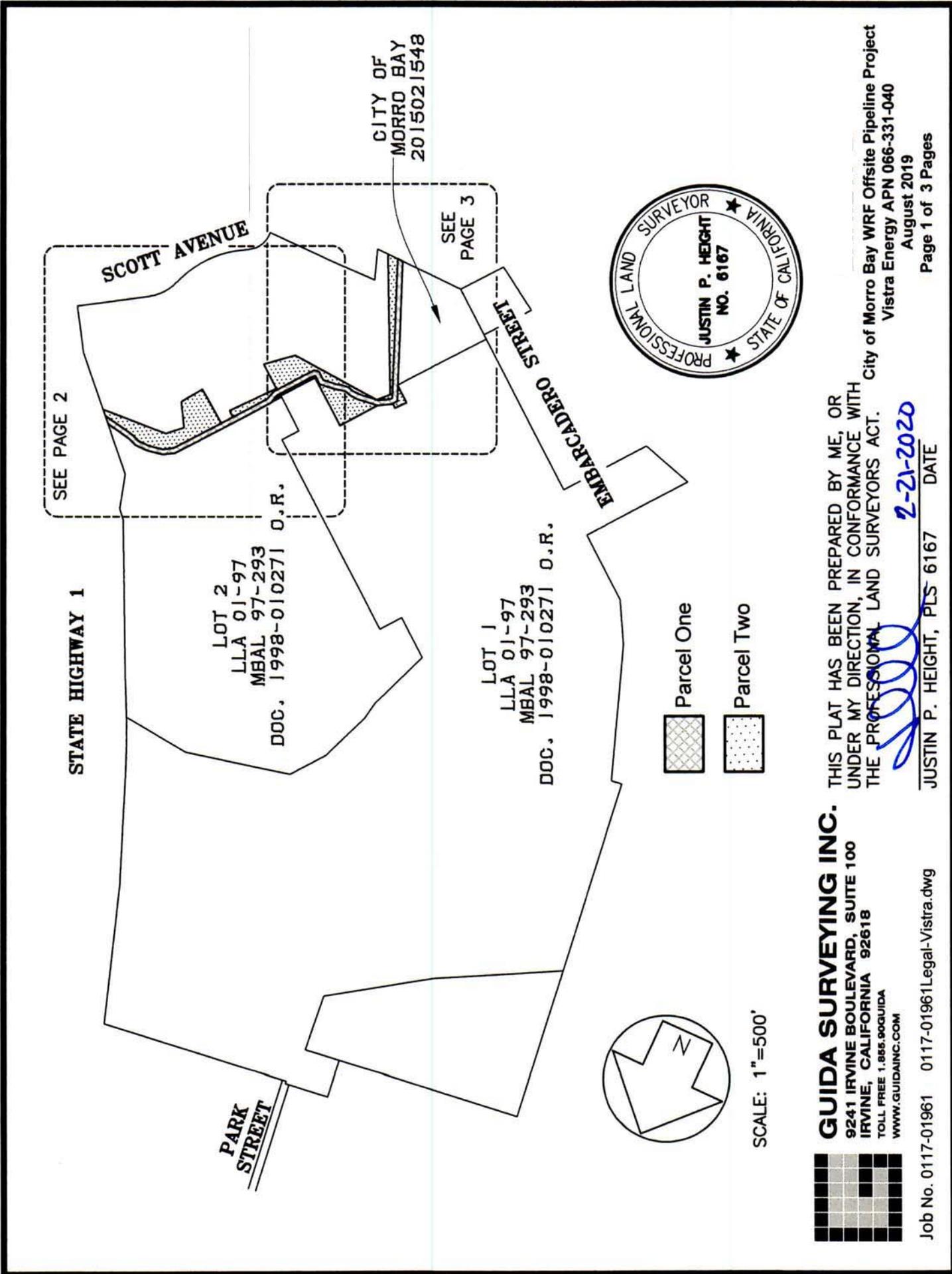
This description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

  
Justin P. Height, PLS 6167

2-21-2020  
Date



# EXHIBIT C-1



**GUIDA SURVEYING INC.**  
 9241 IRVINE BOULEVARD, SUITE 100  
 IRVINE, CALIFORNIA 92618  
 TOLL FREE 1.855.90GUIDA  
 WWW.GUIDAINC.COM

THIS PLAT HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT. City of Morro Bay WRF Offsite Pipeline Project  
 Justin P. Height  
 2-21-2020  
 DATE

Job No. 0117-01961 0117-01961Legal-Vistra.dwg  
 JUSTIN P. HEIGHT, PLS 6167  
 August 2019  
 Page 1 of 3 Pages

**PARCEL ONE (CENTERLINE)**

(A)	S45°31'03"E	16.65
(1)	N82°25'56"W	65.46
(2)	N80°32'04"W	49.88
(3)	N72°44'42"W	34.38
(4)	S89°09'33"W	45.40
(5)	S78°00'52"W	62.75
(6)	S56°11'46"W	46.12
(7)	S36°07'55"W	420.02
(8)	S13°43'22"W	38.91
(9)	S36°13'22"W	173.37
(10)	S81°13'22"W	11.73
(11)	N53°46'38"W	36.26

LOT 2  
LLA 01-97  
MBAL 97-293  
DOC. 1998-010271 O.R.

SOUTHEASTERLY  
LINE OF LOT 2

LOT 1  
LLA 01-97  
MBAL 97-293  
DOC. 1998-010271 O.R.

- (A) S.E. COR. LOT 2  
POINT OF COMMENCEMENT PARCEL ONE
- (B) TRUE P.O.B. PARCEL ONE
- (C) S.E. COR. LOT 2  
P.O.B. PARCEL TWO

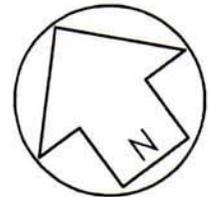
City of Morro Bay WRF Offsite Pipeline Project  
Vistra Energy APN 066-331-040  
August 2019  
Page 2 of 3 Pages

**PARCEL TWO**

1	S45°31'03"E	60.30
2	S84°14'59"W	264.15
3	S45°44'02"W	75.30
4	S32°43'13"E	100.68
5	S32°18'05"W	97.01
6	N55°54'38"W	153.01
7	S36°07'55"W	51.24
8	S53°28'45"E	28.38
9	S38°43'47"W	203.62
10	S53°39'33"E	108.10
11	S48°11'51"W	128.37
12	N87°54'46"W	365.86
22	N35°51'31"E	167.15
23	S54°08'29"E	211.37
24	N36°04'14"E	155.98
25	N27°35'18"E	45.89
26	N36°07'55"E	423.77
27	N56°11'46"E	49.82
28	N78°00'52"E	65.65
29	N89°09'33"E	47.97
30	S72°44'42"E	35.29
31	S80°32'04"E	49.03
32	S82°25'56"E	51.98

Parcel One  
(0.85 acres)

Parcel Two  
(2.14 acres)



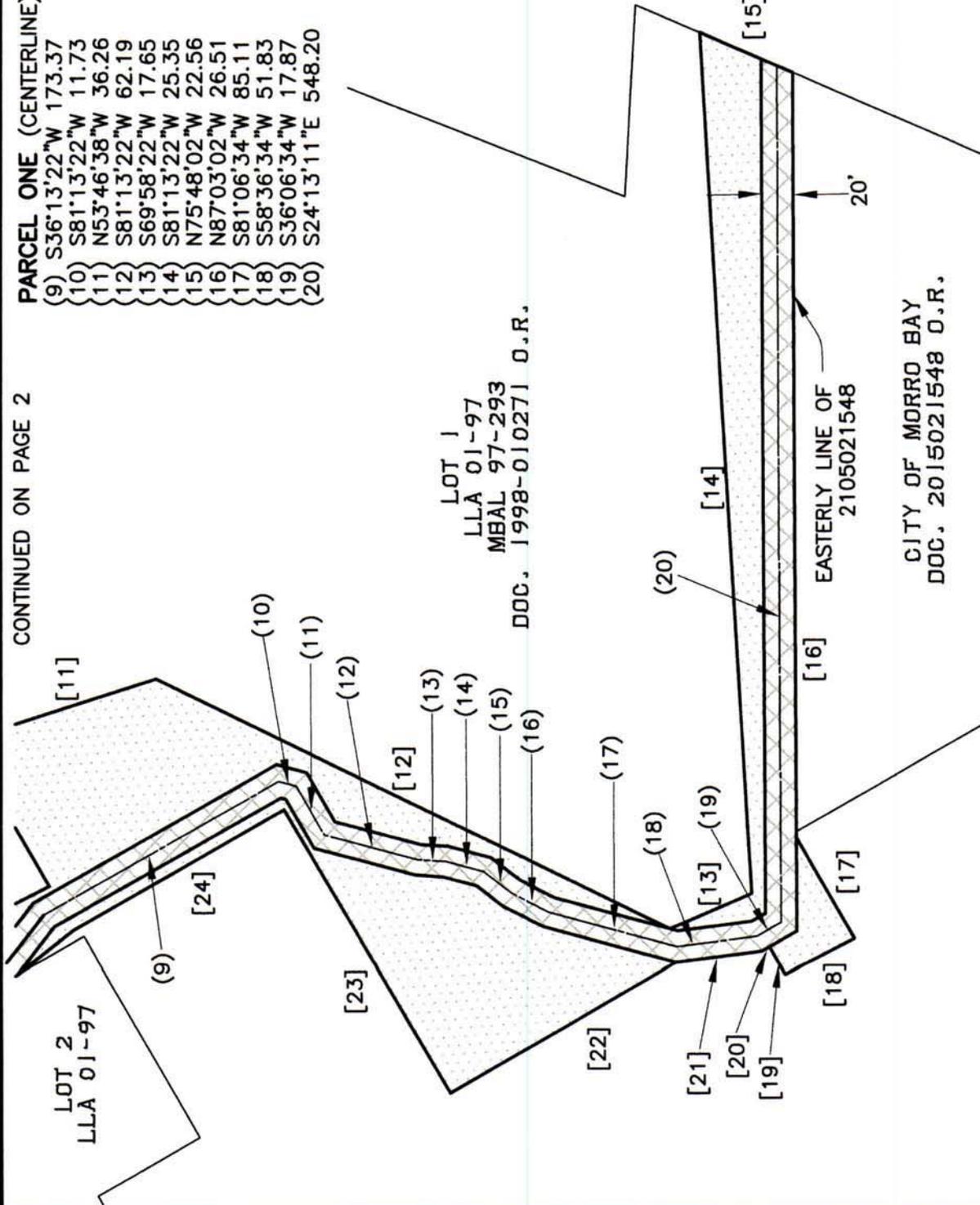
SCALE: 1"=100'

CONTINUED ON PAGE 3

CONTINUED ON PAGE 2

PARCEL TWO		
[11]	S48°11'51"W	128.37
[12]	N87°54'46"W	365.86
[13]	S42°44'53"W	57.37
[14]	S27°24'45"E	551.72
[15]	S89°11'34"W	64.81
[16]	N24°13'11"W	489.11
[17]	N53°38'01"W	75.08
[18]	N38°37'27"E	50.00
[19]	S53°38'01"E	20.25
[20]	N36°06'34"E	5.46
[21]	N58°36'34"E	55.81
[22]	N35°51'31"E	167.15
[23]	S54°08'29"E	211.37
[24]	N36°04'14"E	155.98

PARCEL ONE (CENTERLINE)		
(9)	S36°13'22"W	173.37
(10)	S81°13'22"W	11.73
(11)	N53°46'38"W	36.26
(12)	S81°13'22"W	62.19
(13)	S69°58'22"W	17.65
(14)	S81°13'22"W	25.35
(15)	N75°48'02"W	22.56
(16)	N87°03'02"W	26.51
(17)	S81°06'34"W	85.11
(18)	S58°36'34"W	51.83
(19)	S36°06'34"W	17.87
(20)	S24°13'11"E	548.20



LOT 1  
LLA 01-97  
MBAL 97-293  
DOC. 1998-010271 O.R.

LOT 2  
LLA 01-97

CITY OF MORRO BAY  
DOC. 2015021548 O.R.

 Parcel One  
(0.85 acres)

 Parcel Two  
(2.14 acres)

**GUIDA SURVEYING INC.**  
9241 IRVINE BOULEVARD, SUITE 100  
IRVINE, CALIFORNIA 92618  
TOLL FREE 1.855.90GUIDA  
WWW.GUIDAINC.COM

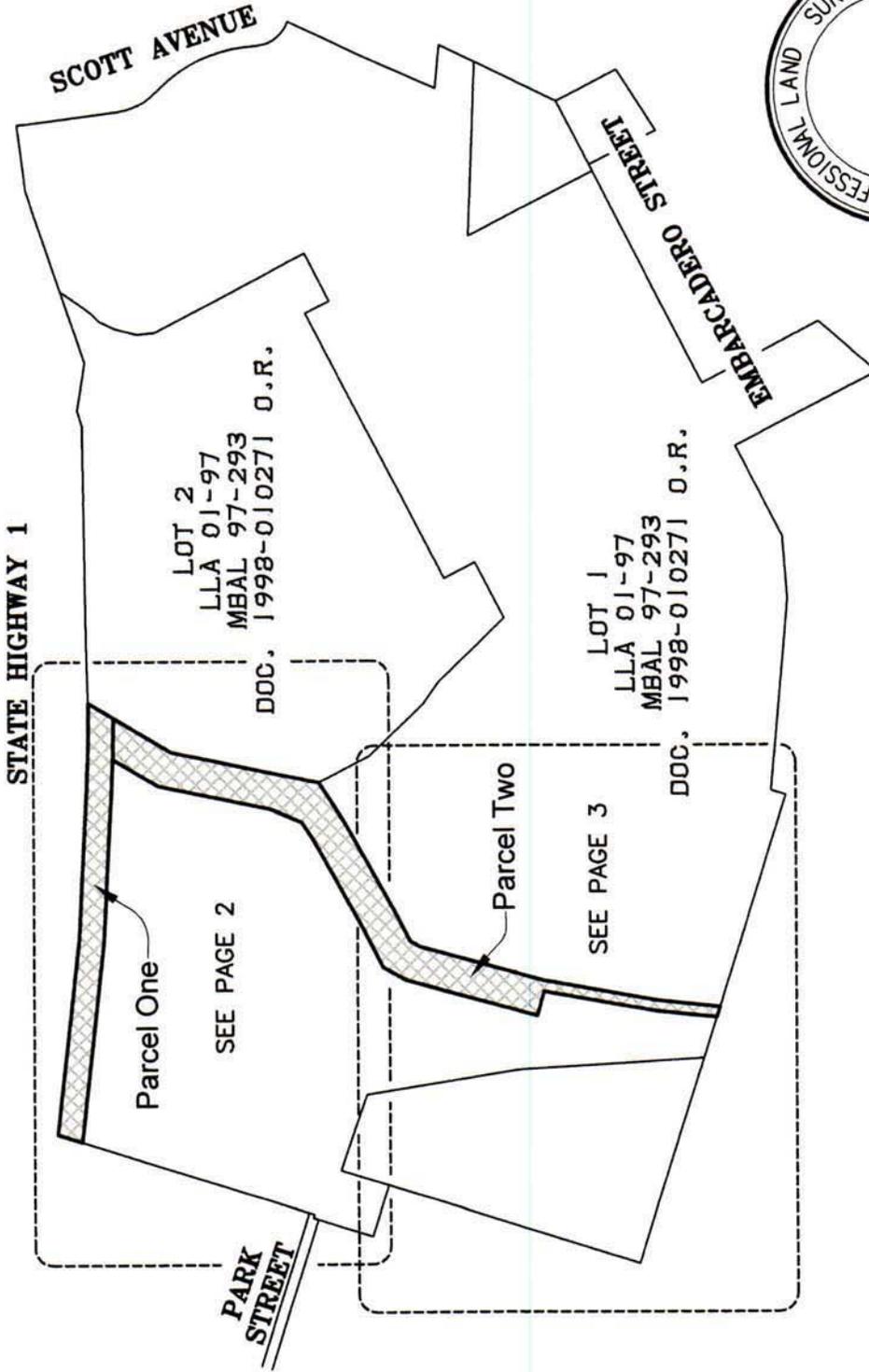
Job No. 0117-01961 0117-01961Legal-Vistra.dwg

City of Morro Bay WRF Offsite Pipeline Project  
Vistra Energy APN 066-331-040  
August 2019  
Page 3 of 3 Pages

# EXHIBIT C-2



SCALE: 1"=500'



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 WWW.GUIDAINC.COM

THIS PLAT HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

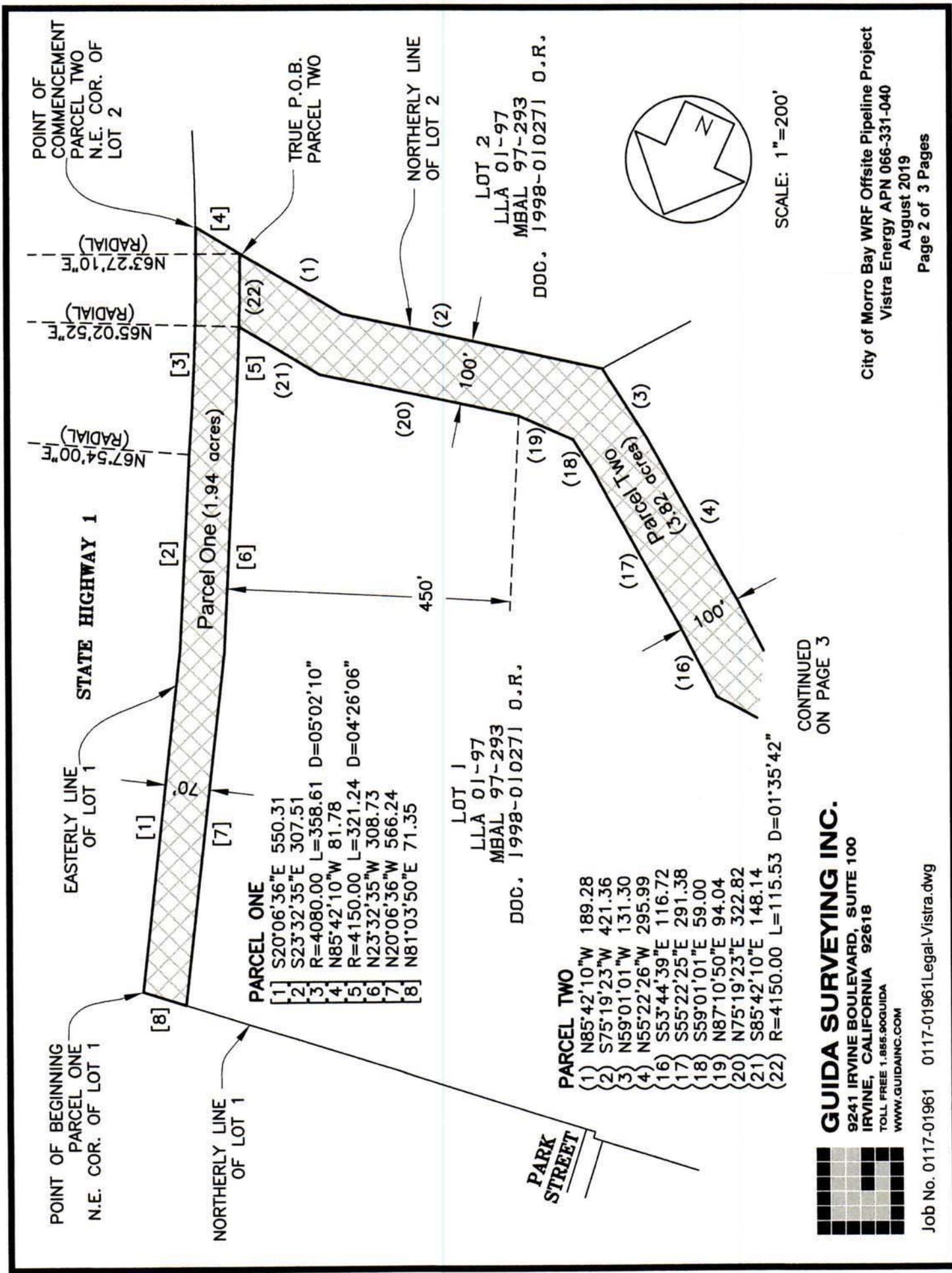
City of Morro Bay WRF Offsite Pipeline Project  
 Vistra Energy APN 066-331-040  
 August 2019

*Justin P. Height*  
 2-21-2020

JUSTIN P. HEIGHT, PLS 6167 DATE

Page 1 of 3 Pages

Job No. 0117-01961 0117-01961Legal-Vistra.dwg



POINT OF BEGINNING  
PARCEL ONE  
N.E. COR. OF LOT 1

EASTERLY LINE  
OF LOT 1

STATE HIGHWAY 1

NORTHERLY LINE  
OF LOT 1

**PARCEL ONE**

- [1] S20°06'36"E 550.31
- [2] S23°32'35"E 307.51
- [3] R=4080.00 L=358.61 D=05°02'10"
- [4] N85°42'10"W 81.78
- [5] R=4150.00 L=321.24 D=04°26'06"
- [6] N23°32'35"W 308.73
- [7] N20°06'36"W 566.24
- [8] N81°03'50"E 71.35

LOT 1  
LLA 01-97  
MBAL 97-293  
DOC. 1998-010271 O.R.

LOT 2  
LLA 01-97  
MBAL 97-293  
DOC. 1998-010271 O.R.

**PARK STREET**

**PARCEL TWO**

- (1) N85°42'10"W 189.28
- (2) S75°19'23"W 421.36
- (3) N59°01'01"W 131.30
- (4) N55°22'26"W 295.99
- (16) S53°44'39"E 116.72
- (17) S55°22'25"E 291.38
- (18) S59°01'01"E 59.00
- (19) N87°10'50"E 94.04
- (20) N75°19'23"E 322.82
- (21) S85°42'10"E 148.14
- (22) R=4150.00 L=115.53 D=01°35'42"



SCALE: 1"=200'

CONTINUED  
ON PAGE 3

**GUIDA SURVEYING INC.**

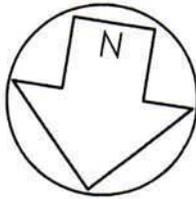
9241 IRVINE BOULEVARD, SUITE 100  
IRVINE, CALIFORNIA 92618  
TOLL FREE 1.855.90GUIDA  
WWW.GUIDAINC.COM

City of Morro Bay WRF Offsite Pipeline Project  
Vistra Energy APN 066-331-040  
August 2019

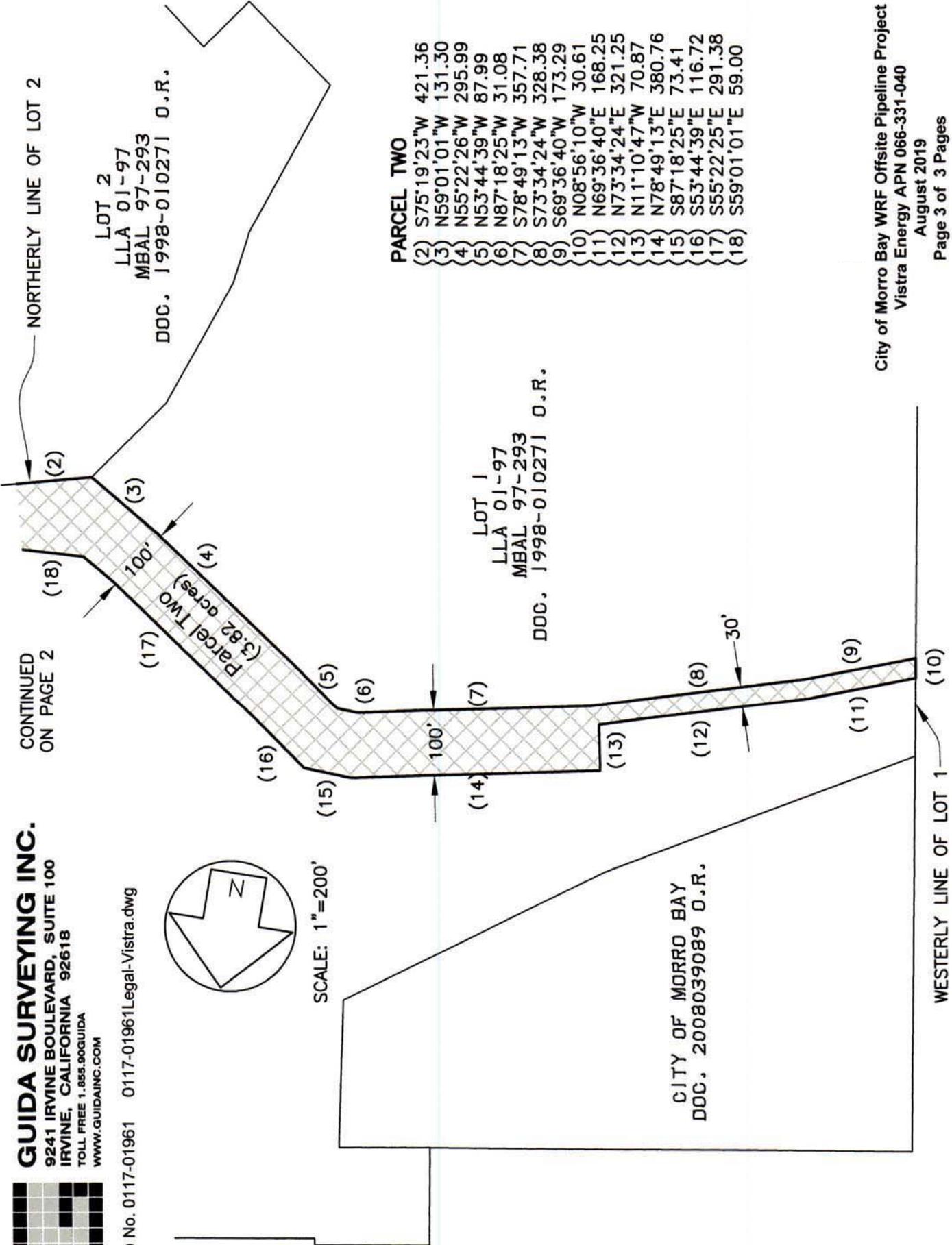
**GUIDA SURVEYING INC.**

9241 IRVINE BOULEVARD, SUITE 100  
 IRVINE, CALIFORNIA 92618  
 TOLL FREE 1-855-900GUIDA  
 WWW.GUIDAINC.COM

Job No. 0117-01961 0117-01961Legal-Vistra.dwg



SCALE: 1"=200'



**PARCEL TWO**

- (2) S75°19'23"W 421.36
- (3) N59°01'01"W 131.30
- (4) N55°22'26"W 295.99
- (5) N53°44'39"W 87.99
- (6) N87°18'25"W 31.08
- (7) S78°49'13"W 357.71
- (8) S73°34'24"W 328.38
- (9) S69°36'40"W 173.29
- (10) N08°56'10"W 30.61
- (11) N69°36'40"E 168.25
- (12) N73°34'24"E 321.25
- (13) N11°10'47"W 70.87
- (14) N78°49'13"E 380.76
- (15) S87°18'25"E 73.41
- (16) S53°44'39"E 116.72
- (17) S55°22'25"E 291.38
- (18) S59°01'01"E 59.00

LOT 1  
 LLA 01-97  
 MBAL 97-293  
 DOC. 1998-010271 O.R.

LOT 2  
 LLA 01-97  
 MBAL 97-293  
 DOC. 1998-010271 O.R.

CITY OF MORRO BAY  
 DOC. 2008039089 O.R.

# EXHIBIT D

**EXHIBIT D**  
**LEGAL DESCRIPTION OF DOMINANT TENEMENT**

That certain real property in the County of San Luis Obispo, State of California, described in a Grant Deed recorded as Document Number 2020003622 on January 24, 2020 in the Office of the Recorder for said County, and further identified as "WRF Parcel" on Exhibit D-2 below, identified with "19" on Exhibit D-3 below, and legally described as follows:

APN 073-101-019

A portion of Parcel 2 of Parcel Map No. CO/MB 89-363 in the County of San Luis Obispo, State of California, as shown on map recorded in Book 48, at Page 13 of Parcel Maps in the Office of the San Luis Obispo County Recorder, described as follows:

Beginning at a point on the south line of said Parcel 2, distant thereon N 56°43'00" W, 93.00 feet from a 1-1/2" iron pipe at the southeast corner of said Parcel as shown on said map;

thence, leaving said south line, N 21°25'57" E, 408.00 feet;

thence N 15°10'57" E, 291.24 feet;

thence N 34°55'57" E, 195.04 feet;

thence N 0°00'57" E, 256.79 feet;

thence N 19°34'03" W, 702.95 feet;

thence S 70°25'57" W, 229.10 feet;

thence S 49°47'18" W, 698.48 feet;

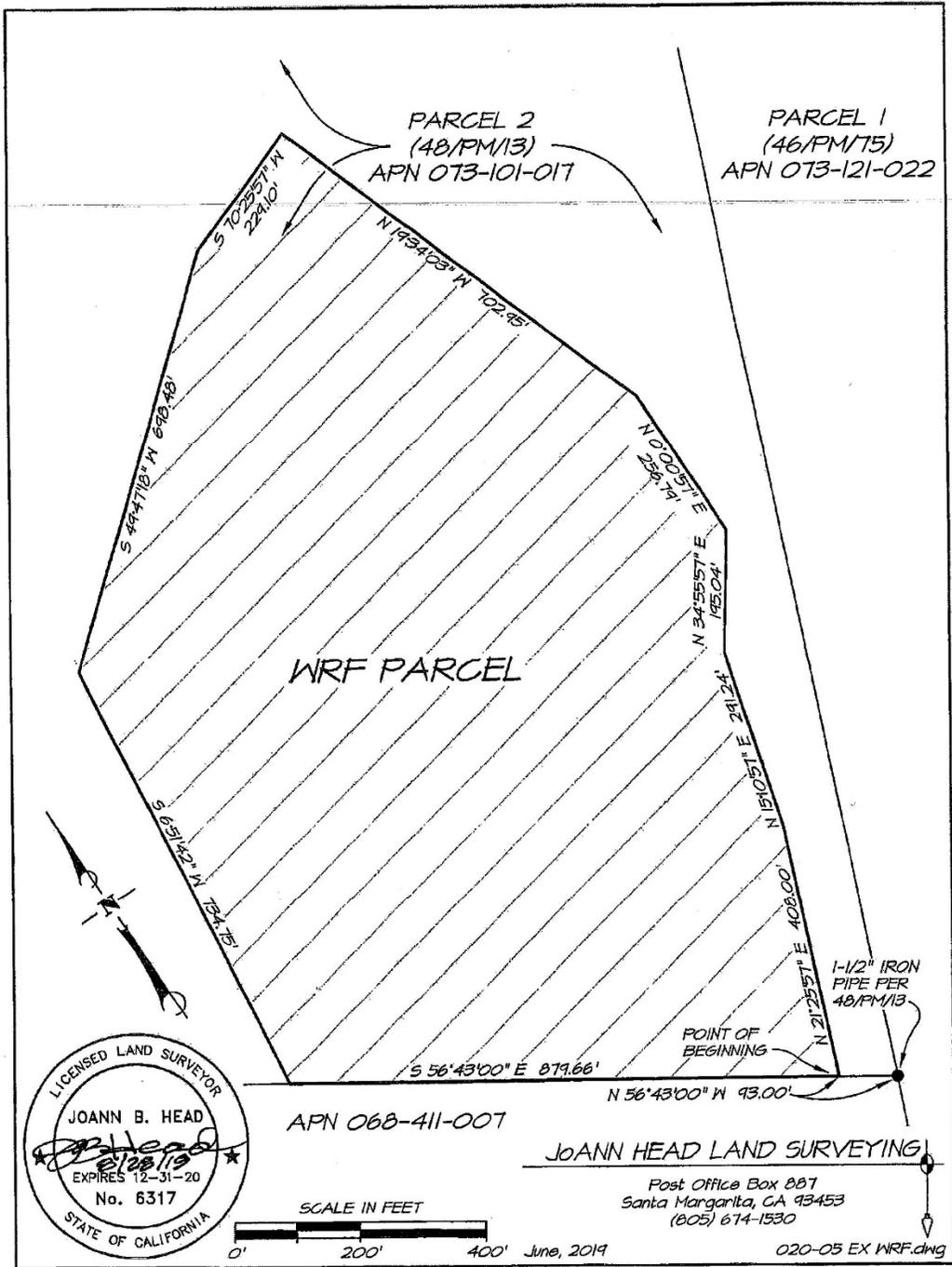
thence S 6°51'42" W, 734.75 feet to the south line of said Parcel 2;

thence, along said south line, S 56°43'00" E, 879.66 feet to the Point of Beginning.

End of Description.

  
JoAnn B. Head







## CERTIFICATE OF ACCEPTANCE

Pursuant to Government Code Section 27281 this is to certify that the interest in real property conveyed by VISTRA CORP. and MORRO BAY POWER COMPANY LLC by Grant Deed of Easements to the CITY OF MORRO BAY is hereby accepted by the undersigned officer and agent of the CITY OF MORRO BAY pursuant to the authority conferred by that certain Memorandum of Understanding approved by the City Council of the CITY OF MORRO BAY dated \_\_\_\_\_, 2021, and that the CITY OF MORRO BAY consents to the recording of the Grant Deed of Easements.

Executed in Morro Bay, California on \_\_\_\_\_, 2021.

**“GRANTEE”**

CITY OF MORRO BAY

By: \_\_\_\_\_  
Scott Collins, City Manager

**EXHIBIT C  
PLANT AGREEMENT AMENDMENT**

**FIRST AMENDMENT TO AGREEMENT TO LEASE AND  
AGREEMENT REGARDING POWER PLANT MODERNIZATION**

THIS FIRST AMENDMENT TO AGREEMENT TO LEASE AND AGREEMENT REGARDING POWER PLANT MODERNIZATION (this “**Amendment**”), effective as of this \_\_\_ day of \_\_\_\_\_, 2021<sup>1</sup> (“**Effective Date**”), is made and entered into by and between MORRO BAY POWER COMPANY, LLC, a Delaware limited liability company (“**MBPC**”), formerly known as Dynegy Morro Bay, LLC, and CITY OF MORRO BAY (“**City**”). MBPC and City are sometimes jointly referred to as the “**Parties**” and individually as a “**Party**.”

**RECITALS:**

- A. Duke Energy Morro Bay LLC and City entered into that certain Agreement to Lease and Agreement Regarding Power Plant Modernization dated effective as of November 15, 2004 (“**Existing Agreement**”) regarding that certain 107-acre property located on 1290 Embarcadero, in the City of Morro Bay, County of San Luis Obispo, California, Assessor’s Parcel Number 066-331-046 (“**Property**”).
- B. MBPC is successor-in-interest to Duke Energy Morro Bay LLC under the Existing Agreement.
- C. Pursuant to the Existing Agreement, City has the option to purchase the Property upon certain terms and conditions, as set forth therein (“**Option**”).
- D. As set forth in that certain Memorandum of Understanding dated \_\_\_\_\_, 2021 (“**MOU**”), and to which an Exhibit C is attached which is substantially similar to this Amendment, MBPC and City have agreed to this Amendment to be delivered on or before the closing of escrow as provided therein.

**AGREEMENT:**

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1. **Defined Terms.** All capitalized terms not defined herein shall have the definitions given such terms in the Agreement. All references in the Agreement to “DUKE” are hereby deemed to mean as follows: “Morro Bay Power Company LLC, a Delaware limited liability company, its successors and assigns.”

---

<sup>1</sup> This date must be inserted by Escrow Holder as of the Escrow Closing Date under the MOU.

2. **Option.** The third paragraph of Section 10.3, "Facility Closure," is hereby deemed to not be operative so the Option is no longer effective.

3. **Miscellaneous.**

- a. This Amendment shall be governed by and construed in accordance with the laws in the State of California and venue for any legal action by either of the Parties against the other related to this Amendment shall be a court of competent jurisdiction in San Luis Obispo County, State of California; provided, that either Party may seek a change of venue, either pursuant to California Code of Civil Procedure section 394, or otherwise pursuant to applicable law, but the Parties expressly agree only to a court of competent jurisdiction in Los Angeles County, State of California.
- b. This Amendment and all terms and provisions hereof shall be binding upon and shall inure to the benefit of the Parties, to both this Amendment as well as the Agreement, and their respective successors and assigns.
- c. Any notices, demands, or communications under this Amendment shall meet the notice provisions of the MOU.
- d. This Amendment may be executed in counterparts by the Parties and each of such counterparts shall be deemed an original for all purposes, but all of such counterparts shall constitute, collectively, one Amendment.
- e. Except as amended hereby, all other terms and provisions of the Existing Agreement are hereby reinstated and acknowledged to be in full force and effect.

**IN WITNESS WHEREOF**, the Parties have executed this First Amendment to Agreement to Lease and Agreement Regarding Power Plant Modernization as of the Effective Date.

**CITY:**  
CITY OF MORRO BAY, a municipal corporation

**MBPC:**  
MORRO BAY POWER COMPANY, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
John Headding, Mayor

By: \_\_\_\_\_  
Name:  
Title:

**ATTEST:**

By: \_\_\_\_\_  
Dana Swanson, City Clerk

By: \_\_\_\_\_  
Name:  
Title:

**APPROVED AS TO FORM:**  
ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Chris F. Neumeyer, City Attorney

## Brief History of Major Events for the Morro Bay Power Plant

- 1953 – Construction starts on the Morro Bay Power Plant, for unit #1 and #2 of the turbine building and the first 450-foot exhaust stack. The Plant starts out as an oil-fired electrical generation facility.
- July 7, 1955 – Plant begins operations, owned and operated by Pacific Gas and Electric (PG&E).
- 1965 – Construction of unit #3 and #4 of the turbine building and the second and third exhaust stacks completed. This effort brings the outer appearance of the turbine building and stacks to what it looks like today.
- At its peak, the plant generated over 1000 megawatts, providing electricity to hundreds of thousands of homes primarily in the Central Valley and the Central Coast.
- 1995 – Power Plant transitions to natural gas-powered operation.
- 1996 – California Assembly Bill 1890 signed by Governor Pete Wilson, approving energy deregulation in California.
- 1998 – Deregulation of energy market in California goes into effect, with the major energy utility companies in California selling many of their power generating facilities (such as the Morro Bay Power Plant).
- July 1998 – PG&E sales major portion of the MBPP site to Duke Energy to run the existing plant.
- August 1999 – Duke Energy begins process to modernize the power plant production. Plans are revised based upon community input, however, the project never moves forward given community concerns, legal and economic issues and evolving environmental regulations.
- 2004 – Outfall Lease Agreement signed between City of Morro Bay and Duke Energy, which includes the \$1 plant purchase option for the City.
- 2006 – Duke Energy sells the plant site to LS energy, excluding the remaining PG&E holdings.
- 2007 – Dynegy acquires LS Energy, thus obtaining the plant site, excluding remaining PG&E holdings.
- 2013 – Dynegy discontinues use of the power plant for energy production purposes and begins the decommissioning and demolition process.
- 2016 – Dynegy removes the tank farm facilities and many outlying smaller structures for the power plant are demolished.
- 2018 – Vistra completes merger with Dynegy, acquiring the plant site, excluding PG&E holdings.
- 2018 – Vistra removes the marine terminal pipeline.
- December 2020 – Vistra submits plans to Morro Bay Community Development Department for a 600 megawatt lithium battery storage facility on the Morro Bay Power Plant site.

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RECORDING REQUESTED BY  
CHICAGO TITLE

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Pacific Gas and Electric Company  
Law Department, B30A  
77 Beale Street  
San Francisco, California 94105  
Attention: John W. Busterud, Esq.

Doc No: 1998-040838

Rpt No: 00052229

Official Records  
San Luis Obispo Co.  
Julie L. Rodewald  
Recorder  
Jul 02, 1998  
Time: 15:04

RF -1 58.00

[ 18 ]

TOTAL 58.00

**DECLARATION OF COVENANTS, CONDITIONS  
AND ENVIRONMENTAL RESTRICTIONS**

This Declaration of Covenants, Conditions and Environmental Restrictions (this "Declaration") is entered into as of June 30, 1998 by Duke Energy Morro Bay LLC, a Delaware limited liability company ("Declarant"), as owner of the property commonly known as Morro Bay Power Plant, located at 1290 Embarcadero Road, Morro Bay, California, and more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Property").

**RECITALS**

A. Declarant purchased the Property from Pacific Gas and Electric Company, a California corporation ("Covenantee"), pursuant to that certain Purchase and Sale Agreement by and between Covenantee and Declarant, dated November 18, 1997 (the "Purchase Agreement"), and that certain Grant Deed, made by Covenantee in favor of Declarant, dated June 30, 1998, and recorded concurrently herewith in the office of the Recorder of San Luis Obispo County, California (the "Official Records"). The Purchase Agreement provides that Covenantee will undertake the Remediation (as defined below) of certain environmental conditions under certain terms and conditions and is relieved of the obligation to undertake Remediation of such environmental conditions under other terms and conditions. As used herein, "Covenantee Environmental Conditions" refers to environmental conditions for which Covenantee has agreed to undertake Remediation under the Purchase Agreement and has not been relieved of such obligation under the Purchase Agreement.

B. Prior to Declarant's purchase of the Property, Covenantee provided Declarant with certain environmental information concerning the Property (collectively, the "Environmental Reports"). The Environmental Reports disclose the presence of Hazardous Material, as defined below, in soil or groundwater or both at various locations throughout the Property.

C. Declarant has executed that certain License Agreement, of even date herewith, and recorded concurrently herewith in the Official Records, whereby Declarant granted Covenantee a non-exclusive license for the purpose of conducting Remediation of Covenantee Environmental Conditions and specified other environmental conditions, pursuant to the terms and conditions of the Purchase Agreement.

D. Covenantee desires that the Property be used in a manner that will avoid potential harm to persons or property which may result from the presence of Hazardous Material in soil or groundwater or both at the Property, in order to protect present and future human health and safety and the environment and in order to benefit Covenantee by reducing Covenantee's potential future liability.

E. As a material condition to the Purchase Agreement, Declarant agreed to execute this Declaration.

NOW THEREFORE, in consideration of value, the receipt and sufficiency of which are hereby acknowledged, Declarant agrees as follows:

#### Article 1 Definitions

The terms "Covenantee," "Covenantee Environmental Conditions," "Declarant," "Declaration," "Environmental Reports," "Official Records," "Property," and "Purchase Agreement" have the meanings given them above, and the terms listed below have the following meanings:

1.1 Affiliate. "Affiliate" of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, employee, representative or agent or subsidiary of the Person. For the purposes of this definition, "control", when used with respect to any specified Person, means the power to direct the management or policies of the specified Person, directly or indirectly, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.

1.2 Covenantee Group. "Covenantee Group" means Covenantee and its Affiliates, and each of their officers, directors, employees, partners, attorneys, agents and successors and assigns.

1.3 Declarant Group. "Declarant Group" means Declarant and its Affiliates, and each of their officers, directors, employees, partners, attorneys, agents and successors and assigns.

1.4 Environmental Laws. "Environmental Laws" means any applicable federal, state, regional or local statutes, regulations, ordinances, codes, permits, orders, or published decisions relating to: (i) air emissions, hazardous materials, storage, use and release to the environment of hazardous or toxic substances, generation, treatment, storage, and disposal of hazardous wastes, wastewater discharges and similar environmental matters; or (ii) the impact of the matters described in the preceding clause upon human health or the environment, including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Occupational Safety and Health Act (42 U.S.C. § 651 *et seq.*) and the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Wat. Code § 13020, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5, *et seq.*), the Hazardous Substance Account Act (Cal. Health & Safety Code § 25300, *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100, *et seq.*), and the California Air Resources Code (Cal. Health & Safety Code § 39000, *et seq.*)

1.5 Governmental Authority. "Governmental Authority" means any federal, state, local or other governmental, regulatory or administrative agency, governmental commission, department, board, subdivision, court, tribunal, or other governmental arbitrator, arbitral body or other authority, but excluding Declarant and any subsequent owner of the Site (if otherwise a Governmental Authority under this definition).

1.6 Hazardous Material. "Hazardous Material" has the definition of "hazardous material" set forth in Section 25260 of the California Health & Safety Code.

1.7 Party. "Party" means either Covenantor or Declarant, as the context requires; "Parties" means, collectively, Covenantor and Declarant.

1.8 Person. "Person" means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

1.9 Remediation. "Remediation" means any or all of the following activities to the extent they relate to or arise from the presence of Covenantor Environmental Conditions: (i) monitoring, investigation, cleanup, containment, remediation, removal, mitigation, response or restoration work; (ii) obtaining any permits, consents, approvals or authorizations of any Governmental Authority necessary to conduct any such work; (iii) preparing and implementing any plans or studies for such

work; (iv) obtaining a written notice from a Governmental Authority with jurisdiction over the Property under Environmental Laws that no material additional work is required by such Governmental Authority; and (v) any other activities reasonably determined by Covenantee to be necessary or appropriate or required under Environmental Laws to address the presence of Covenantee Environmental Conditions at the Property.

1.10 Restrictions. "Restrictions" has the meaning given to it in Section 2.1 below.

1.11 Third Party Claim. "Third Party Claim" means a claim by a Person other than a member of the Covenantee Group or the Declarant Group, including: (i) any claim for the costs of conducting Remediation or seeking an order or demanding that a Person undertake Remediation; and (ii) any claim for loss or damage to persons or property allegedly arising from Covenantee Environmental Conditions.

In this Declaration, the word "including" means including without limiting the generality of any description preceding such term.

## Article 2 General Declaration

Declarant hereby declares that:

2.1 This Declaration sets forth provisions, covenants, restrictions and conditions whereby the Declarant agrees to do or refrain from doing acts on the Property (collectively "Restrictions").

2.2 All of the Restrictions: (i) are for the benefit of Covenantee; (ii) are imposed upon the entire Property; (iii) run with the land and pass with the Property and any portion thereof pursuant to Section 1471 of the California Civil Code; (iv) are binding upon Declarant and each successive owner, during his, her or its ownership of the Property or any portion thereof, and upon each Person having any interest in the Property or any portion thereof derived through any owner of the Property, all for the benefit of Covenantee; and (v) relate to the use of the Property and are reasonably necessary to protect present or future human health or safety or the environment as a result of the presence of Hazardous Material in soil or groundwater or both at the Property.

**Article 3**  
**Restrictions Relating to Development and**  
**Conveyance of Property**

**3.1 Restrictions on Development**

3.1.1 Declarant will not develop the Property or any portion thereof for use as a permanent or temporary lodging (including hotels, motels, and the like), hospital or other health-care facility, school, day care center for children, park, playground or other recreational use. If the Property is already being used for such purposes, Declarant may permit such existing use of the Property to continue, but Declarant will not permit any new or expanded use of the Property (including expanding the portion of the Property so used) for such purposes.

3.1.2 If Declarant undertakes any activities affecting soil or groundwater or both at the Property (including any decommissioning, dismantling, or development activities, or any extraction, excavation or removal of any soil or groundwater or both at the Property), or undertakes any interactions with Governmental Authorities with jurisdiction over the Property under Environmental Law, Declarant will undertake such activities and interactions in a manner designed to avoid, to the extent reasonably practicable and reasonably consistent with achieving Declarant's development goals, the following: (1) increasing the risk that a Governmental Authority would require Remediation relating to any Covenantee Environmental Condition that is more extensive than the Remediation appropriate for the Property under its current use; (2) increasing the cost of any such Remediation; (3) increasing the risk of human exposure to Covenantee Environmental Conditions; or (4) increasing the risks that a Third Party Claim with respect to a Covenantee Environmental Condition, or the Remediation thereof, could arise.

Furthermore, in undertaking any such activities affecting soil or groundwater or both at the Property, Declarant shall (x) comply with all applicable Environmental Laws, (y) adhere to prudent engineering practices and procedures and (z) exercise due care in connection with any disruption, disturbance or excavation of soil or groundwater or both known to be contaminated with any Hazardous Material and the handling, removal and disposal of any such contaminated soil or groundwater or both.

Subject to the obligations set forth in this Section 3.1, nothing contained herein precludes Declarant from undertaking the following activities:

(1) applying for governmental permits and approvals required to implement an improvement, power plant expansion or any development plan, or dismantling, decommissioning or removal of power generation units or oil tanks or other equipment not needed for Declarant's operations, or making due diligence inquiries to

Governmental Authorities in good faith in connection with the sale, lease or financing of the Property or any portion thereof;

(2) undertaking routine operations and installations and repair of utilities and equipment in the course of Declarant's ongoing operations or expansion of Declarant's ongoing operations;

(3) conducting or causing to be conducted environmental assessments or tests of the Property or any portion thereof in connection with a proposed purchase, sale, investment in or financing of the Property, or any portion thereof, or in connection with the commencement of development activities, each to the extent such assessment activity is customary and consistent with prudent utility practices. If such assessment discloses any Covenantee Environmental Condition, Declarant will provide Covenantee with a copy of such report unless such report is privileged or subject to a confidentiality agreement that prevents Declarant from providing the assessment to Covenantee; or

(4) decommissioning, dismantling, or removing any improvements (including the oil storage tanks or power generating facility existing on the Property) and developing the Property or any portion thereof.

3.2 Notice of Transfer. Declarant will provide written notice to Covenantee at least 30 days before any sale, lease or other conveyance of the Property, or any portion thereof or interest therein, to a third Person.

3.3 Obligation of Declarant on Transfer. Declarant will incorporate its obligations under this Declaration into all deeds or other transfer documents executed by Declarant for the Property, or any portion thereof or interest therein, and any grantees or other transferees will be required to comply with this Declaration as if they were designated in this Declaration as Declarant and had executed this Declaration as Declarant. Each such party shall have liability for the performance of the obligations of Declarant hereunder only to the extent that such obligations arise during the period of time such party has an interest in the Property that subjects it to responsibility under this Declaration.

3.4 Obligation of Transferees. Regardless of whether Declarant has fulfilled its obligations under Section 3.3 above, each grantee or other transferee of the Property, or any portion thereof or interest therein, will be deemed by his, her or its receipt of his, her or its deed or other transfer document to have accepted the terms of this Declaration and to have agreed to comply with this Declaration as if he, she or it were designated in this Declaration as Declarant and had executed this Declaration as Declarant.

**Article 4  
Indemnification**

Declarant will indemnify, defend and hold harmless Covenantee and its parents and Affiliates and each of their officers, directors, employees, attorneys, agents and successors and assigns from and against all damages, claims, losses, liabilities, costs and expenses, including reasonable attorneys', consultants' and accountants' fees which arise out of or relate to any breach or violation of this Declaration.

**Article 5  
Duration, Termination, Modification**

**5.1 Termination and Modification.** Declarant cannot terminate, modify or amend this Declaration, or any provision or Restriction contained herein, without the prior written consent of Covenantee, which consent may be granted or denied in Covenantee's sole discretion. No such termination, modification or amendment is effective until a proper instrument in writing has been duly authorized and executed by Covenantee and acknowledged and recorded in the Official Records.

**5.2 Term.** Unless terminated, modified or amended pursuant to Section 5.1 above, this Declaration and each provision and Restriction contained herein will continue and remain in full force and effect with respect to the Property and all portions thereof in perpetuity.

**Article 6  
Breach and Remedies**

Covenantee may pursue any right or remedy that may be available at law or in equity for any violation or breach of this Declaration or any Restriction herein. Each such right and remedy is cumulative and in addition to every other right or remedy that may be available for that violation or breach. Without limiting the generality of the foregoing, Covenantee may bring an action for specific performance against any Person who has violated or is attempting to violate this Declaration or any Restriction herein to enjoin or prevent such Person from doing so and to cause said violation or breach to be remedied. Notwithstanding the foregoing, Covenantee will not in any event be entitled to any punitive, incidental, indirect, special or consequential damages resulting from or arising out of any claim for violation or breach of this Declaration, including damages for lost revenues, income, profits or tax benefits.

**Article 7  
Miscellaneous**

**7.1 Entire Document.** This Declaration contains the entire agreement between Declarant and Covenantee with respect to the matters set forth herein, and

supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the execution date of this Declaration, written or oral.

7.2 Severability. If any provision hereof is held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, this holding or action will be strictly construed and will not affect the validity or effect of any other provision hereof. To the extent permitted by law, the Parties waive, to the maximum extent permissible, any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

7.3 Assignability. This Declaration inures to the benefit of and is enforceable by Covenantee and its successors and assigns.

7.4 Captions. The captions of the various Articles and Sections of this Declaration have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Declaration.

7.5 Governing Law. The validity, interpretation and effect of this Declaration are governed by and will be construed in accordance with the laws of the State of California applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law or are governed by the law of the jurisdiction of organization of the respective parties.

7.6 Notices. All notices, requests, demands and other communications under this Declaration must be in writing and must be delivered in person or sent by certified mail, postage prepaid, or by overnight delivery, and properly addressed as follows:

If to Covenantee:

Pacific Gas and Electric Company  
Law Department, B30A  
77 Beale Street  
San Francisco, California 94105  
Attention: John W. Busterud, Esq.

With a copy to:

Pacific Gas and Electric Company  
245 Market Street, Room 1107 N11A  
San Francisco, California 94105  
Attention: R. Terry Nelson

If to Declarant:

Duke Energy Morro Bay LLC  
5400 Westheimer Court  
4th Floor  
Houston, Texas 77056  
Attention: Ms. Paula G. Rospot  
President

Any Party may from time to time change its address for the purpose of notices to that Party by a similar notice specifying a new address, but no such change is effective until it is actually received by the Party sought to be charged with its contents.

All notices and other communications required or permitted under this Declaration which are addressed as provided in this Section 7.6 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five (5) days following deposit in the United States mail, postage prepaid if delivered by mail.

7.7 Time is of the Essence. Time is of the essence of each term of this Declaration. Without limiting the generality of the foregoing, all times provided for in this Declaration for the performance of any act will be strictly construed.

7.8 No Third Party Beneficiaries. Except as may be specifically set forth in this Declaration, nothing in this Declaration, whether express or implied, is intended to confer any rights or remedies under or by reason of this Declaration on any Persons other than Covenantee and its successors and assigns, nor is anything in this Declaration intended to relieve or discharge the obligation or liability of any third Persons to any Party, nor give any third Persons any right of subrogation or action against any Party.

7.9 Waivers. No failure or delay on the part of Covenantee to enforce any Restriction or to exercise any power, right or privilege under this Declaration shall be construed to be a waiver of any right to enforce any Restriction or to exercise any power, right or privilege thereafter or to impair any power, right or privilege of Covenantee under this Declaration.

7.10 Rights of a Lender. The provisions of this Declaration do not limit the right of Covenantee or Declarant to grant a deed of trust, mortgage, or other similar lien or encumbrance to any commercial bank, trust company or other institutional lender ("Lender") providing financing to Covenantee or Declarant provided the lien of such deed of trust, mortgage or other similar lien or encumbrance is expressly subject to and subordinate to the Parties' rights and obligations under this Declaration. In the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any such deed of trust, mortgage or other similar lien or encumbrance,

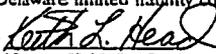
the purchaser or other transferee, and their successors in interest and assigns, shall be bound by the covenants and agreements of its borrower in this Declaration that burden the property encumbered by such deed of trust, mortgage or similar lien or encumbrance; provided, however, that until the person who acquires title to the property encumbered by such deed of trust, mortgage or other similar lien or encumbrance executes and delivers to the other party hereto a written assumption of its borrower's obligations under this Declaration, such person shall not be entitled to any of the benefits of this Declaration. No Lender, foreclosure sale purchaser or deed in lieu transferee shall be subject to any action for the breach or violation of any covenant or agreement in this Declaration which occurs prior to the date of its acquisition of title to the property encumbered by such deed of trust, mortgage or other similar lien or encumbrance.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date set forth above.

"Declarant"

DUKE ENERGY MORRO BAY LLC,  
a Delaware limited liability company

By



Name: Keith L. Head  
Its: Vice President

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF SAN FRANCISCO )

On June 30, 1918, before me, Rosemary G. Trowsdale,  
a Notary Public in and for said state, personally appeared Keith L. Head, personally  
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/its authorized capacity(ies), and that by  
his/her/its signature(s) on the instrument, the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Rosemary G. Trowsdale  
Notary Public in and for said State



**EXHIBIT A**

**LEGAL DESCRIPTION**

[ EXHIBIT A IN GRANT DEED ]

**FEE INTEREST IN PROPERTY WHICH IS LOCATED IN SAN LUIS OBISPO COUNTY, CALIFORNIA, FURTHER DESCRIBED AS FOLLOWS:**

The parcel of land shown as Lot 1 on that certain Lot Line Adjustment designated Case No. LL 01-97 recorded on February 26, 1998 in the Official Records of San Luis Obispo County (the "Lot Line Adjustment") and more particularly described as follows: All that certain real property situated in Section 25, Township 29 South, Range 10 East, Mount Diablo Base and Meridian, in the City of Morro Bay, County of San Luis Obispo, State of California, described as follows:

Commencing at a point of intersection of the northerly right-of-way line of Surf Street (formerly known as Ninth Street) with the centerline of Scott Street (formerly known as "S" Street), as said streets are delineated and so designated on the Map of Atascadero Beach, recorded July 2, 1917 in Book 2, Page 15 of Maps in the Office of the County Recorder of said County, said point also being the point of beginning of the 48.7 acre parcel of land set forth in the quitclaim deed from the County of San Luis Obispo to the Pacific Gas and Electric Company, a corporation ("PG&E"), recorded September 25, 1951, in the office of the County Recorder of said County in Book 628 of Official Records at Page 342; thence along the centerline of Scott Street North 6°07'26" West 126.01 feet to the northeasterly corner of that certain parcel of land described in the deed from PG&E to the County of San Luis Obispo recorded July 28, 1953, in the office of the County Recorder of said County, in Volume 720 of Official Records at Page 69, said point also being the TRUE POINT OF BEGINNING; thence leaving said centerline of Scott Street, along the northerly line of the land described in last said deed South 88°19'28" West 269.38 feet to a point on the centerline of Mesa Drive as said Drive being so delineated on said Map, said point also being the northwesterly corner of the lands described in last said deed, said point also being a point on the boundary line of said 48.7 acre parcel; thence along said boundary line South 87°15'33" West 182.67 feet; thence South 20°48'10" East 122.10 feet to a point on the northerly right-of-way line of said Surf Street and the southerly boundary line of said 48.7 acre parcel; thence along said northerly right-of-way line and said southerly boundary line South 89°11'34" West 362.73 feet to the southeasterly terminus of that certain course in the southwesterly boundary line of said 48.7 acre parcel, said course having a bearing and distance of "North 53°45' West 884.13 feet;" (North 53°52'05" West 884.13 feet for the purposes of this description); said point also being the most easterly corner of the parcel of land described in the deed from the County of San Luis Obispo to PG&E, recorded

January 26, 1956 in the office of the County Recorder of said County, in Volume 833 of Official Records at Page 525; thence at right angles to last said course South 36°07'55" West 190.66 feet to a point on the southwesterly boundary line of Tide Lands Survey No. 14, recorded in Book 4 at page 11 of Record of Surveys in the office of the San Luis Obispo County Recorders office; thence along said southwesterly boundary North 59°39'45" West 201.03 feet; thence leaving said southwesterly boundary North 36°07'55" East 210.96 feet to a point on the southwesterly boundary line of said 48.7 acre parcel, said point being distant North 53°52'05" West 200.00 feet along said boundary line from said southeasterly terminus of the southwesterly boundary line of the 48.7 acre parcel; thence along the southwesterly boundary of said 48.7 acre parcel North 53°52'05" West 684.13 feet; thence at a right angle South 36°07'55" West 369.55 feet to a point on the southwesterly boundary line of the parcel of land quitclaimed to the County of San Luis Obispo by deed recorded August 1, 1949, in Book 530 at Page 214 of Official Records of said County; thence along last said southwesterly boundary North 75°37'05" West 215.33 feet; thence North 36°07'55" East 449.34 feet; thence North 53°52'05" West 286.04 feet; thence North 30°58'19" West 175.66 feet; thence North 21°19'19" West 543.47 feet to a point on the centerline of 79th Street, as said 79th Street is shown on said Map of Atascadero Beach; thence leaving the boundary of said 48.7 acre parcel, along the centerline of said 79th Street South 81°03'50" West 42.89 feet to a point of intersection with the centerline of "C" Street, as said centerline is so delineated on said Map; thence along the centerline of said "C" Street North 8°56'10" West 1,379.64 feet to a point of intersection with the centerline of 70th Street, said 70th Street being so delineated on said Map, thence continuing along said 70th Street North 81°03'50" East 736.36 feet to the southwesterly corner of Lot 27 of Block 28D of said Map, thence along the westerly line of Lot 27 and Lot 20 of said Block 28D North 8°56'10" West 149.96 feet to a point on the centerline of 69th Street, said 69th Street being so delineated on said Map, said point also being the northwesterly corner of Lot 20; thence along said centerline of 69th Street North 81°03'50" East 175.26 feet to a point of intersection with the centerline of "J" Street, said "J" Street being so delineated on said Map; thence along said centerline of "J" Street South 8°56'10" East 10.00 feet to a point of intersection with the westerly prolongation of the northerly line of Lot 6 of Block 27 of said Map; thence along said westerly prolongation and the northerly line of Lot 6 and the easterly prolongation thereof North 81°03'50" East 750.88 feet to the northwesterly corner of the parcel of land described in the deed from PG&E to the State of California recorded October 7, 1960 in the office of the County Recorder of said County in Volume 1087 of Official Records at Page 277, said northwesterly corner also being a point on the westerly right-of-way line of California State Highway 1 as shown on the California Department of Transportation Right-of-Way Map Sheets designated as postmile 29.6 and postmile 30.1 (sheets 27 and 28 of 33) on file in the office of the California Department of Transportation District 5 Right-of-Way Engineering Department in the City of San Luis Obispo, State of California; thence along said westerly right-of-way line South 20°06'36" East 550.31 feet; thence

continuing along said westerly right-of-way line South 23°32'35" East 307.51 feet to the beginning of a non-tangent curve concave easterly having a radius of 4080.00 feet, to which a radial line bears South 67°54'00" West; thence continuing along said westerly right-of-way line southeasterly along said curve through a central angle of 7°10'01" an arc distance of 510.35 feet; thence continuing along said westerly right-of-way line South 27°12'08" East 628.32 feet; thence continuing along said westerly right-of-way line South 44°10'05" East 44.29 feet to a point of intersection with the easterly boundary line of the parcel of land described in the deed from the State of California to PG&E recorded October 7, 1960, in the office of the County Recorder of said County, in Volume 1087 of Official Records at Page 273; thence leaving said westerly right-of-way line of Highway 1 along last said easterly boundary line South 17°19'03" East 136.90 feet; thence continuing along said easterly boundary line South 45°31'03" East 508.65 feet; thence South 34°07'03" East 181.13 feet to the most easterly corner of Lot 39 of Block 31 of said Map; thence along the southeasterly line of said Lot 39, last said line also being the northeasterly prolongation of the centerline of Scott Street, South 55°57'03" West 289.42 feet to the beginning of a tangent curve concave southeasterly having a radius of 175.72 feet; thence continuing along said centerline of Scott Street southwesterly along said curve through a central angle of 39°18'10" an arc distance of 120.54 feet; thence continuing along said centerline South 16°38'53" West 0.26 feet to the beginning of a tangent curve concave northwesterly having a radius of 404.66 feet; thence continuing along said centerline southwesterly along said curve through a central angle of 43°16'54" an arc distance of 305.68 feet; thence continuing along said centerline South 59°55'47" West 15.07 feet to the beginning of a tangent curve concave southeasterly having a radius of 95.71 feet; thence continuing along said centerline southwesterly and southerly along said curve through a central angle of 68°03'13" an arc distance of 113.68 feet to the TRUE POINT OF BEGINNING.

**EXCEPTING THEREFROM** that portion described as follows:

Commencing at the most easterly corner of Lot 39 of Block 31 of said Map of Atascadero Beach, said corner also being a point on the easterly boundary line of said deed recorded October 7, 1960; thence along said easterly boundary line North 34°07'03" West 181.13 feet; thence continuing along said easterly boundary line North 45°31'03" West 300.40 feet to the TRUE POINT OF BEGINNING; thence leaving said easterly boundary line North 82°25'56" West 51.99 feet; thence North 80°32'04" West 49.03 feet; thence North 72°44'42" West 35.29 feet; thence South 89°09'33" West 47.97 feet; thence South 78°00'52" West 65.65 feet; thence South 56°11'46" West 49.82 feet; thence at right angles to that certain course in said southwesterly boundary line of said 48.7-acre parcel said course having a bearing and distance of "North of 53°45' West 884.13 feet" (North 53°52'05" West 884.13 feet for the purposes of this description), South 36°07'55" West 473.15 feet; thence at right angles North 53°52'05" West 148.76 feet; thence at right angles North 36°07'55" East 75.05 feet; thence at right angles North 53°52'05" West 837.90 feet; thence at right angles South 36°07'55" West 97.53 feet; thence at right angles North

53°52'05" West 176.60 feet; thence North 19°35'23" East 254.47 feet; thence North 8°25'31" East 80.98 feet; thence North 19°47'04" East 209.64 feet; thence at right angles to said southwesterly boundary line North 36°07'55" East 159.02 feet; thence North 75°19'23" East 421.36 feet; thence South 85°42'10" East 271.06 feet to the beginning of a non-tangent curve concave northeasterly having a radius of 4080.00 feet, to which a radial line bears South 62°51'50" West, said beginning point also being on said westerly right-of-way line of said California State Highway 1; thence continuing along said westerly right-of-way line southeasterly along said curve through a central angle of 2°07'51" an arc distance of 151.74 feet; thence continuing along said westerly right-of-way line South 27°12'08" East 628.32 feet; thence continuing along said westerly right-of-way line South 44°10'05" East 44.29 feet to a point of intersection with the easterly boundary line of the parcel of land described in the deed dated October 7, 1960; thence leaving said westerly right-of-way line of Highway 1 along last said easterly boundary line South 17°19'03" East 136.90 feet; thence continuing along said easterly boundary line South 45°31'03" East 208.25 feet to the TRUE POINT OF BEGINNING.

Parcel (after exception) containing 107.35 acres more or less.

**[EXHIBIT A-1 IN GRANT DEED]**

**PARCEL ONE:**

All that certain real property described in Exhibit A-1 of that certain Correction Deed dated May 12, 1978 and recorded in Book 2104 of Official Records at Page 466, San Luis Obispo County Records, being a portion of Lot 34 of the Subdivision of Rancho Moro Y Cayucos, as shown upon the map filed for record in Book "A" of Maps at page 160 in the Office of the County Recorder of San Luis Obispo County, State of California, therein described as follows:

Beginning at the most southerly corner of said Lot 34 and running thence along the southwesterly boundary line of said Lot 34

(1) North 32°23'34" West (North 34°00'30" West, geodetic) 306.00 feet, set a Pacific Gas and Electric Company aluminum monument tagged R.C.E. 12748; thence leaving said southwesterly boundary line

(2) North 15°54'58" East 2242.05 feet, set a Pacific Gas and Electric Company aluminum monument tagged R.C.E. 12748; thence

(3) North 75°47'42" East 1441.23 feet, set a Pacific Gas and Electric Company aluminum monument tagged R.C.E. 12748; in the easterly boundary line of said Lot 34, thence running along the easterly boundary line of said Lot 34

(4) South 19°35'26" East 925.95 feet, set a Pacific Gas and Electric Company aluminum monument tagged R.C.E. 12748; marking the most easterly corner of said Lot 34; thence running along the southeasterly boundary line of said Lot 34

- (5) South 56° 50' 55" West 1912.68 feet, set a Pacific Gas and Electric Company aluminum monument tagged R.C.E. 12748,  
(6) South 33° 15' 01" West 1014.22 feet, set a Pacific Gas and Electric Company aluminum monument tagged R.C.E. 12748; and continuing  
(7) South 33° 15' 01" West 2.00 feet, more or less, to the point of beginning; containing 62.20 acres, more or less.

The bearings used in the above description (except where otherwise noted) are on the California Coordinate System, Zone V. To obtain geodetic bearings at the point of beginning, adjust all California Coordinate bearings 1° 36' 56" to the left. The distances used in the above description are ground distances. Multiply all distances by 0.9999575 to obtain grid distances.

A record survey of the real property described above has been made by S. L. Taylor, R. C. E. No. 12748, and recorded in Book 29 of Licensed Survey Maps at page 49, San Luis Obispo County Records.

#### **PARCEL TWO:**

Together with that portion of the parcel conveyed from Frank V. Rodrigues and others to PG&E by easement deed dated April 8, 1976, and recorded April 27, 1976, in Book 1893 of Official Records at page 924, San Luis Obispo County Records, described and designated (a) in said deed dated April 8, 1976, and as shown on a Record of Survey filed October 11, 1977 in Book 29, Page 49 of Maps, San Luis Obispo County Records.

#### **EASEMENT RIGHTS FURTHER DESCRIBED AS FOLLOWS:**

A non-exclusive easement and right of ingress to and egress from Lot 1, as said Lot 1 is shown on that certain Certificate of Compliance Lot Line Adjustment, which is the result of Lot Line Adjustment MBAL 97-239 (Case No. LL 01-97), approved by the Subdivision Review Board on December 29, 1997 and recorded on February 26, 1998 as Document No. 1998-010270 and Document No. 1998-010271 in the Official Records of San Luis Obispo County (the "Lot Line Adjustment") and described as follows:

A non-exclusive easement and right of ingress to and egress from Lot 1, as said Lot 1 is shown on that certain Certificate of Compliance Lot Line Adjustment, which is the result of Lot Line Adjustment MBAL 97-239 (Case No. LL 01-97), approved by the Subdivision Review Board on December 29, 1997 and recorded on February 26, 1998 as Document No. 1998-010270 and Document No. 1998-010271 in the Official Records of San Luis Obispo County (the "Lot Line Adjustment") and described as follows:

**STRIP ONE:**

A 30 foot easement for road purposes lying within said Lot 2 of the Lot Line Adjustment, the centerline of which is described as follows:

Commencing at the most easterly corner of said Lot 1 of the Lot Line Adjustment; thence along the easterly boundary line of said Lot 1, North 34°07'03" West 181.13 feet; thence continuing along said easterly boundary line North 45°31'03" West 327.92 feet to the **TRUE POINT OF BEGINNING**; thence leaving said easterly boundary line North 80°43'15" West 81.56 feet; thence North 75°32'59" West 35.91 feet; thence North 61°27'30" West 40.49 feet; thence North 45°45'36" West 53.58 feet; thence North 36°03'09" West 92.37 feet; thence North 42°56'21" West 41.01 feet; thence North 53°51'57" West 1124.85 feet to the beginning of a tangent curve concave southerly having a radius of 60.00 feet; thence northwesterly and southwesterly along said curve through a central angle of 90°00'08" an arc distance of 94.25 feet to a point which is 15.00 feet southwesterly of, measured at right angles from, the northwesterly boundary line of said Lot 2; thence parallel with, and 15.00 feet southeasterly of said northwesterly boundary line the following four (4) courses: (1) South 36°07'55" West 92.24 feet; (2) thence South 19°47'04" West 205.99 feet; (3) thence South 08°25'31" West 80.96 feet; (4) thence South 19°35'23" West 260.39 feet to a point of termination on the southwesterly boundary line of said Lot 2, said boundary line having a bearing and distance of "North 53°52'05" West 176.60 feet".

The side lines of said 30 foot road easement are to be lengthened or shortened so as to begin at said easterly boundary line, and terminate at last said southwesterly boundary line.

**STRIP TWO:**

A strip of land the uniform width of 20 feet lying in Lot 2 of that certain Lot Line Adjustment designated as Case No. LL 01-97 recorded on February 26, 1998, as document #s 1998-010270 and 1998-010271, in the Official Records of San Luis Obispo County lying 10 feet on each side of the following described line:

Commencing at the northwesterly terminus of that certain course in the above described Strip One, said course having a bearing and distance of North 42°06'21" West 41.01 feet; thence North 53°51'57" West 557.62 feet; thence at a right angle North 36°08'03" East 15.00 feet to a point on the northeasterly line of the above described strip, said point also being the **TRUE POINT OF BEGINNING**; thence from said True Point of Beginning North 36°02'23" East 37.54 feet; thence North 41°58'39" East 33.58 feet; thence North 55°04'35" East 29.72 feet; thence North 63°51'57" East 55.79 feet; thence North 39°32'33" East 21.57 feet; thence North 16°35'07" East 29.09 feet; thence North 16°42'00" West 29.52 feet; thence North 31°07'18" West 35.69 feet; thence North 37°07'09" West 47.77 feet; thence North 36°28'54" West 91.48 feet; thence North 26°26'02" West 28.50 feet; thence North

10°04'40" West 24.21 feet; thence North 6°26'30" West 107.06 feet to the northerly line of said Lot 2.

The side lines of said 20 wide foot road easement are to be lengthened or shortened so as to begin at the northeasterly line of the above described Strip One, and terminate at the northerly line of said Lot 2.



**Jared  
Blumenfeld**  
Secretary for  
Environmental  
Protection



Department of Toxic Substances Control

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Meredith Williams, Ph.D.,  
Director 700 Heinz Avenue  
Berkeley, California 94710-2721



**Gavin  
Newsom**  
Governor

## **RESPONSIVENESS SUMMARY**

Draft Statement of Basis:  
Areas of Concern 1 through 4 and 6

Morro Bay Power Plant  
1290 Embarcadero  
Morro Bay, California 93442

December 21, 2020

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### Attachments

1. Figure 1 – Morro Bay Power Plant: Areas of Concern (AOCs), Historical Groundwater Monitoring Wells, and general groundwater flow direction
2. All comments received (grouped by category) and comment response criteria
3. 2020 Dynegy Annual Stack Inspection Report for the Morro Bay Power Plant

### 1.0 INTRODUCTION

This Responsiveness Summary has been prepared by the California Department of Toxic Substances Control (DTSC) and responds to all written public comments<sup>1</sup> received during the public comment period on the Draft Statement of Basis for Areas of Concerns (AOCs) 1 through 4 and 6 at the Morro Bay Power Plant located at 1290 Embarcadero in Morro Bay, California (Site). The comment period was originally scheduled from March 4 to April 22, but was extended to May 22, 2020, due to the COVID-19 Pandemic, at the request of members of the Morro Bay community.

This Responsiveness Summary will be incorporated as an appendix to the Final Statement of Basis. The Final Statement of Basis will reflect any changes which DTSC determines are appropriate in response to public comments.

The 140-acre Morro Bay Power Plant is comprised of eight AOCs which are described below:

- AOC 1: Former Tank Farm
- AOC 2: Beach Valve Area
- AOC 3: Firehouse Number 1
- AOC 4: Storage Area
- AOC 5: Switchyard Area
- AOC 6: Multi-Use Area
- AOC 7: Power Building
- AOC 8: Metal Cleaning Waste Ponds

The Morro Bay Power Plant and its AOCs are depicted on Figure 1 (provided in Attachment 1). Figure 1 was provided to note the general locations and extent of the AOCs, the locations of the historical monitoring wells which were used to evaluate groundwater conditions at the Site, and to note general groundwater flow underneath the Site.

The public-reviewed Statement of Basis presents the findings of environmental investigations

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<sup>1</sup> For comments that do not require a response, and the criteria used to determine if a particular comment does require a response, please see Section 4.0 below.

conducted at the Morro Bay Power Plant and recommends a Land Use Covenant (LUC) be recorded to address total petroleum hydrocarbons and arsenic at the Site in soil and groundwater. The LUC would restrict land use and groundwater uses and would require a soil management plan (SMP) to verify that soil at the Site will be managed in a manner protective of human health and the environment. In addition, annual inspections would occur to verify the protectiveness of the remedy over time.

The Statement of Basis did not address three of the eight AOCs at the Site due to differing circumstances, as follows:

- AOC 5<sup>2</sup> and AOC 7 have not yet been investigated due to the presence of the structures associated with historical use for each AOC, and
- AOC 8 was formerly permitted through DTSC and was previously clean closed through DTSC's closure process.

Based on the comments and additional evaluation of soil by the current owner Dynegy, and DTSC's review of both, DTSC is recommending that the proposed remedy be revised to require a LUC and SMP only for AOC 1. The requirements of the LUC and SMP will still be the same as described above but will only apply to soil in AOC 1. The other AOCs at the Site will be appropriate for Corrective Action Complete without Controls determinations for soil. The revised and final Statement of Basis will document these DTSC recommendations. Please see Section 5 for more details concerning the Final Statement of Basis and associated activities.

## 2.0 BACKGROUND

The Morro Bay Power Plant is located along the northern shore of Morro Bay and near the southern extent of the larger Estero Bay in the City of Morro Bay. The Morro Bay Power Plant is bounded to the south by Embarcadero road, to the west by Morro Bay, to the north by Highway 1, and to the east by residential and small commercial properties. The Morro Bay Power Plant is a former power generation facility which started in the early 1950s under Pacific Gas and Electric (PG&E) ownership. Duke Energy purchased the property in 1998, LS Power acquired the property in 2006, and then merged with Dynegy in April 2007. In 2014, operations at the Morro Bay Power Plant ceased and the plant was shut down.

Various environmental investigations have been conducted at the Morro Bay Power Plant since the 1990s. Human health and ecological risk assessments have also been conducted and initially identified the chemicals of potential concern (COPCs): those chemicals that had the potential to be at levels of human or environmental concern. This list of chemicals was total petroleum hydrocarbons (TPH), metals, volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs) and asbestos in soil and shallow groundwater at the Site. After acquiring data across the Morro Bay Power Plant, these COPCs were evaluated to determine the Constituents of Concern, which are the actual chemicals at levels exceeding human health or environmental screening criteria. These

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<sup>2</sup> Only the PG&E-owned portion of AOC 5 has not been investigated: the Dynegy owned portion of AOC-5 has been adequately characterized, and DTSC has determined that it does not require any institutional controls, including a Land Use Covenant. This issue will be addressed in the Revised Statement of Basis.

remaining chemicals were TPH in the middle distillate (TPH-md) and residual ranges (TPH-r) and arsenic, which were all above commercial screening levels. Therefore, a remedy is needed to meet environmental standards and provide long-term protection of human health and the environment. The proposed alternative meets these goals. As the lead agency under CEQA, DTSC determined that this proposed remedy was exempt from CEQA, and thus no CEQA document was prepared, since implementing the remedy would have no significant impact on the environment.

### 3.0 PUBLIC REVIEW PROCESS

The following summarizes the public review process for the Statement of Basis.

**Public Comment Period:** DTSC held a comment period from March 4 to April 22, 2020. Due to the COVID-19 pandemic, the public comment period was extended to May 22, 2020.

**Community Profile:** In early 2019, DTSC prepared a Community Profile for the Morro Bay Power Plant. In May 2019, DTSC distributed community surveys to key project stakeholders and all properties and property owners on the ¼ mile radius mailing list, in order to support the information within the Community Profile. Based on the information received from the Morro Bay community, the Community Profile was updated, and finalized in October 2019. The Community Profile can be found on DTSC's database, Envirostor, at the following hyperlink: [Hyperlink to the Morro Bay Power Plant Community profile](https://www.envirostor.dtsc.ca.gov/public/final_documents2?global_id=80001832&doc_id=60456555). The URL for this hyperlink is as follows:

[https://www.envirostor.dtsc.ca.gov/public/final\\_documents2?global\\_id=80001832&doc\\_id=60456555](https://www.envirostor.dtsc.ca.gov/public/final_documents2?global_id=80001832&doc_id=60456555).

**Public Comment Period Notification:** On March 4, 2020, DTSC published an English public notice in the main section of the *San Luis Obispo Tribune* newspaper to announce the start of the 45-day public comment period and solicit comments on the draft Statement of Basis. On February 28 2020, DTSC distributed the community update via U.S. Mail which arrived in the mailboxes on or before March 4, 2020 to 2,251 addresses which included residences and businesses located within an approximately 3/4-mile radius of the Site; key representatives from San Luis Obispo County, and Morro Bay civic/community organizations; and DTSC's mandatory mailing list. A copy of the public notice and the community update can be found on DTSC's database, Envirostor, at the following hyperlink: [Hyperlink to the Public Notice and Community Update for the Morro Bay Power Plant Statement of Basis public comment period](https://www.envirostor.dtsc.ca.gov/public/final_documents2?global_id=80001832&doc_id=60451598). The URL for this hyperlink is as follows:

[https://www.envirostor.dtsc.ca.gov/public/final\\_documents2?global\\_id=80001832&doc\\_id=60451598](https://www.envirostor.dtsc.ca.gov/public/final_documents2?global_id=80001832&doc_id=60451598).

**Public Comment Period Extension Notification:** On April 20, 2020, DTSC published an English public notice extension in the main section of the *San Luis Obispo Tribune* newspaper to announce a 30-day extension of the original public comment period concerning the draft Statement of Basis. The prior proposed end of the comment period was April 22, 2020, and the new end of the comment period was extended to May 22, 2020. The public comment period extension notification was also sent via U.S. Mail to 2,251 addresses which included

residences and businesses located within an approximately 3/4-mile radius of the Site; key representatives from San Luis Obispo County, and Morro Bay civic/community organizations; and DTSC's mandatory mailing list. The public comment period extension notification can be found on DTSC's database, Envirostor, at the following hyperlink: [Hyperlink for the public comment period extension notification](https://www.envirostor.dtsc.ca.gov/public/final_documents2?global_id=80001832&doc_id=60478038). The URL for this hyperlink is as follows: [https://www.envirostor.dtsc.ca.gov/public/final\\_documents2?global\\_id=80001832&doc\\_id=60478038](https://www.envirostor.dtsc.ca.gov/public/final_documents2?global_id=80001832&doc_id=60478038).

**Information Repositories:** Information repositories were established to contain key decision-making documents, including the draft Statement of Basis and supporting documents, and are located at the following locations:

Morro Bay Public Library	DTSC – File Room
625 Harbor Street	8800 Cal Center Drive
Morro Bay, CA 93442;	Sacramento, CA 95826
(805) 772-6394; call for hours	(916) 255-3758, call for an appointment

These documents are available online at DTSC's database, Envirostor, which can be accessed using the following link: [Hyperlink to the Morro Bay Power Plant public Envirostor page](#)

The following documents were made available to the public during the 45-day public comment period and during the extension:

1. DTSC Community Profile, October 2019.
2. DTSC Public Notice placed as a display advertisement in San Luis Obispo Tribune, March 4, 2020: Draft Statement of Basis Available for Review.
3. DTSC Public Notice on comment period extension placed as a display advertisement in the San Luis Obispo Tribune, April 20, 2020: Draft Statement of Basis Available for Review, Extended Public Comment Period.
4. Draft Statement of Basis, Proposed Resource Conservation and Recovery Act (RCRA) Corrective Action remedy for the Morro Bay Power Plant, February 26, 2020

#### **4.0 COMMENTS AND RESPONSES**

The public comment period ended on May 22, 2020. Twenty-one comment cards, nine letters, and thirty-five emails were received. A few of the comment cards, several of the emails and all but one of the letters contained multiple comments. DTSC grouped the comments according to similar concepts, and examples of each comment group and DTSC's responses to each set of comments are provided below.

DTSC will also be preparing letters of response to each comment letter, and they will be transmitted to the individual or organization that generated the original letter through U.S. Mail.

All comments received through comment cards, emails, and letters are provided in Attachment 2 of this Responsiveness Summary. All personal contact information has been removed from the comments to protect the individual or organization.

DTSC used the following criteria to determine whether a specific comment required a specific response. If DTSC reviewed the comment and determined it raised an issue or concern about the proposed remedy or made recommendations as to how the remedy should be changed, then the comment was addressed in some fashion.

Examples of questions or comments that were not answered based on the above criteria are as follows:

- Asking or commenting about how things are defined (such as an AOC or other property boundary),
- Asking or commenting on what Dynegy will do with the other property (like other AOCs or property outside the AOCs but inside the property boundary),
- Making recommendations that do not pertain to the remedy or the property that is part of the remedy, and
- Asking about historical Morro Bay Power Plant information or the status of the Morro Bay Power Plant.

Based on the above criteria, below are each comment group, an example or examples of the comment(s) within that group, and the DTSC response to the comments within that group. The comment groups have been broken into two general categories: those relating to the proposed remedy and associated topics, and those relating to the public participation process and associated topics.

## **The Proposed Remedy and Associated Topics**

### **1. No response required**

*“What other power plants in California have been shut down, decommissioned, or down-sized? What remedies were used in those cases?”*

*“Californians depend on the DTSC to protect us from residual contaminants and groundwater pollution resulting from industrial activities of the past and present. We need the DTSC to step up and help Morro Bay now.”*

### **DTSC Response 1**

Thank you for your questions and comments. Due to these questions and comments not raising specific issues with the proposed remedy within Statement of Basis for the Morro Bay Power Plant, no specific answers have been prepared to address these questions and comments. However, information for the Morro Bay Power Plant can be found at DTSC’s database, Envirostor. The following Hyperlink will take you to the website:

[Hyperlink for the Morro Bay Power Plant on DTSC's database Envirostor](#)

### **2. The Stacks and Dynegy property use**

*“Ever since we moved here in 1991, we noticed a black soot inside our house on the furniture from those smokestacks, even after the plant closed down. We've had nosebleeds which we never had*

before in all the other cities and states we have lived in and our eyes water. The doctor said it's from soot from the smokestacks. The wind blows threw (sic) them, sending black soot for miles. They should be demolished permanently because they are a health hazard to all people living in Morro Bay and its outskirts. Our lungs are filled with that black soot and we all have more respiratory infections frequently. If you truly care about citizens health, please tear down those smoke pipes filled with black harmful soot that deposits itself all over Morro Bay.”

“Please leave the stacks there where they belong! And make it into an aquarium! I believe everyone here will be very happy.”

## **DTSC Response 2**

The fate of the smokestacks and other parts of the Morro Bay Power Plant property outside of the AOCs within the Statement of Basis for the Site does not affect the proposed remedy. Also, DTSC has no authority to dictate whether Dynegy keeps the smokestacks or not. However, comments have identified a concern with the belief that particulate contamination in the form of soot may be issuing from the stacks, which is part of DTSC’s environmental authority. While the Statement of Basis does not address the smokestacks, DTSC requested and has received information from Dynegy concerning Dynegy’s continued annual inspecting of the Morro Bay Power Plant under oversight of the San Luis Obispo Air Pollution Control District, since the power plant closed in 2014. The latest of these reports, the 2020 Annual Stack Inspection Report, is within Attachment 3 for reference. The 2020 Annual Stack Inspection Report and pictures within it identify that the stacks and areas surrounding them at the Morro Bay Power Plant appear to be unimpacted by particulates from the historical activities at the stacks. It is unlikely soot would be deposited offsite from the smokestacks when it is not found onsite as well. Also, the Morro Bay Power Plant closed its permitted units in 2014 and ceased power generation activities. Thus, since 2014, the Morro Bay Power Plant could not have been generating particulates. Thus, it appears that the Morro Bay Power Plant is not the likely source of soot being reported in some resident’s homes in Morro Bay.

## **3. Cleanup Goals**

“When a company that used the land for its commercial activities elects to discontinue that use it must return the land to its highest or best use. The proposal to restrict the use of the land instead of cleaning it is unacceptable. The site is a major resource in this small community. It needs to be able to be redeveloped for an appropriate modern use, whether commercial or recreational. PG&E should be required to clean the site to a level that allows full use.”

“My neighborhood is definitely snarled with overhead power-lines that feed the Power grid. To turn this PG&E property into a toxic industrial wasteland would be so cheap and easy. I would love to see an eventual total clean-up of all Areas of Concern 1 through 8! Please HOLD PG&E responsible!!”

“What all this indicates is that the contaminated land needs to be properly remediated for future residential use in the area and possibly because the drinking water source is very close to the Power Plant. No matter what scenarios ultimately occur, they all require the complete remediation of the Power Plant site.”

## **DTSC Response 3**

During this public comment period, DTSC has been working with Dynegy, the present property owner

of the Morro Bay Power Plant, to further evaluate site soil. Dynegy performed this additional evaluation of soil by comparing soil data to residential/unrestricted use screening levels. The analysis demonstrated that except for soil in AOC 1, soil in AOCs 2 through 4 and 6 are appropriate for residential/unrestricted use. Thus, while AOC 1 soil will still need a Land Use Covenant for soil, AOCs 2 through 4 and 6 will have a new remedy proposed for soil: no further action. This Dynegy report is can be found at the following hyperlink [Hyperlink to the Screening Level Human Health Risk Assessment for Soil from Dynegy](https://www.envirostor.dtsc.ca.gov/public/final_documents2?global_id=80001832&doc_id=60463760). The URL for this hyperlink is as follows:  
[https://www.envirostor.dtsc.ca.gov/public/final\\_documents2?global\\_id=80001832&doc\\_id=60463760](https://www.envirostor.dtsc.ca.gov/public/final_documents2?global_id=80001832&doc_id=60463760)

At present, no change in the groundwater remedy is proposed. Please see DTSC Response 9 for more information concerning evaluation of groundwater.

For additional questions concerning the Land Use Covenant, please see DTSC Response 14 for more information.

#### **4. Other Remedies Evaluated**

“What other remedies were evaluated? What is the estimated cost of implementing these remedies? Are these analyses available? If so, could you please send me at least a summary?”

“No remedies have been examined other than the LUC. Due to the DTSC’s assumption that the power plant site will continue to be used for commercial or industrial purposes, no other remedies have been evaluated. This is not in the public’s best interest. It would seem to be the DTSC’s responsibility to at least examine the feasibility of cleaning up some or all of the AOC’s to a higher, residential standard. At least there would be a basis of comparison for a more fair and objective determination of which remedy would be most appropriate.”

#### **DTSC Response 4**

The corrective action process does not require an analysis of other remedies, or analysis of all possible end-uses at a site. Rather, site-specific information is used to determine what is appropriate. A site with many chemicals in groundwater, soil, soil vapor, and indoor air with multiple pathways for the chemicals to get from one media to another benefits from a detailed analysis of potential remedial options, and this analysis would be performed in a document called a Corrective Measures Study. On the other end of the spectrum, a site which has very few chemicals which are limited in location or toxicity/mobility, does not require, and may not benefit from a Corrective Measures Study. This Site has only two chemicals of concern, and the degree of contamination and toxicity of the chemicals made a Corrective Measures Study unnecessary.

In evaluating a site to determine planned or potential reuse, residential development is not always assumed as being feasible. However, it is DTSC policy that the residential scenario is used as a default scenario for determining the amount of potential cleanup necessary at a site to achieve unrestricted use. In this instance, DTSC did not require PG&E to analyze the site for potential future residential use. However, as identified in DTSC Response 1 above, analysis of residential/unrestricted use for soil has been performed and will result in a change to the remedy for soil in AOCs 2 through 4 and 6. Please see DTSC Response 3 and Section 5 for more information.

#### **5. The Soil Management Plan**

“While the DTSC’s March 2020 flyer entitled “Community Update” lists the preparation of a Soil Management Plan, no such remedy seems to be mentioned in the Draft SOB.”

### **DTSC Response 5**

The Soil Management Plan is not a remedy, but a document that describes the activities necessary to manage contaminated soil that remains at the Site once the remedy is implemented. If the remedy of a Land Use Covenant is approved, Dynegy will prepare a Soil Management Plan for any Areas of Concern which contain contaminated soil. Please see DTSC Response 3 for more information.

### **6. Management of Contaminants**

“What precautions would be taken in hauling away contaminants? Where would the contaminants be hauled to? Would there be contaminant removal on windy days? Would there be toxin measurement devices during the removal?”

### **DTSC Response 6**

For purposes of this proposed remedy, no contaminants would be removed from the site. Thus, these questions do not ask whether the remedy is appropriate or not or make recommendations for changing the remedy. However, if any contaminants are removed from the site before or after this remedy is approved and implemented, the details of that work would need to be approved by DTSC or another appropriate regulatory agency before the work was performed. The above questions are typical of what a regulatory agency would ask upon reviewing the document describing the planned work as part of understanding how the work would be performed, and whether it would be done in a protective fashion for both the workers and the areas surrounding the proposed work.

### **7. Responsibility**

“Who is ultimately responsible for the hazardous substances on the power plant site – PG&E or the current property owner?”

### **DTSC Response 7**

PG&E retained the environmental liability from the sale of the Site from PG&E to Dynegy Morro Bay. PG&E is responsible for the historical contamination at the Site caused by their previous operations. However, Dynegy Morro Bay is the property owner, and Dynegy has responsibility for the Site as well. Thus, while PG&E is responsible for historical contamination at the Site, if newer contamination were identified at the Site (i.e., contamination from activities occurring in 1998 forward), Dynegy would be responsible for this contamination. When the Site was sold to Dynegy Morro Bay, PG&E retained certain portions (including their portion of the switchyard), with the rest going to Dynegy Morro Bay.

### **8. Protecting Human Health and the Environment**

“What precautions would be taken to protect humans and endangered species?”

“Has there been a NERDA finding?”

### **DTSC Response 8**

The proposed LUC will meet the requirements of protecting human health and the environment, as established in the risk assessments supporting the use of a LUC. Also, a Soil Management Plan will be prepared by Dynegy for managing the contaminated soil remaining in AOC 1, to ensure that future activities in AOC 1 are protective of human health and the environment.

DTSC assumes that the second question refers to a NRDA, or Natural Resources Damage Assessment. NRDA “is the legal process that federal agencies like NOAA, together with the states and Indian tribes, use to evaluate the impacts of oil spills, hazardous waste sites, and ship groundings on natural resources both along the nation’s coast and throughout its interior.” DTSC is not aware of a NRDA being performed on this Site, or of any NRDA finding.

## **9. Groundwater**

“You have probably received letters from Morro Bay residents who are concerned about groundwater contaminants. This is particularly important to us since we are planning to recharge our groundwater in areas adjacent to the MBPP, as part of a recycled water project that we hope will provide us an additional source of drinking water. I am not a hydrogeological engineer, but I and many others believe that groundwater flows wherever it can flow. Allowing contaminated groundwater to remain, adjacent to a planned groundwater recharge project intended to produce potable water for our residents, potentially threatens our health.”

“The second concern is the movement of the underground plume of contaminants may migrate from the site due to natural forces, such as rising sea level, or due to man-made activities in the aquifer. Within a mile or so of the power plant site, the City of Morro Bay operates two wells it uses annually to provide drinking water to the City’s residents. In the near future they are considering pumping approximately 800,000 gallons of water a day into the Lower Morro Valley Ground Water Basin east of the valley and pumping a similar amount of water out at their wells in Lila-Kaiser park near the Power Plant. This activity has the potential to move contaminated ground water from the Power Plant in an unknown direction, including to the drinking water wells or into the bay, neither of which is desirable. The current drinking water wells are already problematic due to infusion of raw sewage from leaky sewer lines in North Morro Bay. They may decide to relocate the wells into a closer proximity to the Power Plant site to mitigate the sewage contamination. If such a decision is made, remediation of the site will be essential.”

### **DTSC Response 9**

DTSC has discussed the potential impacts of groundwater contamination at the Site with those at the City of Morro Bay planning this treated groundwater injection project. In discussions with the City of Morro Bay, DTSC determined that it was unlikely that the Site’s contamination would have a significant effect on this planned project, for the following reasons:

- 1) Based on numerous groundwater samples across the Site, taken over 9 years and documented in investigative documents for the Site, no significant plume of contaminants in groundwater has been found. While the groundwater at the Site would still require some form of treatment before being appropriate for residential consumption, the reasons for this do not have to do with contaminants from the site, but rather, other conditions (e.g., high concentrations of dissolved solids or high salinity due to seawater intrusion), and
- 2) While there are a few Site wells that when sampled, groundwater contaminants were found above unrestricted use screening levels, these wells were not near the planned injections, and nearby wells surrounding these historically sampled wells were free from contaminants.

In addition, Dynegy Morro Bay LLC is proposing to evaluate groundwater at the Site, as they did for soil

at the Site, with respect to unrestricted use. Dynegy submitted this evaluation on September 24, 2020, but DTSC has not yet concurred with it or commented on it yet to Dynegy, Once DTSC has reviewed this evaluation, depending on what the evaluation determines and whether DTSC concurs, it may alter the proposed remedy for groundwater. Please see Section 5 for more information.

## **10. Groundwater Sampling Requirements**

“There needs to be some sort of extended testing by PG&E of their wells in the vicinity of the City’s drinking wells as well as the water coming from the City’s wells to confirm the remediation done by PG&E does not reappear. Something like quarterly testing for five years would seem appropriate. There needs to be an increase in frequency whenever pollutants reappear in the well samples. These would be best done by PG&E. A well-designed study of this type would guarantee the safety of Morro Bay and its citizens.”

“I would request that PG&E conduct quarterly testing for five years or more of all wells within one mile of the exterior boundaries of the MBPP site, tests which are completely independent of the City of Morro Bay’s testing. PG&E’s tests of well will included a very detailed analysis and results of any petroleum hydrocarbons (TPH), polycyclic aromatic hydrocarbons (PAHs), metals, pesticides, volatile organic compounds (VOCs), chromium VI, naturally occurring asbestos (NOA), polycarbons (PAHs), petroleum. The test results will be made available to review to the Citizens of Morro Bay in their water/sewer bills upon completion. In addition, I request that PG&E provide remediation if the wells prove to be contaminated.”

### **DTSC Response 10**

If the historical environmental investigations at the Site identified significant contaminant mass moving in groundwater in any direction offsite, DTSC would have previously requested that PG&E sample groundwater wells outside the Site’s boundary. The historical data identified two small areas of localized contamination, both of which were located upgradient from groundwater wells where no significant contamination was detected. Thus, the request for PG&E to sample wells outside their historical groundwater monitoring network for purposes of demonstrating that the remedy is protective is not supported by historical site data. As to the first comment above, PG&E did sample Morro Bay Power Plant wells quarterly for one year in 2011, then semi-annually from 2012 to 2018, before groundwater monitoring was discontinued. Analytical results of Morro Bay Power Plant groundwater monitoring are available to the public on DTSC’s database, Envirostor at [Hyperlink to DTSC's database, Envirostor for the Morro Bay Power Plant](#).

## **11. Future Site Use/Development**

“This is wonderful property and would be a great site for a ‘Stack’s Brewery’ and other commercial use destination location. Morro Bay is a wonderful place that deserves a forward-looking approach to vacant land eye sores like this space has become.”

“My concerns relate to two major, likely occurrences in the foreseeable future. One is the development of the land for both businesses and residential purposes. The impact of this contaminated land on construction crews and occupants of the resulting buildings, could be disastrous.”

### **DTSC Response 11**

DTSC is the lead environmental agency responsible for oversight of remedial activity at the Morro Bay Power Plant site and its potential environmental impacts. Current and future land use is determined by the property owner, Dynegy Morro Bay Limited Lifetime Company, and by any zoning requirements imposed by the City of Morro Bay, or their successors. Land use restrictions will be specified as required in the proposed Land Use Covenant (LUC). Please see Section 1, page 3 for more information.

The proposed Statement of Basis recommended that AOCs 1 through 4 and 6 all be restricted to commercial/industrial use for soil by recording a LUC for the Site. In the revised Statement of Basis, only Area of Concern 1 soil would have land use restrictions. As groundwater is still being evaluated, no recommendation for groundwater is yet being made within this document, but this will be addressed in the revised Statement of Basis. Please see Section 5 for more information.

## **12. Cultural/Archaeological concerns**

“What is your plan to protect and preserve and cultural/archaeological history/artifacts located within the power plant site?”

### **DTSC Response 12**

DTSC has been in contact with PG&E and the California Coastal Commission concerning this issue. PG&E performed outreach to representatives of various Native American tribes, to determine if any tribes would be interested in the current activities at the Site. Three tribes identified interest in the Site, and that they would want to have cultural monitors during any activities at the Site where the ground is being penetrated or disturbed (i.e., during significant soil movement and removal). Also, the Soil Management Plan to be prepared by Dynegy will contain a component that requires apprising Native American tribes of future activities before they occur, so that any interested tribes can be present during soil activities and identify and address any potential cultural or archaeological artifacts, as needed.

## **13. Cost concerns**

“What will be the financial cost to manage the contamination project? And who will pay for it?”

“I would like to submit the following comments regarding the Morro Bay Power Plant located at 1290 Embarcadero Road in Morro Bay, California. I am a citizen of Morro Bay and have concerns about the ground water and potential contaminants on and near the power plant. These contaminants containing toxic heavy metals, harmful man-made organic compounds and naturally occurring, harmful inorganic materials, were introduced to the site during PG&E operations. To my understanding, they have not been remediated and could be harmful the residents and businesses in the area as well as to the entire citizenship of Morro Bay. This being the case, I believe PG&E should reserve funds sufficient to remediate the site prior to any bankruptcy proceedings. This would likely involve a bond in sufficient amount to cover the costs of such a remediation.”

### **DTSC Response 13**

For all activities associated with the historical operations at the Morro Bay Power Plant, PG&E is the responsible party, and PG&E pays for all costs associated with the investigations and remediation. For PG&E’s operations of the Power Building and the Switchyard, PG&E is also responsible for the environmental investigations and any remediation required yet to occur, even if they are not removed until decades from now.

PG&E's bankruptcy does not impact PG&E's responsibility to pay for investigations and any required remediation of its historic activities at the site. If DTSC believe it is necessary to do so, DTSC can require PG&E to post financial assurances in the amount of any required remediation costs.

For future activities at the Site for which Dynegy is responsible (including managing soil and groundwater at the Site beyond the remedy selection phase), Dynegy will be responsible for all costs associated with the Site.

#### **14. The Land Use Covenant**

"What is the basis for deciding that the best future use of the power plant site is for commercial/industrial purposes? What factors were considered?"

"Is the LUC permanent?? Can it be changed in the future? What would the requirements be to use some areas for something other than industrial/commercial?"

"What are the terms of the proposed remedy, specifically implementing a land use covenant LUC) ? Can the LUC be revisited in the future if over decades the site can be cleaned enough to safely allow for other uses then (*sic*) commercial/industrial or is this action done in perpetuity? It would be nice to not restrict uses if someday toxic levels are low enough to allow for other uses as allowed by DTSC."

"Does the proposed Land Use Covenant (LUC) apply to just AOC's 1 through 4 or does it apply to the whole power plant site?"

#### **DTSC Response 14**

The draft Statement of Basis recommended that AOCs 1 through 4 and 6 all be restricted to commercial/industrial use for soil and to limit groundwater use on the entire property by recording a LUC for the Site. The remedy to be proposed in the revised Statement of Basis, if approved by DTSC, will require that the property owner, Dynegy, record a LUC to limit groundwater use on the entire property to commercial/industrial use, and limit soil in AOC 1 to commercial/industrial use. This restriction affects both the AOCs and areas outside of the AOCs for groundwater (since groundwater is contiguous across the property). But for soil, it will only affect AOC 1, since the soil contaminants are not likely to migrate laterally to other uncontaminated soil areas.

Since this is a proposed remedy, the LUC is not finalized nor yet recorded for the property, and thus is not available for public review. Once recorded by Dynegy, the LUC is recorded in perpetuity, which means that it is binding until it is changed. It is not written into Morro Bay City Code. As such, the LUC can be removed or changed, and an entity can work with DTSC to identify what measures are needed. Generally, it stays in place until someone determines that the conditions requiring it have changed, or additional actions are taken by subsequent entities to clean up any contamination, allowing less restrictive use.

Once in place, the LUC remains until modified or terminated and runs with the land, which means if the Dynegy LUC is split into 10 areas, each area would have a LUC for groundwater, and any areas within AOC 1 would have a LUC for soil as well.

The LUC proposed in the current Statement of Basis does not completely prohibit use of the property.

Commercial use, like a brewery, would not be restricted on the property but groundwater on the Site is restricted from use in beverages.

## **The Public Participation Process and Associated Topics**

### **15. Level of Community Outreach**

“As well done as the DTSC’s “Community Update” dated March 2020 may be, my understanding is this flyer was only mailed to a limited number of residents in Morro Bay rather than the population as a whole. I am not sure what other attempts at notice have been made, perhaps a legal notice in the local Tribune, but these do not seem to have been effective. I base this on conversations with a number of Morro Bay residents who don’t have a clue about what is going on at the power plant site.”

“For those who did receive notice, I believe their reaction was much like mine – they had more questions than comments. Even though they may care very much about the power plant site, most people do not have the time or the skill set to follow up with formal questions or to research the issue further. Also not factored in is the substantial Morro Bay population of senior citizens, many of whom do not have the tech savvy to engage in online or computer proceedings. The bottom line is residents do not have enough information to make meaningful comments.”

“Of particular concern is the section on public participation where your activities do not seem to align with your objectives. From my standpoint, there seems to have been little effort in getting the word out to the greater Morro Bay area community. I am open to hear I am wrong.”

“What plans do you have to increase awareness in the coming weeks?”

“Is there anything that I could say that would change/improve/benefit the community in your documents?”

### **DTSC Response 15**

When we initially surveyed the community for interest in this Site in 2019, DTSC mailed a notice to addresses in a roughly 0.25-mile radius that included a total of 768 residences, businesses, city or county stakeholders, and local community groups. After receiving feedback that the larger Morro Bay community would be interested in the project, DTSC expanded the mailing area to include a roughly 0.75-mile radius and included additional community groups who expressed an interest in the survey responses. As a result, the DTSC Community Update in support of the public comment period was mailed out to a total of 2,251 contacts. This includes residences and businesses within the boundary of Las Vegas and Paula Streets to the north, Morro Bay city limits to the east, Morro Bay Boulevard to the south and the coastline to the west. In addition, a display ad was taken out in the San Luis Obispo Tribune that ran in the main section of the newspaper (page A2) on the first day of the 45-day comment period, March 4, 2020.

Given the level of interest in the Site and the unfortunate consequences of the COVID-19 pandemic, DTSC decided to extend the comment period by another 30 days to allow for

further public feedback. The extension was announced via a postcard update that was mailed on Friday, April 17 to the same 2,251 contacts on our mailing lists. Another public notice also ran in the San Luis Obispo Tribune on Monday, April 20, in the main section (page A2) announcing the extension.

We understand that some members of the community may not be as digitally literate as others. To that end, we make our documents available at the local library, so a computer is not necessary for meaningful engagement. We also always include phone numbers and email addresses in our communications, including a toll-free number, so community members have multiple ways to reach us and ask questions. This contact information was included in the Community Update, Public Notices and Comment Period Extension Postcards. When we extended the comment period due to COVID-19, readers were encouraged to contact us if they had questions or if they needed help accessing documents due to the library closure.

DTSC remains committed to ensuring the local community is provided with timely and accurate information related to the Site corrective action plan moving forward. We are always looking for ways to improve our public participation process, including better methods of sharing information with the community. Please contact Kerry Rasmussen, Public Participation Specialist, at (916) 255-3650 or [Kerry.Rasmussen@dtsc.ca.gov](mailto:Kerry.Rasmussen@dtsc.ca.gov) to discuss this further.

#### **16. Outreach to Elected Officials**

“You do note that “To date, the community has not raised issues or concerns regarding RCRA corrective actions in local media.” My contention would be that there is little awareness of the process you are overseeing and that greater efforts need to be made to remedy this lack. When I asked my District 2 County Supervisor about the process he responded on April 2, 2020, “I have no information on the Morro Bay Power Plant item. The City of Morro Bay is likely in the lead on that one.” I think this speaks volumes about the level of awareness in our community.”

“Did you go before the City Council and make an announcement/invitation during a meeting public comment?”

#### **DTSC Response 16**

DTSC strives to ensure that all elected officials are aware of this project. To that end all federally elected officials, County of San Luis Obispo Supervisors, City Councilmembers and key City and County staff are included on our mailing and email lists, including District 2 County Supervisor Bruce Gibson. Moving forward, DTSC will continue to use our mailing list to contact the appropriate City of Morro Bay government officials to keep them apprised throughout the process. DTSC will look into doing additional outreach that is needed to ensure the larger community is aware of any future work related to the Site.

In addition to DTSC’s outreach, PG&E conducts its own supplemental outreach. PG&E notified the Morro Bay City Manager, Public Works Director and Utilities Division Manager of the proposed remedy and public comment period in advance. The City was provided information by PG&E and did not request any further outreach to the City Council.

## **17. Newspaper outreach**

“Can you tell me the date(s) you placed the notice in the Tribune? Was this in their print and digital edition? Are you aware that if this was the only way you planned to reach the general public that only a small percentage of the public subscribes to the paper? Perhaps you were made aware that the majority of Morro Bay residents took the paper and that is why you placed the notice there. Is that the case?”

“Did you consider placing a notice in the Bay News or New Times?”

“Did you send out a press release? Work with local reporters?”

## **DTSC Response 17**

The State Health and Safety Code requires that DTSC place a public notice in a local newspaper of general circulation at the start of a public comment period (see DTSC Public Participation Manual October 2001, Chapter 6, Pages 54-55). For this project, a public notice was placed in the San Luis Obispo Tribune on the start date of the public comment period, March 4, 2020, that ran as a display ad on page A2 in the main section of the print newspaper and online e-edition. This is in accordance with DTSC’s policy as described in the Public Participation Manual (page 54) which explains that DTSC runs public notices as display ads because, “they are placed in more prominent sections of the newspaper, and are more likely to be seen by a larger segment of the targeted community.” An additional public notice was placed in the same manner as the first in the San Luis Obispo Tribune on Monday, April 20 announcing the extension of the public comment period to May 22, 2020.

The San Luis Obispo Tribune was selected because (1) it is a paper that meets DTSC’s requirements as an adjudicated paper of general circulation and (2) it publishes as a daily paper whereas the Estero Bay News is published biweekly and the New Times SLO is published weekly. In the future, DTSC may place public notices in all three papers to increase circulation of the public notice.

In addition to the public notices, a Community Update announcing the start of the comment period and a postcard update announcing its extension were mailed to a total of 2,251 contacts in the community using a roughly 0.75-mile occupant or owner radius mailing list and a key contact list that includes County and City elected officials, previously interested parties and key community organizations. DTSC also sent emails out announcing the comment period and its extension to all interested parties on our project email list.

While we did not send out a press release or work with local reporters directly, the editor of the San Luis Obispo Tribune and the newsroom of KCBX FM are included on our mailing list so the media is made aware of the public comment period. Our Public Information Officer works with any interested reporters to answer their questions in a timely manner.

## **18. Community Groups**

“Did you offer to speak at any of the community groups you listed, or at minimum attend meetings to make an informal announcement?”

“Did you post anything on NextDoor as was recommended?”

### **DTSC Response 18**

All community groups listed in the project's Community Profile are listed on our contact lists and received a copy of the Community Update via mail. While we did not offer to speak to any of the groups or make an informal announcement, had a group expressed interest we would have worked with them to hold a virtual briefing.

We also were unable to post any updates related to the comment period on NextDoor as you need to prove you live in the local neighborhood by providing verification of your address and unfortunately DTSC does not have a Morro Bay location. Moving forward, we will continue to encourage local contacts, such as the City of Morro Bay or the local chamber, to post updates to NextDoor on the agency's behalf.

DTSC will continue to send mail to local elected officials, key city staff and interested community members at key project milestones moving forward to ensure they are aware of the current project status and have the opportunity to ask questions.

### **19. Extending the public comment period**

"I think in the interest of public health and its direct impact, should be tabled and reconsidered 90 days after the current secession (end) of the current COVID-19 global pandemic. The aftermath cannot be assessed given the current situation."

"Thanks for your call yesterday. You didn't mention if you are going to extend the review period considering the state of the state and world. Can you tell me what you folks are thinking?"

"I will have other comments and questions, but most importantly and immediate would be the request to extend the comment period due to the coronavirus. The world is trying to come to a halt, so I would hope your comment period would be extended until the world comes back online. Please let me know when and if you will take this up within your Agency."

"Would you lose anything by extending the period 60 days after the Governor lifts the restrictions put into place yesterday? You could be looked upon as being thoughtful, realistic and interested in maximizing community input :-)"

"Thank you for telling me that your agency has agreed to the 30-day extension on the public comment period and you will be providing that new date in writing to interested parties."

"I spoke with a Morro Bay citizen today who indicated that DTSC has extended the comment period on the Morro Bay Power Plant Draft Statement of Basis Document beyond the April 22, 2020 deadline by 30-days. Can you confirm this?"

"Also, do you have the date chosen for when this comment period will end? Thanks a million!"

"Extend the time for public comment. In light of COVID-19 and limited opportunities for public engagement over the past several weeks, DTSC should extend the time for public comment to include an opportunity for a webinar and broader public discussion."

### **DTSC Response 19**

After internal discussions, DTSC elected to extend the 45-day public comment period beyond the April 22, 2020 date an additional 30 days to allow for more time for the community to provide comments in light of the COVID-19 pandemic. The extended comment period ended on May 22, 2020. DTSC notified the community of this change via a mailed postcard update and a public notice placed in the San Luis Obispo Tribune.

DTSC cannot pause the regulatory process indefinitely and since it is currently unclear how long the pandemic will last, we are unable to table this decision until after the pandemic is resolved. We felt a 30-day extension was sufficient time to provide comments on the proposed remedy, which will manage contamination in place without causing any construction impacts to the community.

### **20. Public Meeting**

“Your own survey tells you the best way to disseminate information is through a public meeting, yet it doesn't seem like one has been organized. You mention that if there is enough significant community interest a public hearing will be set during the midpoint in the review process. How will there be a significant interest demonstrated if people are unaware? If you were told that the best way to get information out was by holding a meeting to make more people aware, then we are going to have a difficult time raising awareness.”

“As you know, I advocated for the public comment period to be extended due to the global pandemic, and you responded with an additional 30 days. After reading this Community Profile I am convinced that the only way to move forward is to wait until the pandemic crisis is over so a public meeting can be held safely. In addition, more time will be needed for your agency to adequately inform the community, and as we know, the community is otherwise engaged during this crisis. You would never want to have it said that you, PG&E and others rammed this through when the community wasn't watching.”

“These issues deserve opportunities for public discussion through a webinar or other means. The Morro Bay community needs an opportunity to hear about the proposed actions from DTSC and other public officials with an opportunity to ask questions and get answers. In particular, the community needs to know the nature and extent of the toxic contamination, range of possible remedies and their pros and cons, and examples of successful efforts in other communities to rid their communities of toxic contamination. I suggest DTSC work with the City to sponsor a webinar to accomplish these information objectives.”

“To truly solicit public participation, a public workshop – really an information session -- should be held here in Morro Bay once things return to normal (or at least the new normal). A session which is well advertised by several means and held in the evening or on a weekend. The session should have a presentation by DTSC explaining the condition of the power plant site and what is being proposed, plus there should be a lengthy period of time designated for the public to ask questions and for those questions to be answered by the DTSC. This would provide an opportunity for real communication to the public and allow a broad spectrum of Morro Bay residents and other interested parties to participate – not just those with flexible schedules and the ability to read complex materials and compose written comments. It would be a chance for people to become truly informed and participate in the discussion.”

## **DTSC Response 20**

DTSC is committed to ensuring the community has the ability to ask questions and provided feedback on the proposed actions at the Morro Bay Power Plant. While the community survey did note that 65.9% would like information via a community meeting, 54.3% like printed materials and 46.5% liked email updates. Given that (1) the proposed remedy uses administrative controls, including a land use covenant and soil management plan to manage contamination in place, and (2) that there would be no remediation construction or community impacts as a result, DTSC management determined a public meeting, either in-person or virtual, was not necessary at this stage of the cleanup process for this Site and a mailed/emailed Community Update and Public Notice in the local paper would be sufficient to solicit community feedback.

After the onset of the COVID-19 pandemic during the comment period, DTSC management evaluated what changes should be made to this project's public comment period in response and decided to extend the public comment period by 30 days to provide additional time for input on the proposed remedy. This was announced via a postcard update mailed to community members and another Public Notice in the local paper.

If before the remedy is implemented by recording the LUC, should there be more substantial environmental work at the Site or proposed changes in land use that would require further environmental actions, DTSC will hold another public comment period and evaluate the possibility of holding either an in-person or virtual public meeting or hearing.

Should you have any further questions or wish to schedule a briefing for you or your organization, Kerry Rasmussen, DTSC Public Participation Specialist, is available at (916) 255-3650 or through email at [Kerry.Rasmussen@dtsc.ca.gov](mailto:Kerry.Rasmussen@dtsc.ca.gov).

## **21 Overall process**

"First, I would like to acknowledge your willingness to answer questions and explain what is happening at the site. I believe the DTSC desires this process to be transparent and open to the public. That said, I do not think these objectives have been achieved."

"As I have shared, I am a bit stymied about how the public can best be helpful. You seem to have a narrowly defined process, where you need to check the public participation box."

"Perhaps most significantly, did you, or do you have plans to do anything listed in section 4.2.9 Additional Activities?"

## **DTSC Response 21**

Thank you for your feedback. DTSC is committed to a transparent and open public participation process for this project. Given the response we have heard from the community to date, DTSC will be increasing the level of public outreach being conducted on this project moving forward. For example, while DTSC's Public Participation Manual only requires work notices to be distributed prior to the start of cleanup activities (see Chapter 6, page 38 of the October 2001 manual), the agency elected to issue a work notice prior to the recent groundwater well removal work. In addition, we also worked with local businesses and community organizations to post a hard copy of the work notice in a publicly viewable space and share it via Facebook and other online platforms.

We will continue to prepare and distribute updates via mail, social media and other methods as deemed appropriate for the nature of the activity or project milestone. Should the community ever feel like our outreach methods are not as transparent as possible or have recommendations on how to improve our outreach, please contact Kerry Rasmussen, DTSC Public Participation Specialist at (916) 255-3650 or through email at [Kerry.Rasmussen@dtsc.ca.gov](mailto:Kerry.Rasmussen@dtsc.ca.gov).

## **22. Miscellaneous**

“Who has already responded to your mailing announcing the process we are now in?”

“Are you not able to answer my public participation questions in writing, even in part by COB Friday? If not then, when?”

### **DTSC Response 22**

Thank you for your inquiry. As a result of the extended comment period, DTSC received 21 comment cards, nine letters, and thirty-five emails related to the project.

During this comment period, we collected comments and questions that are answered at the end of the period. Also, DTSC answered several calls for additional information, and DTSC recommended that callers document their concerns in subsequent letters or emails to DTSC before the end of the public comment period. The end was scheduled to be on April 22 and DTSC extended it to May 22, 2020 based on public request to do so.

## **23. No response required**

“I would recommend you forward my request to the appropriate party to have your Agency’s public participation procedures evaluated. Perhaps you can bring your Public Information Officer in to help translate for the general public. There might be appropriate adjustments to when you simply inform the community of what you are doing versus when you need their actual input. It might be as simple as languaging. Hopefully this can be simply done within your organization rather than having to make regulatory changes.”

“As you shared, the one media outlet that showed interest in this process also had a difficult time wrapping their head around what you were asking.”

## **5.0 CONCLUSIONS AND RECOMMENDATIONS**

Based on the above comments, as well as the *Screening Level Human Health Risk Assessment Report – Dynegy-Owned Portion of the Former Morro Bay Power Plant (SLHHRA)* submitted to DTSC by Dynegy, DTSC concludes that the remedy as proposed would meet the threshold criteria and balancing criteria that are used to evaluate a proposed remedy. Of the two modifying criteria used to determine if a remedy appears appropriate, the criteria of ‘community acceptance’ appears to not be met based on the number of comments from the Morro Bay community urging additional action, rather than accepting recording a Land Use Covenant for all AOCs at the Morro Bay Power Plant Site.

During the public comment period for the Statement of Basis, DTSC worked with Dynegy, who was interested in determining if all the AOCs at the Site needed a LUC for soil. Using existing Site data,

Dynegy prepared the SLHHRA document for DTSC review. The SLHHRA concluded that the only AOC that requires a LUC for soil is AOC 1. DTSC approved the SLHHRA on July 15, 2020. The SLHHRA and its DTSC approval letter can be found on DTSC's database, Envirostor, at the following hyperlink: [Hyperlink to SLHHRA and DTSC approval letter for it](https://www.envirostor.dtsc.ca.gov/public/final_documents2?global_id=80001832&doc_id=60463760). The URL for this hyperlink is as follows: [https://www.envirostor.dtsc.ca.gov/public/final\\_documents2?global\\_id=80001832&doc\\_id=60463760](https://www.envirostor.dtsc.ca.gov/public/final_documents2?global_id=80001832&doc_id=60463760)

The SLHHRA addresses some concerns raised within the comment period by allowing unrestricted use of AOCs 2 through 4 and 6 for soil. However, a number of comments also raised issue with potential groundwater contamination and what this contamination might do over time. Because the SLHHRA only addressed Site soil and not groundwater, DTSC previously requested Dynegy prepare a groundwater evaluation document, and Dynegy submitted this evaluation on September 24, 2020. This document re-evaluates Site groundwater, to determine if the groundwater is significantly impacted above unrestricted use, and if so, whether this applies to all Site groundwater or just a portion or portions. DTSC has not yet concurred with it or commented on it yet to Dynegy, Once DTSC has reviewed this evaluation, depending on what the evaluation determines and whether DTSC concurs, DTSC may alter the proposed remedy for groundwater. This potential change to the remedy for groundwater will be documented in the revised Statement of Basis.

Since DTSC is recommending that the proposed remedy be revised, and because the remedy could be further revised based on the results within the groundwater evaluation mentioned above, DTSC is revising the Statement of Basis based on public input and Dynegy's additional analysis. However, to avoid revising the Statement of Basis multiple times, DTSC will not revise the Statement of Basis until after the groundwater evaluation is reviewed and approved by DTSC. If the final groundwater evaluation concludes that not all site groundwater needs to be part of the LUC and DTSC's concurs, then the proposed remedy will be further revised.

Once the Statement of Basis is revised based on the groundwater evaluation, DTSC will issue a public notice using the same process as was used for the original Statement of Basis. Also, DTSC will plan for a public meeting to occur at the end of the public comment period, to better engage with the public on what the new proposed remedy for the site is, and to elicit public comment and feedback. It is currently unknown when exactly these activities will take place because DTSC's review of the groundwater evaluation has not been completed and approved, and the review and approval process will likely take 2 to 4 months. It is anticipated that the Revised Statement of Basis will be prepared and the public notice for it issued in early 2021.

# **Attachment 1**

## **Figure 1**



Figure 1 - Morro Bay Power Plant Areas of Concern, Historical Groundwater Monitoring Wells and General Groundwater Direction

**Attachment 2**  
**Comment response criteria**  
**and all comments received**  
**(grouped by category)**

## All Comments Received during the Public Comment Period for the Statement of Basis

### Whether a comment is to be considered or not

*If the comment raises an issue or concern about the proposed remedy, or makes recommendations as to how the remedy should be changed, it should be addressed in some fashion.*

*Examples of questions or comments that do not need to be answered are as follows:*

- *Asking or commenting about how things are defined (such as an AOC or other property boundary),*
- *Asking or commenting on what Dynegy will do with the other property (like other AOCs or property outside the AOCs but inside the property boundary),*
- *Making recommendations that do not pertain to the remedy or property that is part of the remedy,*
- *Asking about historical site information or the status of the site*

All comments received by DTSC were separated into two general categories: “Technical Comments and Associated Topics” and “Public Participation Comments and Associated Topics”

### Technical Comments and Associated Topics

#### Comments that do not require a response

“Please includes us DTSC Draft Statement”

“No questions. Thank you.”

“Battery Storage Facility - Ironic/makes sense, Hire competent Inspectors-(vet). Retire with? P.S. Lennar any fun?”

“What other power plants in California have been shut down, decommissioned, or down-sized? What remedies were used in those cases?”

“First of all, thanks, for working on these projects as someone needs to be a watchdog over pollution matters. Morro Bay appears to have been long going on project to follow the change of ownerships with this facility.

It appears to me that all of the past owners, including our own federal government, has deemed this area of past pollution of little consequence to even them!

I see that there has been lots of deferral going on with lots of paperwork to keep the subject somewhere on the stove of many back burners!

Like many things today to ignore the matter or turn one’s head and ears is to do the “wait and see method.” Lots of other watchdogs have passed away if we wait long enough!

Another plan in concert with Wait and See, maybe, nature will make it go away too!

I enjoyed look over your web site at other locations of contamination throughout California.

It’s nice to see how Many things are actually being corrected by monies, gathered up, by several different means, to get those responsible parties to “own up” for pollution in their areas.

I’m was not aware of how Super Funds were being allocated but I’m sure there are all types of hands reaching into that loosely closed grab bag by “certified” contractors.

This is all great to save the planet from those others not so like-minded.

I see that this department typically has a mouth problem with some companies. Like our own congress, the department has lost teeth!

One place in particular is the Waste Management Inc. or Dump Site out at the Kettleman City, California area. According to the web site they have been operating without a permit for many years! They keep doing the paperwork shuffle with the state and pushing their allowed time limits for responses over and over. The state has some blame here too, as I have been an employee the the state of California Corrections and they do it to the inmates and vendors. Glad I'm retired now! The response time is being abused by both sides to allow, for the most part, nothing to be done in a timely manner! Waste treatment uses Documented delay tactics and then say "you mean I couldn't do that with my own employees and not use an outside independent watchdog." Forgive me's are working better that getting permissions, nowadays!

Creating issues to slow down the process of during responses back and forth.

The thoughts of actually having a permit, just "blows in the wind." Just like the stuff they let evaporate out into thin air in the hot sun and winds of the Central Valley.

The "Wait and see" or "ignore the issues" seems to be the method of operations all over our country. This has been "played out" for so many YEARS, with all the past administrations, that it gotten into a situation of "no finger gets to pointed to where a "bite" CAN mean anything!"

Now even subpoenas mean nothing to help the rules of law work!

Anyhow, I have done my best by turning into an independent voter since the Days of Ross Perot.

I mine my cash register even if our government uses "negative numbers" to have their, so called, "budgets" to kick the can down the road!

Enough rant from me or this public opinion if it can be claim as such?

I'm happy for you to be employed here and doing the best you can to manage our planet's concerns!"

"First, thank you for making it easy to access the documents relating to the Morro Bay Power Plant Property Draft Statement of Basis online. And thank you for extending the public comment period for review of the draft."

"Californians depend on the DTSC to protect us from residual contaminants and groundwater pollution resulting from industrial activities of the past and present. We need the DTSC to step up and help Morro Bay now."

"Why don't you build the waste water treatment plant at that site? Plenty of land - idle - no worries re: ground contamination and close to the city. If anyone had common sense you could tie all the 3 beach towns to it. The proposed WWTP will probably ruin the farm land in the Valley. In Minneapolis, St. Paul there are 3 large plants to serve 600-800 thousand people."

"As a long-time resident of Morro Bay, I want to thank the Department of Toxic Substance Control (DTSC), for the opportunity to comment on the draft Statement of Basis for the Morro Bay Power Plant (MBPP) site, located at 1290 Embarcadero Road in Morro Bay, California. I also want to thank you personally for your time yesterday on the phone, patiently answering my detailed questions about the Corrective Action Consent Agreement (2006 Docket HWCA: P1-06/07-001)), between the DTSC and Pacific Gas and Electric Company (PG&E); and Attachment 7 - Scope of Work for Corrective Measures Implementation."

"Thank you for including the San Luis Obispo County Air Pollution Control District (APCD) in the environmental review process. We have completed our review of the draft Statement of Basis which explains the proposed remedy for contamination at eight Areas of Concern at the Morro Bay Power Plant

site at 1290 Embarcadero Road in Morro Bay, California. The remedy involves implementing a land use covenant to restrict future use of the site and preparation of a soil management plan for any future soil disturbance at the site. The remedy will not require construction or a physical remedy, thus this activity is not a project within the definition of the California Environmental Quality Act (CEQA) and is therefore exempt from CEQA.

The **(1) Information Comment** Section states information pertinent to the applicant, lead agency, and/or public. The **applicant** or **agent** should contact the APCD Engineering & Compliance Division about permitting requirements stated in the (1) Information Comment Section at 805-781-5912.

(1) **INFORMATION COMMENTS**

Proper Abatement of Asbestos-Containing Material (ACM)

Demolition activities can have potential negative air quality impacts, including issues surrounding proper handling, abatement, and disposal of asbestos-containing material (ACM). ACM could be encountered during the demolition or remodeling of existing structures or the disturbance, demolition, or relocation of above or below ground utility pipes/pipelines (e.g., transite pipes or insulation on pipes). If this project will include any of these activities, then it may be subject to various regulatory jurisdictions, including the requirements stipulated in the National Emission Standard for Hazardous Air Pollutants (40CFR61, Subpart M - asbestos NESHAP).

NESHAP requirements include but are not limited to:

- 1) Written notification to the APCD, within at least 10 business days of activities commencing.
- 2) Asbestos survey report conducted by a Certified Asbestos Consultant.
- 3) Written work plan addressing asbestos handling procedures in order to prevent visible emissions.

Go to [slocleanair.org/rules-regulations/asbestos.php](https://slocleanair.org/rules-regulations/asbestos.php) for further information.

Proper Abatement of Lead-Based Coated Structures

Demolition, remodeling, sandblasting, or removal with a heat gun can result in the release of lead-containing particles from the site. Proper abatement of lead-based paint must be performed to prevent the release of lead particles from the site. An APCD permit is required for sandblasting operations. For additional information regarding lead abatement, contact the San Luis Obispo County Environmental Health Department at 805-781-5544 or Cal-OSHA at 818-901-5403. Additional information can also be found online at [epa.gov/lead](https://epa.gov/lead).

Naturally Occurring Asbestos on Site

Naturally occurring asbestos (NOA) has been identified by the California Air Resources Board as a toxic air contaminant. Serpentine and ultramafic rocks are very common throughout California and may contain NOA. The APCD has identified areas throughout the county where NOA may be present ([NOA Map](#)). The following requirements apply because the project site is in a candidate area for NOA. Before soil is disturbed on the site, the applicant shall ensure that a geologic evaluation is conducted to determine if the area disturbed is or is not exempt from the CARB Asbestos Air Toxics Control

Measure (Asbestos ATCM) for Construction, Grading, Quarrying, and Surface Mining Operations (17 CCR 93105) regulation.

- a. If the site is not exempt from the requirements of the regulation, the applicant must comply with all requirements outlined in the Asbestos ATCM. This may include development of an Asbestos Dust Mitigation Plan and an Asbestos Health and Safety Program for approval by the APCD; or
- b. If the site is exempt, an [exemption request](#) must be filed with the APCD.

More information on NOA can be found at [slocleanair.org/rules-regulations/asbestos/noa](http://slocleanair.org/rules-regulations/asbestos/noa).

#### Hydrocarbon Contaminated Soil

Should hydrocarbon contaminated soil be encountered during construction activities, the APCD must be notified as soon as possible and no later than 48 hours after affected material is discovered to determine if an APCD Permit will be required. In addition, the following measures shall be implemented immediately after contaminated soil is discovered:

- Covers on storage piles shall be maintained in place at all times in areas not actively involved in soil addition or removal;
- Contaminated soil shall be covered with at least six inches of packed uncontaminated soil or a non-permeable hydrocarbon barrier. No headspace shall be allowed where vapors could accumulate;
- Covered piles shall be designed in such a way to eliminate erosion due to wind or water. No openings in the covers are permitted;
- The air quality impacts from the excavation and haul trips associated with removing the contaminated soil must be evaluated and mitigated if total emissions exceed the APCD's construction phase thresholds;
- During soil excavation, odors shall not be evident to such a degree as to cause a public nuisance; and,
- Clean soil must be segregated from contaminated soil.

The notification and permitting determination requirements shall be directed to the APCD Engineering & Compliance Division at 805-781-5912.

Again, thank you for the opportunity to comment on this proposal and we look forward to reviewing and commenting on future potential actions that may be initiated by the soil management plan.”

“It looks like the last Environmental Assessment Report was in 1997 – 23 years ago. It also looks like the last “corrective action activity” was done in 2018. Shouldn’t updated studies be done now? “

“Where are the city wells located in relationship to the AOC’s? What is the risk of contamination?”

“After 60 years of power generation on this site in Morro Bay, I’m sure that the property is overwhelmingly needing removal of contaminants.”

“I understand from contacting Vistra, the owners, that they are well aware of this process, something I wasn't sure of. I also understand from the City's Public Works list that Vistra has withdrawn its application for a Battery Energy Storage System Project. Which begs the question: now what? I understand the "now what" is not a concern for DTSC. However, it concerns me that DTSC is limiting itself to not challenge the basic

assumption; that is to evaluate based on the minimum: continued industrial/commercial land use.”

“Approximately 5 years ago, the power plant was forced by the City to cap its well. I know that wells are of concern because the City is proposing drilling on the property for the purpose of injecting water to be drawn out as drinkable water. I understand that DTSC believes the water at the plant is fairly shallow and that wells will be sunk deep. However, there was a breach in drilling when the Shell MTBE fiasco happened about 15 years ago. What is to say that won't happen here?”

“How can you allow a company to pollute and not take responsibility for the total cleanup? Can we look to what happened at Avila Beach or the closure of Diablo Canyon as examples?”

“The power plant site is already surrounded by recreational areas, including the beach but also Lila Kaiser Park where children play. (This park is on power plant land, leased by the City.) The plant also borders a residential neighborhood and is a short distance away from the high school.”

“Which local agencies and/or nonprofit organizations are you aware of who are either required to and have taken an interest in this process? I am particularly interested in the City of Morro Bay and San Luis Obispo County governments.”

“I would like to know more about the contaminants. I don't feel that the statement of Basis adequately explains the contaminants and the remediation.”

“AOC 6. Duke was the owner when Marine Mammal center and Pacific wildlife moved onto the property. Did Duke perform any contaminant study before they moved in? So it is still contaminated?”

“I'm unclear how the boundaries of an AOC can be drawn separate from the larger parcel of the whole plant. Do you assume, or has there been some measurement to know that what is of concern in each AOC has not or will not leak/spread beyond the boundaries of the drawn AOC's?”

“You're basing a Land Use Covenant on an investigation of the site performed by an interested party, PG&E (or the contractor they hired). Why doesn't DTSC perform the site evaluation or contract it out to an independent entity?”

“Will this site ever be anything but an area of concern?”

“How big an area is each of the eight “Areas of Concern” (AOC)? What is the percentage of each of these in relation to the total power plant site?”

“Will the AOC's – or are they – specifically defined by a legal description?”

“With the LUC basically being a “status quo” remedy, no harm would come from delaying a decision on the Draft SOB. On the contrary, delay could be well justified by the potential benefits of further study.”

“I put aside time this afternoon to look at your mailing entitled "Morro Bay Power Plant: Public Comment for Draft Statement of Basis Document." Unless I got it wrong, I was disappointed to see that you did not provide all the materials either in the snailmail or online for my review. It looks like the only places to view the draft Statement of Basis (never explained what it is, just referred to for the first time outside of the title at the bottom of page 2 column 1) is at the Morro Bay Library or at DTSC in Sacramento. Is there a reason you cannot provide me a link to the document that I hope resides online somewhere or could be made available?”

“The link provided for the DTSC's EnviroStor database flips to a location in Cambria. Can you send me a link, please?”

“As DTSC Project Manager, please present this question for discussion. during the hearing.”

“There is no clear question(s) you are posing to the public for discussion for them to opine”

“Why has this review for toxins at this site been delayed until now?”

“What is the purpose of this clean-up?”

### **The Stacks and Dynegy property use**

“Ever since we moved here in 1991, we noticed a black soot inside our house on the furniture from those smokestacks, even after the plant closed down. We’ve had nosebleeds which we never had before in all the other cities and states we have lived in and our eyes water. The doctor said it’s from soot from the smoke stacks. The wind blows threw (sic) them, sending black soot for miles. The should be demolished permanently because they are a health hazard to all people living in Morro Bay and its outskirts. Our lungs are filled with that black soot and we all have more respiratory infections frequently. If you truly care about citizens health, please tear down those smoke pipes filled with black harmful soot that deposits itself all over Morro Bay.”

“My family and have lived in Morro Bay, CA close to 30 years now. When we first moved here, I experienced headaches and nosebleeds when i never had before in my life. We attribute this to the smoke stacks. Also, we have lived all over the country - Missouri, Texas, Southern California, Colorado, and Illinois and none of us has ever had the symptoms caused by the smoke stacks which were billowing out black soot day in and day out.

Now that the smoke stacks are no longer working, they, with the wind blowing through all opened areas in that facility, are still depositing black soot inside our house in the north part of Morro Bay. We can wipe our hands over a piece of furniture, just like before, and out hands and/or dust cloths during all these years, produces black soot on our hands and/or the dust cloths. All this is dangerous to our lungs! Please take down those filthy smoke stacks for once and for all so that citizens don't get cancer. Others have complained too. They have the same problems.”

“Please leave the stacks there where they belong! And make it into an aquarium! I believe everyone here will be very happy.”

“Thank you for the opportunity to provide input on the proposed remedy for the AOC of the power plant in Morro Bay. I think the proposed remedy is acceptable however an even better remedy would be to tear this eyesore down and return the area to nature. I'm sure this request is not within your scope but maybe you could echo this concern and/or direct this request to the powers that be.”

### **The proposed Remedy – cleanup goals**

“When a company that used the land for its commercial activities elects to discontinue that use it must return the land to its highest or best use. The proposal to restrict the use of the land instead of cleaning it is unacceptable. The site is a major resource in this small community. It needs to be able to be redeveloped for an appropriate modern use, whether commercial or recreational. PG&E should be required to clean the site to a level that allows full use.”

“I have been a resident of Morro Bay since 1995 and homeowner. I am particularly interested in the *Corrective Action Consent Agreement (2006 Docket HWCA: P1-06/07-001) between the DTSC and Pacific and Electric Company (PG&E) and Attachment 7 – Scope of Work for Corrective Measure Implementation.*

The Power Plant is a toxic site and needs to be remediated before anything else can be decided upon, It is the responsibility of PG&E to remediate the Area of Concern (AOC) 1, the former Tank Farm area that is mentioned as that is close to the Morro Creek watershed area to the north; and Morro Bay City wells for the protection of any contamination of critical City wells.”

“I would like to see AOC 1 (the former tank farm area) totally cleaned of contaminated soil.”

“My neighborhood is definitely snarled with overhead power-lines that feed the Power grid. To turn this PG&E property into a toxic industrial wasteland would be so cheap and easy. I would love to see an eventual total clean-up of all Areas of Concern 1 through 8! Please HOLD PG&E responsible!!”

“So the exposures at the existing undisturbed site are not expected to be a problem, and disturbance during redevelopment is not expected to be a problem. What is the proposed remedy for AOC 6 metals during redevelopment?”

“My recommendation would be to have the prior owners (PG&E) and or tenants (Navy) of the property clean up the site at their own expense to allow for all future land uses. Why should others have to go to the future expense of cleaning the site? Ultimately that cost will be passed on to the community though higher cost of services and goods. If this cannot for some reason be done through this process, perhaps you could suggest another. Maybe this would be more appropriately discussed in the PG&E bankruptcy proceeding or through a legislative remedy.”

“I urge the DTSC to require PG&E to remove all soils and groundwater contaminants from AOC’s 1 through 4 and 6, and any other accessible areas on the site. As I understand it, PG&E is obligated to clean up the entire site as various portions may be sold off and developed for different uses in the future. If DTSC’s mission is to restore contaminated resources, shouldn’t PG&E clean up those areas of the site that are accessible now, while they are still solvent?”

“What all this indicates is that the contaminated land needs to be properly remediated for future residential use in the area and possibly because the drinking water source is very close to the Power Plant. No matter what scenarios ultimately occur, they all require the complete remediation of the Power Plant site.”

“PG&E will remediate the Area of Concern (AOC) 1, the former Tank Farm area that you mentioned, as that is close to the Morro Creek watershed area to the north, and city wells.”

“Remove rusty tank easterly of AOC-6. This tank is a visual impact and is a source of rust.”

“Establish wetlands in AOC-1 and AOC-2. Wetlands provide resilience to natural hazards (Storms, fires, flooding, droughts, tsunamis).”

“Investigate to see if current WTF (under construction) can be incorporated into DTSC project (or vice versa).”

### **The Proposed Remedy – other remedies evaluated**

“What other remedies were evaluated? What is the estimated cost of implementing these remedies? Are these analyses available? If so, could you please send me at least a summary?”

“Why weren’t on-site residential risks analyzed as part of the evaluation of other remedies (per Section 3 on page 5)?”

“No remedies have been examined other than the LUC. Due to the DTSC’s assumption that the power plant site will continue to be used for commercial or industrial purposes, no other remedies have been evaluated.

This is not in the public's best interest. It would seem to be the DTSC's responsibility to at least examine the feasibility of cleaning up some or all of the AOC's to a higher, residential standard. At least there would be a basis of comparison for a more fair and objective determination of which remedy would be most appropriate."

### **The proposed Remedy – Soil Management Plan**

"While the DTSC's March 2020 flyer entitled "Community Update" lists the preparation of a Soil Management Plan, no such remedy seems to be mentioned in the Draft SOB."

### **The proposed Remedy – general**

"What precautions would be taken in hauling away contaminants? Where would the contaminants be hauled to? Would there be contaminant removal on windy days? Would there be toxin measurement devices during the removal?"

"I understand that DTSC is considering remedies for areas of concern on the subject power plant property. The City of Morro Bay is presently considering this property to inject treated wastewater into the ground for indirect potable reuse and extract that water from the city's wells nearby. Should there be a concern about the city extracting well water that had been injected into the ground here? The city also have plans showing a new sewer forcemain going through this property (see off-site pipeline plans sheets 05-PP-40 through 05-PP-44; <http://morrobaywrf.com/wrf-project-documents/> ). The displaced excavated material coming out of the trench for the pipeline will most likely have contaminated soils as the route passing by or through AOC areas 5, 6 & 8. What remedy is suggested for this displaced material?"

### **General - Responsibility**

"Who is ultimately responsible for the hazardous substances on the power plant site –PG&E or the current property owner?"

"I'm assuming Vistra is still the current land owner. Do they own all 131 acres? How are they involved in cleanup? What portion of the property is PGE responsible for clean-up?"

### **General – protecting human health and the environment**

"What precautions would be taken to protect humans and endangered species?"

"Has there been a NERDA finding?"

### **Groundwater Issues**

"You have probably received letters from Morro Bay residents who are concerned about groundwater contaminants. This is particularly important to us since we are planning to recharge our groundwater in areas adjacent to the MBPP, as part of a recycled water project that we hope will provide us an additional source of drinking water. I am not a hydrogeological engineer, but I and many others believe that groundwater flows wherever it can flow. Allowing contaminated groundwater to remain, adjacent to a planned groundwater recharge project intended to produce potable water for our residents, potentially threatens our health."

"The second concern is the movement of the underground plume of contaminants may migrate from the site due to natural forces, such as rising sea level, or due to man-made activities in the aquifer. Within a mile or

so of the power plant site, the City of Morro Bay operates two wells it uses annually to provide drinking water to the City's residents. In the near future they are considering pumping approximately 800,000 gallons of water a day into the Lower Morro Valley Ground Water Basin east of the valley and pumping a similar amount of water out at their wells in Lila-Kaiser park near the Power Plant. This activity has the potential to move contaminated ground water from the Power Plant in an unknown direction, including to the drinking water wells or into the bay, neither of which is desirable. The current drinking water wells are already problematic due to infusion of raw sewage from leaky sewer lines in North Morro Bay. They may decide to relocate the wells into a closer proximity to the Power Plant site to mitigate the sewage contamination. If such a decision is made, remediation of the site will be essential."

"The City of Morro Bay has water wells which are located along the side of Lila Kaiser Park – how are these protected from power plant groundwater contamination? Also, how can groundwater contaminants be contained when the power plant site is next to Morro Creek and when it is known that seawater intrusion occurs at Morro Bay up to 1.5 miles inland?"

"A number of Morro Bay residents are concerned that the City is planning to locate an injection well for reclaimed water on the former Morro Bay Power Plant property, property on which the DTSC has identified a number of Areas of Contamination (AOC). The well will be part of the City's Water Reclamation Project already underway. Although the City has answered many of residents' questions during a helpful report on the Draft Statement of Basis, one question many of us have asked about the mitigation measures for dealing with the contamination has never been directly answered by the City: Wouldn't all of the groundwater under the site of the former Morro Bay Power Plant potentially be contaminated by toxic substances leaching into the groundwater directly under the soil of any of the areas DTSC has identified as containing those substances? The injection well, which is located on the Power Plant Property, will deliver reclaimed water from the Water Reclamation Facility into the Morro Groundwater Aquifer. That aquifer runs under the entire property of the former Morro Bay Power Plant. City responded to our question as follows: "The wells and WRF components (pipeline and injection sites) are not located in any of the AOCs. That was verified with staff at DTSC." (Quoted from the 5/12/2020 City Council report attached to the agenda and stated again during the City Council meeting by City Manager Scott Collins). Something seems wrong with this picture. Is the groundwater in the Morro Basin going to respect the boundaries of the AOCs. That is, will rainwater or other water leaching toxins from the contaminated soil and contaminating the groundwater stay under just those AOC boundaries? That seems impossible. Wouldn't the contaminated water mix with all the groundwater in that aquifer and therefore contaminate the reclaimed water injected into the well? As DTSC Project Manager, please present this question for discussion. during the hearing."

### **Groundwater Sampling Requirement**

"There needs to be some sort of extended testing by PG&E of their wells in the vicinity of the City's drinking wells as well as the water coming from the City's wells to confirm the remediation done by PG&E does not reappear. Something like quarterly testing for five years would seem appropriate. There needs to be an increase in frequency whenever pollutants reappear in the well samples. These would be best done by PG&E. A well-designed study of this type would guarantee the safety of Morro Bay and its citizens."

"PG&E will conduct quarterly tests for five years of all wells within one-mile radius of the exterior boundaries of the MBPP site (tests which are completely independent of the City of Morro Bay tests). PG&E's tests of wells will include detailed results of any petroleum hydrocarbons (TPH), polycyclic aromatic hydrocarbons (PAHs), metals, pesticides, volatile organic compounds (VOCs), chromium VI, asbestos, polychlorinated biphenyls (PCBs), polynuclear aromatic hydrocarbons (PAHS), petroleum."

"I would request that PG&E conduct quarterly testing for five years or more of all wells within one mile of the exterior boundaries of the MBPP site, tests which are completely independent of the City of Morro Bay's testing. PG&E's tests of well will included a very detailed analysis and results of any petroleum hydrocarbons (TPH), polycyclic aromatic hydrocarbons (PAHs), metals pesticides, volatile organic compounds (VOCs),

chromium VI, naturally occurring asbestos (NOA), polycarbons (PAHs), petroleum, petroleum. The test results will be made available to review to the Citizens of Morro Bay in their water/sewer bills upon completion. In addition, I request that PG&E provide remediation if the wells prove to be contaminated.”

“PG&E will set aside the monetary resources now to:

- A. Provide for the quarterly tests of the wells, and the reporting to be shared with the citizens of Morro Bay in their water/sewer bills on a quarterly basis for five years.
- B. Provide complete remediation if the wells prove to be contaminated.”

## **Future Site Use/Development**

“This is wonderful property and would be a great site for a 'Stack's Brewery' and other commercial use destination location. Morro Bay is a wonderful place that deserves a forward looking approach to vacant land eye sores like this space has become.”

“Prepare site for offshore wind production transmission. No restrictions. Jobs for Morro Bay! Income for City! Prior users clean up any toxic waste.”

“I understand the complexity of the property and especially the complicated zoning is for this property. This will determine what uses are possible for the land. The public has many desires for land use, such as, moving the marine museum and boat storage, doing a marine aquarium with parking, a boat haul out on industrial site, and a road through the property for cars to exit to hwy one. Power plant property is highly desired to the residents and business-people of Morro Bay for tourism to enhance and improve our city property status.”

“My concerns relate to two major, likely occurrences in the foreseeable future. One is the development of the land for both businesses and residential purposes. The impact of this contaminated land on construction crews and occupants of the resulting buildings, could be disastrous.”

“What is the future land use for this property?”

## **Cultural/Archaeological**

“What is your plan to protect and preserve and cultural/archaeological history/artifacts located within the power plant site?”

## **Cost issues**

“Because of the chemical substances found in the soil are there funds available or greatly reduced cost (rent of land?) to defray expense of creating "above soil" industrial or commercial use to benefit the community of Morro Bay?”

“I know little about these things, but since contaminants will be stored in place, I suggest a trust fund be set up by PGE in case the contaminants ever have to be removed or they begin seeping into our groundwater.”

“What will be the financial cost to manage the contamination project? And who will pay for it?”

“DTSC needs to act now to secure action by PG&E to investigate and address Site contamination. The Community Update document states: "PG&E remains responsible for investigating and addressing Site contamination from historical power generation activities." If this is the case, what is DTSC doing to secure funding through PG&E's bankruptcy and CPUC oversight to protect our community and ensure that this responsibility is fulfilled in a timely manner?”

"I would like to submit the following comments regarding the Morro Bay Power Plant located at 1290 Embarcadero Road in Morro Bay, California. I am a citizen of Morro Bay and have concerns about the ground water and potential contaminants on and near the power plant. These contaminants containing toxic heavy metals, harmful man-made organic compounds and naturally occurring, harmful inorganic materials, were introduced to the site during PG&E operations. To my understanding, they have not been remediated and could be harmful the residents and businesses in the area as well as to the entire citizenship of Morro Bay. This being the case, I believe PG&E should reserve funds sufficient to remediate the site prior to any bankruptcy proceedings. This would likely involve a bond in sufficient amount to cover the costs of such a remediation."

"Who is paying for this cleanup?"

"No bankruptcy by PG&E can be allowed to prevent cleaning-up the site."

### **LUC issues**

"What is the basis for deciding that the best future use of the power plant site is for commercial/industrial purposes? What factors were considered?"

"Is the LUC permanent?? Can it be changed in the future? What would the requirements be to use some areas for something other than industrial/commercial?"

"What are the terms of the proposed remedy, specifically implementing a land use covenant (LUC) ? Can the LUC be revisited in the future if over decades the site can be cleaned enough to safely allow for other uses then (sic) commercial/industrial or is this action done in perpetuity? It would be nice to not restrict uses if someday toxic levels are low enough to allow for other uses as allowed by DTSC."

"Is this the first time the Land Use Covenant has been brought forward publically? Is not, can you provide me with a brief timeline of how we got here?"

"A Land Use Covenant with said restrictions into perpetuity does seem like a big deal. Is this not worthy of a public meeting discussion, required or not? Wouldn't this be the biggest land-use type change since the plant was built in the 50s and something the community has to live with forever?"

"You mention needing to remind the public in the future you are only dealing with soil and groundwater, and not anything to do with the removal of the buildings and the like. Please consider the proposal you are making, the Land Use Covenant, will indeed greatly impact what goes on at that site and the community going forward. This is not a small inconsequential act when you are proposing codifying land-use restrictions unless you can explain how it is not."

"The proposed remedy of land use covenants is inadequate. The level of toxic contamination may make the property uneconomic for other uses and result in a continuing blight on the community. I urge more aggressive action now by DTSC to fulfill its mission of "restoring contaminated resources" and ensure prompt removal of this toxic blight."

"Does the proposed Land Use Covenant (LUC) apply to just AOC's 1 through 4 or does it apply to the whole power plant site?"

"How did the DTSC arrive at the conclusion that a LUC is the best remedy?"

"Is the proposed LUC available for review? If so, would you please send me a copy?"

"Will there be a public hearing on the proposed LUC?"

"Another question I have is if the LUC applies to only the AOC's can the rest of the acreage be developed

without further input from DTSC?”

“Additionally, the LUC proposes future land uses as commercial or industrial. Wouldn't it benefit California residents more if the areas I identified above were cleaned up so any future use (e.g. residential) could be allowed? Why should this obligation be postponed for future generations to pay for, when it could be remedied now by the responsible party-PG&E?”

“The LUC is being presented as the preferable remedy based on the assumption that this property will continue to be used for commercial/industrial purposes in the anticipated future. This assumption must be challenged.

After years of diminishing electrical generation, Dynegy ceased operations in 2013 and the power plant was taken offline in 2014.

Prior to that, beginning in October 2000 and continuing for many years, the power plant site was the subject of an application by Duke Energy to the California Energy Commission to expand its operations by constructing a new four-smokestack power plant (CEC Docket No. 00-AFC-12). This generated huge public concern and involvement, including the formation of a grassroots, non-profit organization called the Coastal Alliance on Plant Expansion (CAPE) which became a formal intervenor in the CEC's application process. Though not mentioned in either the introduction of the Draft SOB or on the DTSC's Envirostor description of the power plant, the CEC application is an important part of the site's history. Not only was valuable information made available about the power plant and its operations, but it triggered tremendous interest by Morro Bay residents and others in recharacterization of the power plant site.

In January 2006, the Morro Bay City Council appointed a Morro Bay Power Plant (MBPP) Property Ad-Hoc Committee which became known as the Morro Bay North Embarcadero Waterfront (N.E.W.) Futures Group. Its purpose was to lead a community driven process to identify and evaluate alternatives for the power plant site. Their July 2007 report to the City Council included three scenarios for redeveloping the property. One of these discussed potential alternative uses of the site in the event of plant closure, including the creation of a museum or convention center or the establishment of other recreational activities.

More recent evidence of the public's interest in changing the character of this property is the Morro Bay Maritime Museum, constructed on a portion of the current power plant site.

These are just a few examples of the public's desire to redevelop the power plant site, transforming it from industrial use to recreational or visitor-serving purposes. This only makes sense given the location of the power plant on one of the most beautiful coastlines in the country, right next to a national estuary, and in the middle of a town dependent on tourism for its primary source of revenue.

With the power plant closed, there is real opportunity to do something different with the property. True, investigations are being made into using the site for wind or wave energy operations but these are a long way from becoming a reality. The obstacles may well prove too difficult or expensive, and the site may again be available for other types of development.

According to the DTSC's Land Use Covenant Quick Reference Guide: “A LUC remains in effect until it is formally removed or modified. DTSC will review applications and information supporting a LUC termination or variance. For example, if a new owner completes additional cleanup to remove contamination, DTSC could go through the process of a public notice and terminate the LUC. This would create an added burden on a future owner who wanted to convert the site to a recreational or purpose other than industrial. It would also seem to shift the burden of hazardous substance clean-up from PG&E to a new owner. This doesn't seem right since PG&E was, after all, the one to create the problem. The result of a LUC would be to make a new type of project more difficult and costly, thus reducing the chances of such a desirable change taking place.”

“In the event that the DTSC does decide to go ahead and implement the LUC as the sole remedy, I request that the suitability of the LUC be reviewed every five years rather than allow it to be created in perpetuity. (I

understand from information on your website that such a limitation is possible.)”

## **Public Participation Process and Associated Topics**

### **Level of Community Outreach**

“As well done as the DTSC’s “Community Update” dated March 2020 may be, my understanding is this flyer was only mailed to a limited number of residents in Morro Bay rather than the population as a whole. I am not sure what other attempts at notice have been made, perhaps a legal notice in the local Tribune, but these do not seem to have been effective. I base this on conversations with a number of Morro Bay residents who don’t have a clue about what is going on at the power plant site.”

“For those who did receive notice, I believe their reaction was much like mine – they had more questions than comments. Even though they may care very much about the power plant site, most people do not have the time or the skill set to follow up with formal questions or to research the issue further. Also not factored in is the substantial Morro Bay population of senior citizens, many of whom do not have the tech savvy to engage in online or computer proceedings. The bottom line is residents do not have enough information to make meaningful comments.”

“Of particular concern is the section on public participation where your activities do not seem to align with your objectives. From my standpoint, there seems to have been little effort in getting the word out to the greater Morro Bay area community. I am open to hear I am wrong.”

“What plans do you have to increase awareness in the coming weeks?”

“Is there anything that I could say that would change/improve/benefit the community in your documents?”

### **Outreach to Elected Officials**

“You do note that “To date, the community has not raised issues or concerns regarding RCRA corrective actions in local media.” My contention would be that there is little awareness of the process you are overseeing and that greater efforts need to be made to remedy this lack. When I asked my District 2 County Supervisor about the process he responded on April 2, 2020, “I have no information on the Morro Bay Power Plant item. The City of Morro Bay is likely in the lead on that one.” I think this speaks volumes about the level of awareness in our community.”

“Did you go before the City Council and make an announcement/invitation during a meeting public comment?”

### **Newspaper Outreach**

“Can you tell me the date(s) you placed the notice in the Tribune? Was this in their print and digital edition? Are you aware that if this was the only way you planned to reach the general public that only a small percentage of the public subscribes to the paper? Perhaps you were made aware

that the majority of Morro Bay residents took the paper and that is why you placed the notice there. Is that the case?"

"Did you consider placing a notice in the Bay News or New Times?"

"Did you send out a press release? Work with local reporters?"

### **Community Groups**

"Did you offer to speak at any of the community groups you listed, or at minimum attend meetings to make an informal announcement?"

"Did you post anything on NextDoor as was recommended?"

### **Extending the public comment period**

"I think in the interest of public health and its direct impact, should be tabled and reconsidered 90 days after the current secession (end) of the current COVID-19 global pandemic. The aftermath cannot be assessed given the current situation."

"Thanks for your call yesterday. You didn't mention if you are going to extend the review period considering the state of the state and world. Can you tell me what you folks are thinking?"

"Have you decided to extend the review period beyond the April date?"

"I will have other comments and questions, but most importantly and immediate would be the request to extend the comment period due to the coronavirus. The world is trying to come to a halt, so I would hope your comment period would be extended until the world comes back online. Please let me know when and if you will take this up within your Agency."

"Unfortunately, you still have a review clock out in Morro Bay. Have you decided to put it on hold?"

"Would you lose anything by extending the period 60 days after the Governor lifts the restrictions put into place yesterday? You could be looked upon as being thoughtful, realistic and interested in maximizing community input :-)"

"Thank you for telling me that your agency has agreed to the 30-day extension on the public comment period and you will be providing that new date in writing to interested parties."

"I spoke with a Morro Bay citizen today who indicated that DTSC has extended the comment period on the Morro Bay Power Plant Draft Statement of Basis Document beyond the April 22, 2020 deadline by 30-days. Can you confirm this?"

"Also, do you have the date chosen for when this comment period will end? Thanks a million!"

"Extend the time for public comment. In light of COVID-19 and limited opportunities for public engagement over the past several weeks, DTSC should extend the time for public comment to include an opportunity for a webinar and broader public discussion."

### **Public Meeting**

“Your own survey tells you the best way to disseminate information is through a public meeting, yet it doesn't seem like one has been organized. You mention that if there is enough significant community interest a public hearing will be set during the midpoint in the review process. How will there be a significant interest demonstrated if people are unaware? If you were told that the best way to get information out was by holding a meeting to make more people aware, then we are going to have a difficult time raising awareness.”

“As you know, I advocated for the public comment period to be extended due to the global pandemic, and you responded with an additional 30 days. After reading this Community Profile I am convinced that the only way to move forward is to wait until the pandemic crisis is over so a public meeting can be held safely. In addition, more time will be needed for your agency to adequately inform the community, and as we know, the community is otherwise engaged during this crisis. You would never want to have it said that you, PG&E and others rammed this through when the community wasn't watching.”

“These issues deserve opportunities for public discussion through a webinar or other means. The Morro Bay community needs an opportunity to hear about the proposed actions from DTSC and other public officials with an opportunity to ask questions and get answers. In particular, the community needs to know the nature and extent of the toxic contamination, range of possible remedies and their pros and cons, and examples of successful efforts in other communities to rid their communities of toxic contamination. I suggest DTSC work with the City to sponsor a webinar to accomplish these information objectives.”

“To truly solicit public participation, a public workshop – really an information session -- should be held here in Morro Bay once things return to normal (or at least the new normal). A session which is well advertised by several means and held in the evening or on a weekend. The session should have a presentation by DTSC explaining the condition of the power plant site and what is being proposed, plus there should be a lengthy period of time designated for the public to ask questions and for those questions to be answered by the DTSC. This would provide an opportunity for real communication to the public and allow a broad spectrum of Morro Bay residents and other interested parties to participate – not just those with flexible schedules and the ability to read complex materials and compose written comments. It would be a chance for people to become truly informed and participate in the discussion.”

## **Overall Process**

“First, I would like to acknowledge your willingness to answer questions and explain what is happening at the site. I believe the DTSC desires this process to be transparent and open to the public. That said, I do not think these objectives have been achieved.”

“As I have shared, I am a bit stymied about how the public can best be helpful. You seem to have a narrowly defined process, where you need to check the public participation box.

“Perhaps most significantly, did you, or do you have plans to do anything listed in section 4.2.9 Additional Activities?”

## **Miscellaneous**

“Who has already responded to your mailing announcing the process we are now in?”

“Are you not able to answer my public participation questions in writing, even in part by COB Friday? If not then, when?”

**No Response Required**

“I would recommend you forward my request to the appropriate party to have your Agency’s public participation procedures evaluated. Perhaps you can bring your Public Information Officer in to help translate for the general public. There might be appropriate adjustments to when you simply inform the community of what you are doing versus when you need their actual input. It might be as simple as languaging. Hopefully this can be simply done within your organization rather than having to make regulatory changes.”

“As you shared, the one media outlet that showed interest in this process also had a difficult time wrapping their head around what you were asking.”

# Attachment 3 2020 Dynegy Annual Stack Inspection Report for the Morro Bay Power Plant



July 6, 2020

Mr. Gary Willey  
San Luis Obispo County Air Pollution Control District  
3433 Roberto Court  
San Luis Obispo, CA 93401

Attention: Mr. Tim Fuhs

**Re: Dynergy Morro Bay LLC  
Permit Exemption Number 113-9  
2020 Annual Stack Inspection**

Dear Mr. Willey:

In a letter dated April 2, 2015, the San Luis Obispo County Air Pollution Control District (APCD) issued a conditional exemption (Permit Exemption Number 113-9) to the retired Morro Bay Power Plant (MBPP) to ensure the facility prevents particulate matter from exiting the lower stack openings and traveling offsite. Prior to formal facility retirement in February 2014, deteriorating exhaust ductwork was removed from the Units 1 and 2 stack to eliminate the safety hazard of falling exhaust debris. This left some openings in the stack where the duct work used to connect to the stack. All other access points into the three stacks (i.e., access doors and other ductwork connections) are either sealed closed, or are locked closed to prevent unauthorized entry.

Pursuant to permit exemption No. 113-9, and in an effort to alleviate public health and safety concerns, the attached stack inspection describing the condition of the lower stack openings and the absence of particulate fallout is being submitted to your office.

*I certify under the penalty of law that this document and all attachments are prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. The results contained herein should not be construed to imply accuracy beyond the errors associated with equipment, instrumentation, or method capability, nor should the results be construed to represent an endorsement of the required testing methodology. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Should you have any questions or require additional information, please do not hesitate to contact Dianna Tickner at (618) 381-3124, or myself at (805) 801-0600.

Sincerely,

Kathy Hurst  
On behalf of, Dynergy Morro Bay, LLC



DYNEGY

Dynergy Morro Bay, LLC  
Annual Stack Inspection  
Permit Exemption 113-9

Date of Inspection: 5/22/2020

Time of Inspection: 10:00 HRS

Inspected By: Kathy Hurst, NAES ES

Signature: *Kathy Hurst*

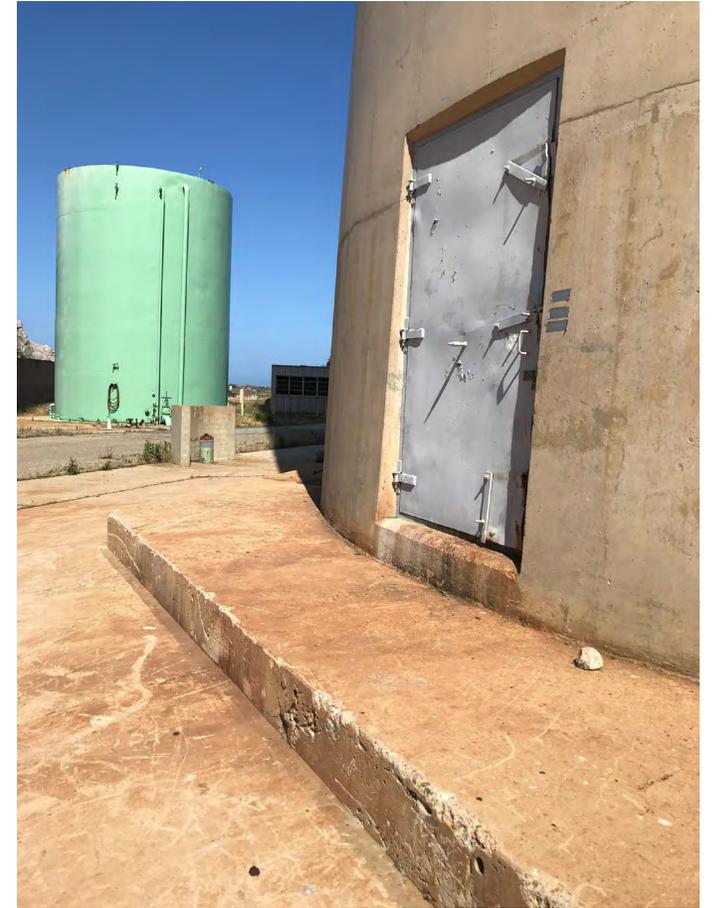
Item	Observation
Weather Conditions	Slight fog, but mostly clear, mild winds and cool (57 deg. F)
Unit 1/2 West Stack Opening Condition – Upper Entry	Metal frame is rusting; but the opening is clear and free of debris.
Unit 1/2 West Stack Opening Condition – Lower Entry	Metal frame is rusting; but the opening is clear and free of debris.
Unit 1/2 East Stack Opening Condition – Upper Entry	Metal frame is rusting; but the opening is clear and free of debris.
Unit 1/2 East Stack Opening Condition – Lower Entry	Metal frame is rusting; but the opening is clear and free of debris.
Particulate Fallout Present – Stack Internal Walls & Floor	The stack doors are normally locked closed. When opened, a good layer of dirt and bird feces covered most of the floor inside the Unit 1/2 Stack. Unit 3 Stack was similar, but with a much smaller amount. Unit 4 stack was sealed closed. No particulate fallout was observed on the walls or floor inside of the stacks. The walls were clean and in good condition.
Area/Ground Surrounding Base of Stack	There were no signs of debris coming from the stack openings or depositing on the ground on the stack concrete foundations and/or the areas surrounding the base of the stacks. Bird feces is accumulating in some areas, mostly around Unit 1/2 Stack.
Corrective Action?	None required.



**STACKS 1-3  
WEST SIDE VIEW**



**UNIT 1/2 STACK  
EAST SIDE  
FOUNDATION**





UNIT 1/2 STACK –  
ENTRY DOOR OPEN



UNIT 1/2 STACK  
INSIDE FLOOR & INSIDE WALLS





UNIT 3 & 4 STACKS  
WEST SIDE VIEW



UNIT 3 STACK  
ENTRY DOOR  
CLOSED



UNIT 3 STACK  
ENTRY DOOR OPEN



UNIT 3 STACK INSIDE OF DOOR

UNIT 3 STACK  
EAST SIDE VIEW  
FOUNDATIONS CLEAR  
OF DEBRIS



UNIT 4 STACK  
FOUNDATIONS  
AROUND STACK  
CLEAR OF DEBRIS



## Frequently Asked Questions about Proposed Morro Bay – Vistra MOU Agreement

*Does approval of the proposed Vistra MOU agreement mean the City Council approves Vistra’s proposed battery storage project?*

No. Vistra’s proposed project will need to follow all of the City’s standard processes, including planning, review, evaluation and consideration for approval. The proposed project and potential Environmental Impact Report (if the project continues to move forward) will be reviewed in the future at public hearings by both the Planning Commission and City Council.

*Is the Council “green lighting” the project as Vistra has proposed it?*

No. The City is eager to have public input, which could modify the proposed project, and perhaps more importantly, the Council has not made **any** decisions yet on the proposed project (nor is Council making any decisions about the proposed project if the proposed Vistra MOU agreement is approved).

*Will the public have opportunities to provide input?*

Yes. This proposed project will require an Environmental Impact Report per the California Environmental Quality Act (CEQA). CEQA has extensive provisions for public input both in framing factors to consider in evaluation of the proposed project’s potential impacts and in commenting upon the impacts. There are also anticipated public hearings before both the Planning Commission and City Council as the project moves through the review process.

*What happens if the proposed battery storage project isn’t approved?*

The battery storage project (BESS) could provide sufficient economic returns to Vistra to fund removal of the existing turbine building (and the stacks, if the community chooses). If the proposed battery storage project becomes uneconomical for Vistra, or Vistra otherwise decides not to proceed, and Vistra does not tear down the Morro Bay Power Plant by 2028, the Vistra MOU agreement requires that Vistra will nonetheless pay \$3,000,000 to the City.

*How can we learn more about the proposed battery storage project?*

Current project information is posted on the City’s “Current Planning Projects” page and includes the project application, project description, plans, a prior presentation from Vistra to City Council, and all current environment studies for the project. The page will be updated continually as additional project material is developed. Link to City’s Current Planning Projects page: <https://www.morro-bay.ca.us/842/Current-Planning-Projects>.

*How will the City address public safety, view impacts, etc.?*

Each of these topics, and many more, are key elements in the CEQA review process, with independent experts providing analysis for consideration.

*What if the proposed project has environmental impacts that can’t be mitigated?*

If the proposed project includes any unmitigated environmental impacts, the City (to approve the proposed project) will have to adopt a statement of overriding consideration as part of an adoption of the EIR, at a noticed public hearing. Further, additional public benefits would need to be extended to the community if there are any exceptions to the City’s development standards.

*The California Coastal Commission told the community that the new Water Reclamation Facility had to be built inland to avoid coastal hazards/sea level rise concerns, so why is the BESS being proposed so close to the coastline?*

The City's current wastewater treatment plant, located off Atascadero Road, is located in a Tsunami inundation zone, and FEMA 100 year flood zone AE and in an area potentially subject to sea level rise impacts by the year 2100. Also, the City attempted to obtain a Coastal Development Permit (CDP) for demolition of the existing plant and construction of a new plant in same location. The CDP was denied in 2013 by the Coastal Commission because the project was deemed inconsistent with the City's Local Coastal Plan (LCP) zoning provisions, failed to avoid the coastal hazards noted previously, and was in a sensitive view area identified in the LCP.

The BESS is located in a tsunami inundation zone, as are most of the areas in the City that are located immediately adjacent to the waterfront. The anticipated EIR will look at this issue as part of the environment review process that has just started for the proposed project. Other issues noted above do not apply to the specific location of the proposed BESS project on the former tank farm site at the power plant.