

**CALIFORNIA COASTAL COMMISSION**

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**STAFF REPORT: REGULAR CALENDAR**

<b>Application No.:</b>	9-18-0157
<b>Applicant:</b>	Dynegy Morro Bay, LLC
<b>Project Location:</b>	City of Morro Bay and coastal waters of Estero Bay, County of San Luis Obispo.
<b>Project Description:</b>	Decommissioning, partial removal, and partial abandonment-in-place of onshore and offshore components of a retired marine terminal at the Morro Bay Power Plant.
<b>Staff Recommendation:</b>	Approval with conditions.

**SUMMARY OF STAFF RECOMMENDATION**

Dynegy, the project applicant, proposes to decommission, partially remove, and partially abandon-in-place a retired marine terminal formerly used to deliver fuel oil to the Morro Bay Power Plant (“MBPP”) in the City of Morro Bay, San Luis Obispo County. The marine terminal was originally built in the 1950s but has been retired since the 1990s when the power plant switched from using fuel oil to natural gas. The marine terminal consists primarily of two intake pipelines that extend from the power plant to a location about 3700 feet offshore in Estero Bay. The pipelines and other components are buried beneath an area of sensitive coastal dunes, a recreational beach, Morro Creek, and the seafloor until the pipelines emerge offshore in coastal waters about a quarter-mile north of Morro Rock. The proposed project is more fully described in more detail in an Initial Study/Mitigated Negative Declaration (“IS/MND”) published by the State Lands Commission, which certified the CEQA document and approved a lease termination in February 2018.

Dynegy proposes to decommission the terminal in several segments, based on the characteristics of the different areas that contain parts of the project. Within the power plant, Dynegy will remove some of the marine terminal components and abandon-in-place several deeper components. Beneath the coastal dunes, Dynegy will abandon components in place to avoid disturbing the sensitive dune habitat. Within the beach, Dynegy will fully excavate the pipelines in sections. Within the surf zone area, Dynegy will use the “Dynamic Pipe Ramming” method, which uses pneumatic rams instead of excavation to remove the pipelines. Finally, Dynegy will excavate and remove the sections of pipelines in the project’s offshore segment.

In addition to several of the CEQA document’s mitigation measures that are incorporated into this CDP through **Special Condition 1**, Commission staff recommend the Commission approve several additional Special Conditions meant to further protect coastal resources. **Special Condition 2** requires Dynegy to submit, prior to starting work, copies of the required approvals from the Regional Water Quality Control Board and the U.S. Army Corps of Engineers, and to also submit, prior to any work that would directly affect Morro Creek or its lagoon, any Biological Opinion issued by the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service. **Special Condition 3** provides that the Spill Prevention Plan Dynegy is required to prepare as part of the project’s CEQA mitigation measures include a description of potential worst-case spill scenarios and demonstrate that Dynegy can adequately address those scenarios. **Special Condition 4** prohibits all marine discharge from vessels used during the project. **Special Condition 5** ensures that Dynegy assumes the risks associated with site hazards and indemnifies the Commission against any liability related to those hazards. In recognition that some project components to be abandoned-in-place may later be exposed due to sand movement, coastal erosion, or other forces, **Special Condition 6** requires Dynegy to submit an application to amend this CDP if those components become exposed. **Special Condition 7** describes a number of specific protective provisions that Dynegy is to include in the marine wildlife monitoring plan it is to prepare as part of its CEQA mitigation requirements. Similarly, **Special Condition 8** includes specific provisions that Dynegy is to implement as part of the CEQA mitigation requirements related to protection of grunion. **Special Condition 9** requires Dynegy, if possible, to schedule any activities that would directly affect Morro Creek or its lagoon during times when long-range weather forecasts predict little or no chance of precipitation. **Special Condition 10** adds specific timing and buffer provisions for protecting nesting birds to the CEQA mitigation requirements regarding nesting. **Special Condition 11** requires all project lighting to be limited to levels needed for project illumination and worker safety for any night lighting to be shielded and directed downward to avoid affecting nearby habitats and species. **Special Condition 12** adds public access provisions to the Traffic Safety Plan required through the project’s CEQA mitigation measures. **Special Condition 13** requires Dynegy to post notices of its project activities at nearby areas used for public access to the shoreline. **Special Conditions 13** and **14** impose a number of requirements to protect, preserve, and report any tribal cultural resources found during project activities.

With these conditions, Commission staff has determined the proposed work would conform to Coastal Act Sections 30230, 30231, and 30232 (marine biological resources), 30233 (dredging and filling of coastal waters), 30240 (environmentally sensitive habitat areas), 30210, 30214, and 30220 (public access and recreation), and 30244 (archaeological resources). Staff therefore recommends the Commission **approve** the proposed permit, as conditioned. The motion to act on this recommendation is found below on page 4.

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## APPENDICES

Appendix A: Substantive File Documents

Appendix B: Applicable Mitigation Measures from the State Lands Commission’s 2018 certified *Mitigated Negative Declaration for Dynegy Morro Bay, LLC – Morro Bay Power Plant Marine Terminal Decommissioning Project*.

## EXHIBITS

Exhibit 1: Map of Project Location

Exhibit 2: Schematic Drawing of Marine Terminal

## I. MOTION AND RESOLUTION

Staff recommends the Commission **approve** coastal development permit application 9-18-0157.

### **Motion:**

*I move that the Commission **approve** coastal development permit 9-18-0157 subject to conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

### **Resolution:**

*The Commission hereby approves coastal development permit 9-18-0157 and adopts the findings set forth below on grounds that the development will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

1. **Mitigated Negative Declaration (MND) Mitigation Measures.** This permit incorporates those mitigation measures identified in the State Lands Commission's 2018 certified *Mitigated Negative Declaration for Dynege Morro Bay, LLC – Morro Bay Power Plant Marine Terminal Decommissioning Project* concerning protection of marine and terrestrial resources, public access, and recreation that are attached to this report as Appendix B.

PRIOR TO STARTING PROJECT-RELATED GROUND-DISTURBING ACTIVITIES, the Permittee shall provide for Executive Director review and approval the plans, reports, and other materials required under the listed Appendix B mitigation measures. These project activities may not start until the Executive Director has provided written approval of the submitted documents.

2. **Other Permits and Approvals.** PRIOR TO STARTING PROJECT-RELATED GROUND-DISTURBING ACTIVITIES, the Permittee shall provide to the Executive Director copies of all other local, state, and federal permits and approvals required to conduct project-related work. These permits and approvals include:
  - a. Central Coast Regional Water Quality Control Board: Section 401 Water Quality Certification.
  - b. U.S. Army Corps of Engineers: Authorization under Rivers and Harbors Act Section 10 and Clean Water Act Section 404.

PRIOR TO STARTING PROJECT-RELATED GROUND-DISTURBING ACTIVITIES THAT MAY DIRECTLY AFFECT WETTED AREAS OF MORRO CREEK OR THE MORRO CREEK LAGOON, the Permittee shall additionally provide:

- c. Biological Opinion: from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service for any work proposed within Morro Creek or its lagoon, or documentation from those agencies that no Biological Opinion is required.

Any changes to the approved project required by these agencies shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this CDP unless the Executive Director determines that no amendment is legally necessary.

3. **Revised Spill Prevention and Response Plan.** PRIOR TO STARTING DECOMMISSIONING ACTIVITIES, the Permittee shall submit, for Executive Director review and approval, additional documentation to be implemented as part of the project's Oil Spill Response Plan (provided as Appendix L of the project's IS/MND) that identifies the worst-case terrestrial and marine spill scenarios and demonstrates that adequate spill response equipment will be available to address those scenarios.
4. **Prohibition on Marine Discharge.** There shall be no marine discharge of sewage or bilge/ballast water from project vessels during offshore project activities. A zero-discharge policy shall be adopted for all project vessels.

- 5. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the Permittee acknowledges and agrees (1) that the site may be subject to hazards from ground motion, liquefaction, lateral spread, storm waves, storm surges, coastal erosion, tsunami, and flooding; (2) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (3) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (4) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 6. Potential Future Exposure of Remaining Project Components.** If the Permittee is unable to remove any of the marine terminal components within the Surf Zone or Offshore Segments of the project, they are to be re-buried and abandoned in place. However, if in the future any of those components become exposed on the beach or in the water column, or if any project components allowed to remain under the Sand Dune Segment of the project become exposed, the Permittee is to submit within 30 days an application to amend this coastal development permit to provide for full removal or reburial of the exposed components.
- 7. Marine Wildlife Monitoring and Contingency Plan (MWMCP).** PRIOR TO THE COMMENCEMENT OF MARINE OPERATIONS (including offshore and surf zone project activities), the Permittee shall prepare a MWMCP for review and approval by the Executive Director. The Permittee shall implement the MWMCP during all marine operations (e.g., pipeline removal, mooring system removal, pre- and post-project inspection surveys). The MWMCP shall include the following elements, and shall be implemented consistent with vessel and worker safety:

  - a. Prior to the start of offshore activities the Permittee shall provide awareness training to all Project-related personnel and vessel crew, including viewing of an applicable wildlife and fisheries training video, on the most common types of marine wildlife likely to be encountered in the Project area and the types of activities that have the most potential for affecting the animals.
  - b. A minimum of two qualified marine mammal observers shall be located on the derrick barge or other nearby project vessel to conduct observations, with two observers on duty during all pipeline removal activities. The MWMCP shall identify any scenarios that require an additional observer on the barge or other Project vessel and, in these cases, make recommendations as to where they should be placed to ensure complete coverage of the surrounding marine environment.
  - c. Shipboard observers shall submit a daily sighting report to the Executive Director no later than noon the following day that shall be of sufficient detail to determine whether observable effects to marine mammals are occurring.

- d. The observers shall have the appropriate safety and monitoring equipment adequate to conduct their activities (including night-vision equipment, when applicable).
  - e. The observers shall have the authority to temporarily halt any project activity that could result in harm to a marine mammal, sea turtle or other special status species, and to suspend those activities until the animals have left the area. For monitoring purposes, the observers shall establish a 1,640 foot (500 meter) radius avoidance zone around the derrick barge and other Project vessels for the protection of large marine mammals (i.e., whales) and a 500-foot (152-meter) radius avoidance zone around the derrick barge and other Project vessels for the protection of smaller marine mammals (i.e., dolphins, sea lions, seals, etc.) or sea turtles.
  - f. In the event that a whale becomes entangled in any cables or lines (e.g., vessel mooring lines), the observer shall immediately notify NMFS and the Executive Director, so appropriate response measures can be implemented. Similarly, if any take, as that term is defined in the federal Endangered Species Act, occurs to a marine mammal or sea turtle, the observer shall immediately notify the Executive Director, NMFS and any other required regulatory agency.
  - g. Propeller noise and other noises associated with pipeline removal and other decommissioning activities shall be reduced or minimized to the extent feasible.
  - h. In addition to on-site monitoring, the MWMCP shall describe measures to be taken during the transit of project vessels and equipment to the project site in order to minimize the risk of collisions with marine mammals and/or sea turtles. Such measures shall include, but are not limited to, restrictions on vessel speed.
  - i. Marine observers and vessel operators shall monitor for and take steps to avoid observe fishing gear during vessel transit and project operations.
  - j. The captain of the derrick barge and the Permittee's project management team shall be responsible for ensuring that the MWMCP is implemented.
  - k. A final report summarizing the results of monitoring activities shall be submitted to the Executive Director and other appropriate agencies no more than 90 days following completion of pipeline removal and other offshore activities. The report shall include: (a) an evaluation of the effectiveness of monitoring protocols and (b) reporting of (i) marine mammal, sea turtle, and other wildlife sightings (species and numbers); (ii) any wildlife behavioral changes; and (iii) any project delays or cessation of operations due to the presence in the project area of marine wildlife species subject to protection.
- 8. Grunion Run Protection and Monitoring.** To the maximum extent feasible, project activities occurring on the beach and in the intertidal zone shall be scheduled outside of the grunion spawning season, which is defined for this permit as the seasonally-predicted grunion run and egg incubation period as identified at the beginning of each year by the California Department of Fish and Wildlife (generally April through August). If conducting these activities is not possible outside of the grunion spawning season, the Permittee shall have a qualified biologist conduct a survey of the project site to determine presence or absence of grunion. If the biologist determines that any grunion spawning or incubation is

occurring and/or that grunion are present in any life stage in or adjacent to the project site, then no project activities shall occur below or within 25 feet of the semi-lunar high tide mark until grunion have left the area. The Permittee shall have the biologist provide inspection reports after each survey and shall provide copies of those reports upon the Executive Director's request.

- 9. Avoiding and Minimizing Potential Effects on Morro Creek and Lagoon.** All project activities that have the potential to intersect the active channel of Morro Creek or the Morro Creek lagoon are to be scheduled during times when long-term (at least 10 days) local weather forecasts show low (less than 20%) or no probability of precipitation. If, despite this scheduling requirement, these activities will still directly affect the creek or lagoon areas, Dynergy is to implement the project's Stream Diversion Plan (IS/MND Appendix H) in a manner that minimizes the area in which project activities would occur within wetted areas of the creek or lagoon.
- 10. Avoiding Adverse Effects on Nesting Birds.** NO MORE THAN 14 DAYS PRIOR TO STARTING CONSTRUCTION ACTIVITIES, a qualified biologist approved by the Executive Director shall conduct a pre-construction survey for the presence of nesting birds. The survey shall include all suitable nesting habitat within 300 feet (and 500 feet for raptors) of the project's terrestrial work boundaries. If the survey identifies any active nests of a Federal- or State-listed endangered or threatened bird species, or a bird species of special concern, the Permittee shall notify the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service within 24 hours of such survey and shall implement measures to avoid adverse effects to those nests consistent with the recommendations of those agencies. Measures may include, but not be limited to, delaying or redirecting project activities, establishing visual or aural barriers between project activities and any nest areas, or reducing the extent or intensity of project activities when nests are present.
- 11. Minimizing Adverse Effects of Artificial Lighting.** The Permittee shall ensure that any artificial lighting used during project activities is minimized to the extent practicable while allowing for necessary illumination levels and worker safety. If nighttime lighting is used, lights shall be shielded and directed downward so that light does not illuminate areas beyond the immediate work area.
- 12. Traffic Safety Plan.** Prior to starting onshore staging or construction activities, the Permittee shall submit, for Executive Director review and approval, a Traffic Safety Plan that identifies all measures that will be implemented to minimize any adverse effects from project-related traffic to public access to the shoreline. This Plan shall identify primary and secondary truck routes, any additional traffic or safety measures – e.g., flaggers, lane closures, site egress and exit locations, timing restrictions, alternate routes, etc. – that will allow for minimal disruption of public traffic.
- 13. Posting.** At least two weeks prior to conducting project activities on the beach or in coastal waters, the Permittee shall post notices describing the location and duration of project activities. Notice shall be posted at the Morro Rock Beach, Morro Bay Harbor District Office, and the adjacent Morro Strand State Beach.



**14. Tribal Cultural Resources Monitoring Plan.** Prior to project-related ground-disturbing activities, including the removal of the anode bed and wells within the MBPP Facility Segment, the Permittee shall prepare a Tribal Cultural Resources Monitoring Plan for Executive Director review and approval. The Monitoring Plan shall be prepared in coordination with one or more representatives of a tribe that is culturally affiliated with the project area and shall include the following measures:

- a. Retaining one or more monitors from a tribe located in San Luis Obispo County that is culturally affiliated with the site and that will be present during all ground-disturbing activities.
- b. Providing at least five days prior notice to the monitor(s) of all ground-disturbing activities.
- c. Providing the monitor(s) with safe and reasonable access to the site.
- d. Identifying procedures for tribal monitoring of work in the project's Surf Zone and Offshore Segments, including availability of resources and information needed to monitor excavation activities.
- e. Describing the guidance to be provided to project personnel about identifying potential tribal resources that may be encountered.
- f. Ensuring the monitor(s) will provide project personnel with orientation on the Monitoring Plan's requirements, including the potential for exposing tribal cultural resources, guidance on recognizing such resources, and procedures to be implemented if they are encountered.
- g. Implementing the Tribal Cultural Resources Treatment Plan as described in **Special Condition 15** below.

The Permittee shall implement the Monitoring Plan as approved by the Executive Director.

**15. Tribal Cultural Resources Treatment Plan.** PRIOR TO THE START OF GROUND-DISTURBING PROJECT ACTIVITIES, the Permittee, in consultation with the tribal monitor(s), shall prepare a Tribal Cultural Resources Treatment Plan that identifies measures to be implemented if intact tribal cultural resources are discovered during project activities. The Treatment Plan shall include provisions that allow the tribal monitor(s) to temporarily halt all project activities within 100 feet of the find, that ensure the location of the find is kept confidential, and that ensure the area of the find is secured to minimize site disturbance and avoid potential vandalism. The Treatment Plan shall also specify measures that will be taken to assess the nature and extent of the find, to record the find, and to notify relevant tribal representatives based on the results of the assessment. The Treatment Plan shall require that further impacts to the find be avoided through preservation in place, if feasible.

## IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

### A. PROJECT DESCRIPTION

The proposed project involves decommissioning, partial removal, and partial abandonment of a retired marine terminal formerly used to deliver fuel oil to the Morro Bay Power Plant (“MBPP”) in the City of Morro Bay, San Luis Obispo County. The marine terminal consists primarily of two intake pipelines – one 24-inch diameter and one 16-inch diameter – that extend from the power plant to a location about 3700 feet offshore in Estero Bay (see Exhibits 1 and 2). The pipelines are steel coated with concrete, asphalt, and/or gunnite, and are buried beneath an area of sensitive coastal dunes, a recreational beach, and the seafloor until they emerge offshore in coastal waters about a quarter-mile north of Morro Rock. Parts of the pipelines beneath the beach run near sensitive habitat at the mouth of Morro Creek. Other components of the marine terminal include a cathodic protection shed, two anode wells, and an anode bed within the MBPP site, two anode beds beneath the sand dunes, and pipeline anchoring devices offshore. The offshore portions of the project are within state tidelands, with the outermost 2280 feet of the pipelines subject to a lease from the State Lands Commission and the remaining offshore portion within an area of tidelines that had initially been granted to the County of San Luis Obispo then transferred to the City of Morro Bay.

The power plant and marine terminal were originally built in the 1950s, though the marine terminal has been retired since the 1990s when the MBPP switched from using fuel oil to using natural gas. Dynegy, the current power plant owner, is now proposing to decommission the marine terminal by removing certain components and by abandoning other components in place.<sup>1</sup> The proposed project is described in more detail in an Initial Study/Mitigated Negative Declaration (“IS/MND”) published by the State Lands Commission, which certified the CEQA document and approved a lease termination in February 2018.<sup>2</sup> The IS/MND imposes a number of mitigation measures on the project, several of which are incorporated into the Commission’s approval of this CDP through [Special Condition 1](#) and are provided in Appendix B of these Findings.

Dynegy has proposed conducting the decommissioning in several segments, based on the different characteristics of the project areas that contain portions of the marine terminal:

- **Within the MBPP Facility:** Dynegy plans to remove the cathodic protection shed and the related anode equipment, bed, and wells, along with the concrete pads capping the

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<sup>1</sup> In September and October 2017, Dynegy conducted activities to prepare for this decommissioning that included pigging and flushing the pipelines and removing deteriorated components from the offshore ends of the pipelines. These were conducted under emergency CDP G-9-17-0049 and after-the-fact CDP 9-18-0089. During October 2017, Dynegy completed the work allowed under the emergency CDP, and on December 8, 2017 submitted an after-the-fact and follow-up permit application to the Commission to authorize the completed work. On March 9, 2018, the Commission approved the follow-up permit for the completed work.

<sup>2</sup> The CEQA document is available at: <http://www.slc.ca.gov/Info/CEQA/Dynegy.html>).

two wells. It would abandon-in-place the approximately first 50 feet of each pipeline by plugging them with a cement slurry. Dynergy would also abandon-in-place several deeper components, including a vent pipe, wiring, and anodes.

- **Sand Dune Segment:** For the approximately 1,130 linear feet of each pipeline and the two anode beds, anchor blocks, and electrical cable under the sand dunes, Dynergy would abandon them in place and would plug the pipelines with cement slurry. These components are buried up to about 20 feet below the sand, and abandoning them in place is meant to avoid disturbing the dune habitat. Dynergy plans to cut and cap the pipelines about fifty feet shoreward of the dunes to further minimize potential effects to the dune habitat.
- **Beach Segment of Pipelines:** The next approximately 810 feet of pipeline are buried up to about 20 feet beneath the beach. Dynergy proposes to excavate a series of trenches to expose segments of the pipelines, cut them into 20- to 30-foot sections, and remove all of the pipeline segments beneath the beach area. The work would involve excavating parallel trenches above approximately 180-foot lengths of the pipelines, with the trenches being a total of about 200 feet wide, due to the depth of the pipelines and the need for a minimum 2:1 slope when excavating in sand. Work in this segment would also occur within the “meander zone” of the mouth of Morro Creek, which seasonally connects to Estero Bay and sometimes develops a seasonal lagoon. Dynergy plans to conduct the work during the summer/fall dry season when Morro Creek is not flowing.
- **Surf Zone Segment of Pipelines:** The two pipelines are buried about ten feet beneath the sand of the surf zone out to about 1275 feet offshore. Dynergy proposes to remove these segments using dynamic pipe ramming (“DPR”), which involves using a pneumatically-powered ram to drive or pull the pipelines through the soil. The DPR process would require placing two air compressors and a DPR hammer at the onshore end of the pipeline segments and another DPR hammer on a barge at the offshore end of the pipeline segments. Dynergy would first attempt to remove the 16-inch pipeline, followed by the 24-inch pipeline. Once removed, the pipelines would be placed on the seafloor and cut into approximately 30-foot sections, then placed on the barge for transport and disposal.

Dynergy has noted that this DPR technique has been used successfully in other settings, but has not yet been attempted in a surf zone. If using this method does not successfully remove the pipelines in their entirety, Dynergy would attempt to remove portions at either end to the extent possible and then “abandon-in-place” any sections it is not able to remove.

- **Offshore Segment of Pipelines:** The final approximately 2400-2500 feet of pipelines are buried about ten feet beneath the seafloor until they emerge at a water depth of about 54 feet. Dynergy proposes to excavate and remove these pipeline segments entirely, along with the helical screw anchors, concrete anchors, and other components that were installed to stabilize the pipelines. The pipelines would either be cut into sections by divers operating on the seafloor or after pulling them onto the work barge.

Before starting any onshore excavations, Dynegy would flag the expected work area boundaries and conduct vegetation surveys to determine the presence or absence of sensitive species and native or non-native species. All native species that may be affected by project activities would be salvaged and stored for site restoration. Dynegy would then remove the top six to 12 inches of topsoil or sand from affected areas of the beach to use as the final layer during site restoration. After removal of the project components, Dynegy would backfill and re-contour the affected areas on the beach as described in the Site Restoration Plan provided as the IS/MND's Appendix J. Before starting activities offshore, Dynegy would conduct side-scan sonar surveys in the project area to provide a baseline image of the seafloor that Dynegy will compare with a post-excavation side-scan survey to ensure it has removed all project-related debris that might be generated during the offshore work. The survey work will be subject to the IS/MND's Mitigation Measure BIO-8 (see Appendix B), which is incorporated into the Commission's CDP through [Special Condition 1](#) and establishes measures meant to reduce potential hazards and adverse effects on habitat and marine wildlife.

Dynegy would also establish an operational "shore base" at a nearby contractors office on the Morro Bay dock that would provide administrative support and room for loading and offloading equipment and pipeline segments. Work barges would transit to and from this location to conduct the offshore work. Dynegy would also establish an equipment laydown area within the MBPP site and at an existing parking area at the north end of the Morro Bay Embarcadero.

**Project schedule:** Dynegy plans to conduct the work during the late summer and fall of 2018. Work would generally occur for up to 12 hours per day and seven days per week for up to about five months, with the offshore activities expected to take about 15 weeks to complete. Dynegy may also occasionally work up to 24 hours per day if needed to maintain the project schedule or make up for poor weather conditions.

To reduce potential impacts of project activities on traffic and public access, Dynegy will schedule delivery and hauling trucks outside of peak traffic periods (7:00 to 9:00 a.m. and 4:00 to 6:00 p.m.) to the extent feasible and will provide advance notice to nearby residents and businesses of scheduled project activities.

## **B. COASTAL COMMISSION JURISDICTION AND STANDARD OF REVIEW**

The marine terminal components in coastal waters are within the Commission's retained jurisdiction and the standard of review for these project components is Chapter 3 of the Coastal Act. Project components above the mean high tide line on the beach, in the sand dunes, and in the MBPP site are within the jurisdiction of the City of Morro Bay's certified Local Coastal Program ("LCP").

For this proposed project, the applicant and the City requested that the Commission conduct its review using the consolidated permit review process described in Coastal Act Section 30601.3, which allows the Commission to consider a single, consolidated permit for proposed projects that require a CDP from both the Commission and a local government with a certified LCP, though only with the consent of the applicant, local government, and the Executive Director or

Commission.<sup>3</sup> The standard of review for this consolidated permit process is Chapter 3 of the Coastal Act, though the Commission may use the LCP for guidance.

In its March 1, 2018 permit application, Dyneyg requested that the Commission conduct a consolidated review. The City later provided a March 29, 2018 letter concurring with the request. Pursuant to Section 30601.3(a)(2), the Executive Director has determined that public participation will not be substantially impaired and has approved this consolidation.

### C. OTHER AGENCY APPROVALS:

- **California State Lands Commission:** The State Lands Commission served as the lead agency for the project under the California Environmental Quality Act. On February 27, 2018, it certified a Mitigated Negative Declaration for the project and approved the termination of Dyneyg’s lease of state submerged tidelands (PRC 1390.1) upon satisfactory completion of this proposed decommissioning project.
- **Central Coast Regional Water Quality Control Board:** The project will be subject to a Section 401 water quality certification from the Regional Board.
- **U.S. Army Corps of Engineers:** The Corps has regulatory authority over the proposed project pursuant to Section 10 of the federal Rivers and Harbors Act of 1899 (33 U.S.C 1344) and Section 404 of the federal Clean Water Act. Pursuant to Section 307(c)(3)(A) of the federal Coastal Zone Management Act (“CZMA”), any applicant for a federal permit required to conduct an activity affecting any land or water use or natural resource in the coastal zone must obtain the Commission’s concurrence through a certification to the permitting agency that the project will be conducted consistent with California’s approved coastal management program. This coastal development permit (9-18-0157) will serve as the Commission’s concurrence under the CZMA.

**Special Condition 2** requires Dyneyg to submit copies of the above approvals before starting any ground-disturbing activities. If those approvals result in changes to the project as approved by the Commission, **Special Condition 2** also requires Dyneyg to submit an application to amend this CDP, unless the Executive Director determines that no amendment is needed.

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<sup>3</sup> Section 30601.3 states:

- (a) Notwithstanding Section 30519, the commission may process and act upon a consolidated coastal development permit application if both of the following criteria are satisfied:*
- (1) A proposed project requires a coastal development permit from both a local government with a certified local coastal program and the commission.*
  - (2) The applicant, the appropriate local government, and the commission, which may agree through its executive director, consent to consolidate the permit action, provided that public participation is not substantially impaired by that review consolidation.*
- (b) The standard of review for a consolidated coastal development permit application submitted pursuant to subdivision (a) shall follow Chapter 3 (commencing with Section 30200), with the appropriate local coastal program used as guidance.*
- (c) The application fee for a consolidated coastal development permit shall be determined by reference to the commission’s permit fee schedule.*
- (d) To implement this section, the commission may adopt guidelines, in the same manner as interpretive guidelines adopted pursuant to paragraph (3) of subdivision (a) of Section 30620.*

## **D. SPILL PREVENTION AND RESPONSE**

Coastal Act Section 30232 states:

*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

The proposed project involves the use of several different marine vessels and equipment in coastal waters, along with vehicle and heavy-equipment use in onshore areas. This equipment could release fuel or other hazardous fluids, sewage water, bilge water, ballast water, or solids such as asbestos into the marine and shoreline environment. Additionally, the marine terminal itself could cause a release of hazardous materials. Although the marine terminal pipelines were pigged and flushed in 2017 and are expected to contain no more than trace amounts of residual hydrocarbons, they could result in a hazardous release. Depending on the size and contents of any leak, spill or discharge from one of these sources, impacts to both marine and terrestrial resources could be significant.

The project's IS/MND includes several mitigation measures that are incorporated by reference into [Special Condition 1](#) of this CDP. Measure [HAZ-1](#) requires Dynegy to prepare a Contaminated Materials Management Plan that meets the requirements of the San Luis Obispo County Environmental Health Services Department to handling any contaminated materials that may be encountered during project activities. Measure [HAZ-2](#) requires Dynegy to implement a number of protective measures if hydrocarbon contaminated soil is encountered. Measure [HAZ-4](#) requires Dynegy to prepare a plan to handle any hazardous materials, such as fuel, that it intends to use during the project, and Measure [HAZ-5](#) implement an Asbestos Work Plan that meets San Luis Obispo County Air Pollution Control District requirements should project activities encounter any asbestos.

[Special Condition 1](#) additionally incorporates the IS/MND's Measure [HAZ-3](#), which requires Dynegy to implement an Oil Spill Response Plan (OSRP) provided as Appendix L of the IS/MND and meant to reduce the risk of accidental spills and releases from project vessels, vehicles, equipment, and project components. The OSRP requires Dynegy to test the fluid within the pipelines prior to removal and submit results to the Commission to ensure there are no more than *de minimus* amounts of hydrocarbons within them. For project vehicles and equipment on land, the OSRP establishes preventative measures such as regular maintenance and monitoring of project vehicles and equipment, use of a designated, off-site refueling area for onshore vehicles and equipment, provision of drip pans, and having on hand clean-up materials for minor spills. Project vessels will provide secondary containment for fuel stored on project vessels. The OSRP also describes the onsite spill response team, equipment and procedures that Dynegy will maintain for minor spills, Dynegy's existing contracts with certified secondary responders for both terrestrial and marine spills, and procedures for agency notification following an incident. In order to further minimize the potential for damage due to accidental spills or leaks, the Commission is additionally requiring, through [Special Condition 3](#), that Dynegy submit for Executive Director review and approval, an additional component to that

OSRP that identifies the potential worst-case spill scenarios for both onshore and offshore operations, including maximum volumes, and demonstrates that adequate spill response equipment is available for those scenarios. That additional component is to also identify the location of oil spill response equipment, and include a plan for conducting training and response drills. Additionally, consistent with its approvals of previous major offshore projects, the Commission is including [Special Condition 4](#), which requires implementation of a zero discharge policy for all project vessels.

### **Conclusion**

As proposed and conditioned, the Commission finds that the project will protect against the spillage of hazardous materials and is therefore consistent with Section 30232 of the Coastal Act.

## **E. PROTECTING MARINE RESOURCES AND WATER QUALITY**

Coastal Act Section 30230 states:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Coastal Act Section 30231 states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

### **Description of project area habitat types and species**

This area of shoreline and coastal waters provides rich and important habitat for many species. Nearby Morro Bay is within the National Estuary Program and is an important stop on the Pacific Flyway. Estero Bay provides foraging habitat for fish, marine mammals, sea turtles, and birds, and is within the seasonal spawning range of the California grunion, an important species along Central and Southern California beaches.

There are a number of species of special concern that are known to exist or have the potential to live seasonally or year-round in the nearshore portion of the project area. These include several whale species – the Fin whale (*Balaenoptera physalus*), humpback whale (*Megaptera novaeangliae*), and blue whale (*Balaenoptera musculus*) and other marine mammals – the

Common bottlenose dolphin (*Tursiops truncatus*), California sea lion (*Zalophus californicus*), Pacific harbor seal (*Phoca vitulina richardsi*), and southern sea otter (*Enhydra lutris nereis*). Several species of sea turtles may also be present in the area – the Olive ridley turtle (*Lepidochelys olivacea*), leatherback turtle (*Dermochelys coriacea*), green turtle (*Chelonia mydas*), and loggerhead turtle (*Caretta caretta*). There are also four special status bird species that, depending on conditions and the presence of prey, may use the project area for foraging – the California least tern (*Sterna antillarum browni*), Xantus' s murrelet (*Synthliboramphus hypoleucus*), marbled murrelet (*Brachyramphus marmoratus*) and the short-tailed albatross (*Phoebastria albatrus*).

The intertidal and offshore project areas consist entirely of sandy or soft bottom habitats, which are generally not considered particularly sensitive habitat areas unless occupied by marine grasses or known sensitive species. Benthic species within these nearshore areas are generally adapted to disturbances caused by wave action, storms, or seasonal sand movement, which are similar to the types of disturbance that will result from the project's offshore excavation activities. While Dynegy will be conducting inwater work during what is expected to be a season with calmer water and fewer storm conditions, the project site is subject to storm and wave energy directly from the Pacific Ocean, which could subject the project activities to unexpected risks, hazards, and damages, such as flooding, erosion, storm surge, and others. [Special Condition 5](#) requires Dynegy to provide written acknowledgement of those risks and to indemnify the Commission for any claim of damage or liability resulting from these hazards.

### **Project impacts and mitigation measures**

Dynegy's project description and the project's IS/MND include a number of mitigation measures generally meant to avoid and minimize several potential impacts. For example, Dynegy has scheduled the work in the fall to avoid the more challenging winter storm and weather conditions that could increase project risks. Dynegy has also prepared the Oil Spill Response Plan, described above in Section IV.D – Spill Prevention and Response, which, along with [Special Condition 3](#), is expected to minimize the potential for a spill as well as the potential adverse effects that would result from a spill. Several of the IS/MND's mitigation measures, which are included as part of [Special Condition 1](#) (see also Appendix B), would further reduce potential adverse effects. They include Measure [BIO-1](#), which requires that an approved biological monitor provide training to all project personnel about avoiding adverse impacts to species and habitats. Nonetheless, the project could adversely affect nearby marine resources in several ways – through habitat disturbance, turbidity, noise, offshore lighting, and others. These potential adverse effects, and the mitigation measures and Special Conditions needed to address them, are described below.

#### *Habitat disturbance and turbidity*

Offshore project activities will occur in the less sensitive soft substrate and sandy bottom areas of Estero Bay, where benthic species are generally adapted to similar temporary disturbances such as those resulting from wave action, storms, or seasonal sand movement. Pre-project marine surveys show that the Estero Bay seafloor in the project area consists primarily of fine- to medium-grained sands, which will cause some amount of localized turbidity when they are disturbed during project excavation; however, they are expected to settle out of the water column



relatively quickly and result in only minor adverse effects. Nonetheless, project activities, unless adequately mitigated, have the potential to adversely affect marine resources and water quality.

The project involves excavation, removal of marine terminal components, possible pipeline cutting, and other activities that will disturb benthic habitat and the species that relies on that habitat. The affected sandy and soft-bottom areas are primarily populated by diverse infaunal invertebrates, such as polychaetes, tube-building worms, sand dollars, as well as various demersal and pelagic fish species. Some number of these organisms will be directly affected; however, because the project area represents a relatively small proportion of all the nearby similar habitat in Estero Bay and because the excavated or disturbed areas will be naturally recontoured through wave action and sediment transport, the adverse effects are expected to be relatively minor and temporary.

Dynergy has provided a Marine Safety and Anchoring Plan (Appendix C of the IS/MND) that specifies how project vessels will be anchored safely. It is to be implemented in accordance with the IS/MND's mitigation measures [BIO-8](#) and [BIO-13](#), both of which require Dynergy to conduct surveys to identify any areas of hard bottom or seagrass in or near the project area and, if found to modify the project's anchoring locations to avoid any disturbance to those areas. Both mitigation measures are incorporated into this CDP by [Special Condition 1](#).

Dynergy's proposed Dynamic Pipe Ramming ("DPR") method is meant to reduce the area of excavation and disturbance in the project's Surf Zone and Offshore segments that would otherwise be needed for pipe removal. If the DPR method is not successful, Dynergy may "abandon in place" any segments it is not able to remove using DPR. If the "abandon in place" approach is used, [Special Condition 6](#) requires Dynergy to rebury those segments, but it also requires, if those segments become exposed in the future, that Dynergy submit an application to remove them. If the DPR method is not successful, Dynergy could also consider other methods, such as trestle-based excavation and removal or surf sled-based removal; however, any proposal to use these or other methods would require an amendment to this CDP, as those methods have not been adequately reviewed for conformity to Coastal Act requirements.

#### *Avoiding adverse effects to marine wildlife*

Several project elements – excavation, cutting pipeline components, vessel and equipment noise, etc. – have the potential to cause adverse effects to nearby marine wildlife species. Of particular concern is the noise that will be generated by the project's geophysical surveys and its Dynamic Pipe Ramming ("DPR") method for removing segments of the buried pipelines.

The geophysical surveys will be conducted pursuant to the IS/MND's Measure [BIO-8](#), which is incorporated into this CDP through [Special Condition 1](#) and which requires Dynergy to obtain an offshore geophysical survey permit through the State Lands Commission's Low-Energy Offshore Geophysical Permit Program.<sup>4</sup> That permit limits surveys to using equipment with relatively low energy outputs (e.g., side-scan sonar, echosounders, magnetometers, etc.) and

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<sup>4</sup> See State Lands Commission, *Mitigated Negative Declaration – Low Energy Offshore Geophysical Permit Program Update*, September 2013.

includes requirements meant to protect marine wildlife from noise generated during these surveys, including establishing safety zones, monitoring the presence and location of wildlife, implementing safe practices for vessels, and others. The surveys will also be subject to [Special Condition 7](#), which requires Dynegey to prepare a Marine Life Monitoring and Contingency Plan that includes specific provisions for monitoring marine mammals, establishing safety zones around the activities, reporting any harm to marine mammals, and other protective measures. Dynegey provided a Preliminary Marine Wildlife Contingency Plan as Appendix I of the IS/MND, which, if revised to include the provisions of [Special Condition 7](#), may be used for purposes of this CDP. The surveys will occur in relatively shallow water (generally 50-foot depths or less) in an area of sandy substrate, where sound energy generated during the surveys will attenuate relatively quickly due to the dispersing effects of the surface water waves and its interaction with the seafloor. Under such conditions, and with the required mitigation measures, this type of survey will be carried out in a manner that will sustain the biological productivity of the area.

Dynegey's proposed Dynamic Pipe Ramming ("DPR") would also cause elevated sound levels within the water column that could adversely affect any nearby fish or marine mammals. The DPR technique uses a pneumatic or hydraulic hammer to push or pull pipeline segments from beneath the beach or seafloor. As noted above, this technique has not been used before in a marine environment, so there are no monitoring data on which to base expected noise levels. However, the technique is similar to vibratory pile driving, which generates noise at up to about 180 decibels in a frequency range from about 400 Hertz to 2.5 kilohertz.<sup>5</sup> The DPR's decibel levels are expected to be somewhat lower, as the hammer would be partially insulated due to the burial depth of the pipes beneath the beach and seafloor.

Nonetheless, these noise levels and frequency ranges overlap with the hearing range of a number of marine species and exceed some of the thresholds identified by the National Marine Fisheries Service in its 2016 *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* (Guidance Manual). This Guidance Manual distinguishes between impulsive sound sources, such as air guns and impact pile driving, and non-impulsive sound sources, such as vibratory pile driving and DPR. It also identifies noise levels expected to cause behavioral changes or damage to different groups of marine mammals, based on their hearing range frequencies, and identifies decibel thresholds that can cause permanent (Level A Harassment) or temporary (Level B Harassment) hearing threshold shifts (see Table 1 below).

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<sup>5</sup> See, for example, California Department of Transportation, *Transportation and Construction-Induced Vibration Guidance Manual*, September 2013.

**Table 1:** Summary of Marine Mammal Hearing Groups and Acoustic Thresholds (Received Level) for a Non-Impulsive Sound Source (from IS/MND Table 3.4-5)

Hearing Group <sup>2</sup>	Generalized Hearing Range <sup>3</sup>	PTS Onset		TTS Onset
		Impulsive (Peak SPL <sup>4</sup> )	Non-Impulsive (Cumulative SEL <sup>5</sup> )	Non-Impulsive (Cumulative SEL <sup>5</sup> )
Low-Frequency (LF) Cetaceans	7 Hz to 35 kHz	219 dB	199 dB	179 dB
Mid-Frequency (MF) Cetaceans	150 Hz to 160 kHz	230 dB	198 dB	178 dB
High-Frequency (HF) Cetaceans	275 Hz to 160 kHz	202 dB	173 dB	153 dB
Phocid Pinnipeds (PW) (underwater)	50 Hz to 86 kHz	218 dB	201 dB	181 dB
Otariid Pinnipeds (OW) (underwater)	60 Hz to 39 kHz	232 dB	219 dB	199 dB

Source: NMFS 2016.

Acronyms: dB = decibel; Hz = Hertz; kHz = kilohertz; PTS = permanent threshold shift; SEL = sound exposure level; TTS = temporary threshold shift.

Notes:

<sup>1</sup> If a non-impulsive sound may exceed peak SPL thresholds associated with impulsive sounds, these thresholds should also be considered; therefore, peak SPL thresholds are also provided.

<sup>2</sup> LF cetaceans = baleen whales; MF cetaceans = dolphins, toothed whales, beaked whales, bottlenose whales; HF cetaceans = true porpoises, Kogia, river dolphins, cephalorhynchid, Lagenorhynchus cruciger, L. australis; PW pinnipeds = true seals; OW pinnipeds = sea lions and fur seals.

<sup>3</sup> Represents the generalized hearing range for the entire group as a composite (i.e., all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans and PW pinnipeds (approximation).

<sup>4</sup> Peak SPL has a reference value of 1  $\mu$ Pa. Peak SPL thresholds are not weighted.

<sup>5</sup> Cumulative SEL has a reference value of 1  $\mu$ Pa<sup>2</sup>s. Cumulative SEL acoustic threshold levels incorporate marine mammal auditory weighting functions, and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds would be exceeded.

Of the groups represented on this table, humpback and gray whales are included in the low-frequency cetaceans group; however, the project is scheduled to occur outside their peak migration season when they are most likely to be present in the project area. Local dolphin species are included in the mid-frequency group, though the highest expected DPR sound levels are expected to be at frequencies around 1 kHz, which is a low sensitivity frequency for these species. The only high-frequency species in the area is the harbor porpoise, although similar to the dolphins, their hearing is less sensitive in the DPR's 1 kHz sound generation range. Nonetheless, all of these species, if close enough to the DPR activity, could experience short-term or permanent hearing loss. Additionally, California sea lions and Pacific harbor seals, both of which are year-round residents in the area, have sensitive hearing levels at similar frequencies that the DPR would generate, and could experience damage if close enough to the activities.

To reduce these potential adverse effects, [Special Condition 1](#) incorporates IS/MND mitigation measures [BIO-10](#) through [BIO-12](#) (see Appendix B). Measure [BIO-10](#) requires that the DPR be initiated using a “soft start” – that is, the initial DPR work would begin at greatly reduced levels and then be gradually ramped up so as to allow any marine species and birds to move away from the activity before the noise reaches harmful levels. Because noise decays with distance, this “soft start” requirement is believed to be an effective way to substantially reduce the harm to nearby marine life.<sup>6</sup> Measures [BIO-11](#) and [BIO-12](#) require that Dynegy retain a marine acoustics specialist to work with the National Marine Fisheries Service (“NMFS”) to measure underwater noise levels and conduct sound source characterization during DPR operations that will be used to determine safety zones around the project based on NMFS acoustic thresholds for protecting marine life. Measure [BIO-12](#) also provides for an initial safety zone of 1,000 meters (more than one-half mile) until the project-specific zone has been determined.

#### *Avoiding adverse effects to grunion*

Project activities could also result in another type of potential adverse effect, as they might occur during spawning season of the California grunion (*Leuresthes tenuis*), which generally runs each year from early spring to early September. Grunion spawning during that period can occur during high tides following new or full moons, with eggs remaining under the beach sand for about two weeks after spawning. Grunion is considered a species of special concern due to its unique spawning behavior and past adverse effects on the species resulting from habitat modification and overharvesting. The California Department of Fish and Wildlife establishes seasonal closures on grunion harvests to help protect the species. To avoid and minimize potential impacts on the grunion, [Special Condition 8](#) requires that project activities within the intertidal zone take place outside the spawning and incubation season to the extent feasible and that any activities that do occur during the season not occur unless supported by a biological survey that finds no evidence of grunion spawning or incubation.

#### *Avoiding introduction or spread of non-native aquatic species*

The project has the potential to introduce non-native aquatic species to the state’s marine waters. This can occur by using vessels that bring these species from other locations, either in ballast water or by being attached to the vessels through biofouling. Depending on the species, this can cause significant adverse impacts to the local biota and ecosystems. To avoid this type of impact, [Special Condition 1](#) incorporates the IS/MND mitigation measure [BIO-14](#) (see Appendix B), which requires all project vessels to originate from nearby harbors or to have all underwater surfaces cleaned before entering state waters. It also requires all vessels to manage ballast water using the SLC’s ballast management regulations, which establishes limits, management methods, and reporting requirements meant to prevent vessel ballast water from introducing new species into state waters. Finally, it requires the project’s approved marine biologist to provide information to project personnel about avoiding and minimizing the spread of non-native aquatic species. [Special Condition 4](#) provides further protection against this adverse effect by prohibiting marine discharge from all project vessels.

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<sup>6</sup> The Inverse Square Law shows that noise diminishes as it moves away from its point of origin at a rate of about six decibels for each doubling of distance, which makes the noise about a quarter as loud, though the resulting decibel level at distance also depends on whether there are sound reflective surfaces or barriers that would increase or decrease the sound levels.

*Limits on offshore lighting*

Some project vessels will be moored offshore for an extended period and will require lighting for navigation and safety purposes. Excessive lighting could adversely affect a number of marine species by providing an attractive nuisance or by disrupting their behavior. Most project activities are planned for daylight hours, which will reduce potential adverse effects, and [Special Condition 1](#) incorporates the IS/MND's Measure [AES-1](#), which is meant to further reduce those potential effects by requiring Dynegy to submit an Offshore Lighting Plan that identifies the minimum lighting needed for navigation and safety and ensures that any necessary lighting is shielded and directed downward to minimize the area of potential effects.

**Conclusion**

As proposed and conditioned, the Commission finds that the project will adequately protect marine resources and is therefore consistent with Sections 30230 and 30231 of the Coastal Act.

**F. TERRESTRIAL BIOLOGICAL RESOURCES**

Coastal Act Section 30233 states, in relevant part:

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource-dependent activities.*

*(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.*

*(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of*

*Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division...*

*(d) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients that would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for these purposes are the method of placement, time of year of placement, and sensitivity of the placement area.*

Coastal Act Section 30240 states:

*a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The project involves work near two sensitive habitat areas – coastal dunes and the mouth and lower reaches of Morro Creek – though the project is largely designed to avoid direct impacts to those areas. The project area includes several different vegetation assemblages, including two designated by the California Department of Fish and Wildlife (“CDFW”) as Natural Communities of Special Concern – Central Dune Scrub (also described as Mixed Dune) and Central Coast Riparian Scrub (also described as Arroyo Willow Thicket) – which CDFW has identified as high priority habitats for conservation.<sup>7</sup>

In 2015, the applicant conducted field vegetation surveys to determine the presence of special-status plants within and near the project site. The surveys identified two – sticky sand verbena (*Abronia maritima*), and Blochman’s groundsel (*Senecio blochmaniae*) – both of which are ranked as “plants of limited distribution” by the California Native Plant Society. Based on the site’s habitat characteristics, the differences in other potential species’ blooming periods, annual abundances, and periods of dormancy, along with the uncertainty that the field survey could fully identify all sensitive plants that might be present, the project’s IS/MND concluded that the site has the potential to include a number of additional sensitive species, including:

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<sup>7</sup> See CDFW’s *List of Vegetation Alliances and Associations. Vegetation Classification and Mapping Program*, September 2010.

Arroyo de la Cruz manzanita (*Arctostaphylos cruzensis*)  
 beach spectaclepod (*Dithyrea maritima*)  
 Blockman's leafy daisy (*Erigeron blochmaniae*)  
 California seablite (*Suaeda californica*)  
 coast wooly-heads (*Nemacaulis denudate* var. *denudate*)  
 coastal goosefoot (*Chenopodium littoreum*)  
 Coulter's goldfields (*Lasthenia glabrata*)  
 Indian Knob mountainbalm (*Eriodictyon altissimum*)  
 marsh sandwort (*Arenaria paludicola*)  
 Miles' milk-vetch (*Astragalus didymocarpus*)  
 Morro manzanita (*Arctostaphylos morroensis*)  
 popcorn lichen (*Cladonia firma*)  
 salt marsh bird's-beak (*Chloropyron maritimum* spp. *maritimum*)  
 southern curly-leaved monardella (*Monardella undulata*)

Project activities would also occur close to areas that support sensitive animal species, with the project site itself including designated critical habitat for two species. Morro Creek is within designated critical habitat for the federally-threatened South Central California coast steelhead (*Oncorhynchus mykiss*) and the beach area is within designated critical habitat for the federally-threatened Western snowy plover (*Charadrius alexandrinus nivosus*). Morro Creek may potentially provide habitat for the federally-endangered tidewater goby (*Eucyclogobius newberryi*), though the nearest designated critical habitat for the goby is about 2.5 miles north, at Toro Creek. Similarly, Morro Creek may potentially provide habitat for the federally-threatened California red-legged frog (*Rana draytonii*), though the closest documentation of that species is about a mile north in Morro Strand State Park.

Dynegy has included with its project several measures meant to generally avoid or minimize potential impacts to the nearby terrestrial biological resources, and the project's IS/MND additionally requires that Dynegy implement several mitigation measures meant to avoid or limit effects on these resources. For example, several of the IS/MND's mitigation measures meant to reduce potential air quality impacts – such as limits on idling and fuel use of all motorized equipment, use of dust suppression methods such as water trucks or sprinkler systems and limits on vehicle speeds – will also result in reduced potential impacts to the site's sensitive habitat areas. Other IS/MND measures that are incorporated into this CDP through [Special Condition 1](#) will provide further protection. For example, Measure [BIO-1](#) requires Dynegy to provide environmental awareness training to project personnel that describes nearby sensitive species and habitats, applicable regulatory requirements, and the measures that are to be implemented during project activities to avoid and minimize impacts. Measure [BIO-2](#) requires Dynegy to conduct biological surveys prior to starting project activities and to ensure a biological monitor is on site at all times. If special-status species are observed within the project site or are in areas where they may be affected by project activities, that monitor is to stop or redirect the work so it does not adversely affect these species. Measure [BIO-3](#) requires that Dynegy identify the areal extent of the expected onshore project activities and limit them to the minimum area needed.

Along with these general provisions, there are a number of mitigation measures included, and Special Conditions needed, to avoid or minimize impacts from specific project activities or to protect specific habitat areas. These are described below.

#### **Avoiding impacts to coastal dune habitat**

Some project components, primarily sections of the two marine terminal pipelines, are buried beneath the area of coastal dune habitat between the MBPP and the beach. The project's main avoidance measure to avoid disturbing this dune area is to cut the buried pipelines at either side of the dune segment of the project to allow them to remain in place. By doing so, Dynergy avoids excavating within the dune area or using the Dynamic Pipe Ramming method to remove these pipeline sections, as either method could result in surface disturbance, slumping, vegetation removal, and other similar adverse effects within the coastal dune habitat area.

While this approach prevents disturbance of the coastal dune habitat, it also introduces the potential that the remaining project components could be exposed or uncovered due to coastal erosion or relatively high amounts of sand movement. To address that potential, and to avoid the adverse effects that could result from the pipelines or other components becoming exposed, [Special Condition 6](#) requires Dynergy to submit a complete application to amend this CDP within 30 days of any remaining facility components becoming exposed. Depending on the cause and location of the exposure, the application may propose to either remove or rebury the exposed components.

#### **Avoiding impacts to Morro Creek and its associated species**

Depending on project timing and seasonal weather or storm conditions, project activities could directly affect Morro Creek. Like many of California's coastal streams, Morro Creek periodically forms a lagoon near its mouth that can break through to the ocean at different locations along the beach. With the creek's shifting location, the marine terminal pipelines may at times be directly beneath the creek's meandering mouth or lagoon. By scheduling project activities for the drier part of the year in late summer and early fall, Morro Creek is less likely to be flowing to the ocean and the lagoon may be relatively small. This timing also avoids adversely affecting adult steelhead that generally migrate into or out of coastal streams in late winter or early spring. If a lagoon is present, however, juvenile steelhead that are using the lagoon as rearing habitat could be adversely affected.

The project currently includes several measures meant to reduce potential direct impacts to Morro Creek. For example, the IS/MND acknowledges that Morro Creek could be flowing above the pipeline or within an area to be excavated during activities on the beach segment of the project. If that occurs, its Measure [BIO-4](#) requires that a USFWS-approved biologist conduct a pre-construction aquatic survey to determine the presence or absence of steelhead or tidewater gobies and that, if found, they be separated from the active work area using a fine-mesh screen or filter fabric installed within the creek. The IS/MND also specifies that heavy equipment operation within the stream channel be minimized to the extent feasible and that any pipeline removal within the stream channel be conducted in a manner that avoids or minimizes turbidity within the water column. It also includes a Project Stream Diversion Plan (the IS/MND's Appendix H) that would be implemented if project work is expected to occur within the active creek channel or lagoon. This Plan, if implemented, would first require that USFWS and NMFS



issue Biological Opinions that would allow capture and relocation of any steelhead or gobies that may be within the affected part of the creek or lagoon. If that activity is approved, the Plan would then involve either diverting and dewatering the creek to avoid conducting construction activities within the active creek and lagoon area, or placing cofferdams to isolate the work area from any connection between Morro Creek and the ocean. The cofferdams, along with sump pumps needed to keep the work area relatively dry, would be maintained during the full period of project activities within the affected creek and lagoon area. Equipment access within the channel or lagoon area would be limited to avoid impacts to the bed or banks of the waterbodies, and pipelines would be cut on either side of the active channel or lagoon area (rather than within those areas) to reduce potential contamination and would then be lifted or pulled slowly to minimize any turbidity impacts within those areas.

To further avoid and minimize the impacts that would result from in-water work or from the measures identified in the Stream Diversion Plan, [Special Condition 9](#) first requires that Dynegy schedule all excavation and pipeline removal work that could directly affect the creek and lagoon areas during times when creek flows are low or are not reaching the ocean and when the long-range weather forecast (at least ten days) predicts a low probability of precipitation. This would reduce the potential that the creek or lagoon would need to be dewatered or diverted to accommodate project activities. If, despite this timing requirement, project excavation and pipe removal will intersect with the active creek channel or the lagoon, [Special Condition 9](#) requires Dynegy to implement the Stream Diversion Plan in a manner that minimizes the extent of project activities within the wetted areas of the creek or lagoon. Additionally, because that Plan is to be implemented pursuant to any requirements or guidance provided in NMFS and USFWS Biological Opinions, [Special Condition 2](#) requires Dynegy to provide those Biological Opinions or documentation from the agencies that a Biological Opinion is not required, before starting any work within the wetted area of the creek or lagoon.

#### **Avoiding adverse effects on nesting birds**

As noted above, some project activities would occur within designated critical habitat for the federally-threatened Western snowy plover, which includes the project's coastal dune area that the plover may use for nesting. The plover may also use the beach area for foraging. Several other special-status bird species are known to use, or have the potential to use, the project area, including the California least tern (*Sterna antillarum browni*), loggerhead shrike (*Lanius ludovicianus*), and black-crowned night heron (*Nycticorax nycticorax*). Some raptors, such as the peregrine falcon (*Falco peregrinus*), Cooper's hawk (*Accipiter cooperii*) and white-tailed kite (*Elanus leucurus*) may use the Morro Creek riparian habitat for roosting. Quite a few marine bird species use the surf zone and offshore areas of the project site, including the California brown pelican (*Pelecanus occidentalis californicus*), a variety of gulls, various grebes (*Aechmophorus* sp.), scoters (*Melanitta* sp.), loons (*Gavia* spp.), and others.

For the most part, project activities will be scheduled to occur after nesting season for the various species. Therefore, because the project activities are temporary and would occur within a relatively small portion of the onshore and offshore habitat areas, the primary adverse effects on birds would be their temporary displacement from areas disturbed during the project. These adverse effects would be further reduced by various mitigation measures – for example, and as noted above, the IS/MND's Measure [BIO-2](#) requires Dynegy to have a biological monitor on site

during project activities who is empowered to stop or redirect work that may affect any special-status species, including plovers and least terns, to avoid adverse impacts to those species. Nonetheless, if active nests are in the area during any project activities, the IS/MND imposes Measure [BIO-5](#), which is meant to reduce impacts to any nesting birds that may be present during project activities. That measure, which is incorporated by reference into [Special Condition 1](#), requires Dynegy to conduct nesting bird surveys before project work begins and before each work day. It also requires the onsite biologist to develop buffers around nests or observed species and requires Dynegy to conduct project activities outside these buffer areas. To further avoid and minimize impacts to nesting birds, [Special Condition 10](#) specifies the minimum buffers to be established between project activities and nests and also requires Dynegy to implement any measures recommended by U.S. Fish and Wildlife Service and/or the California Department of Fish and Wildlife if active nests are found. To further reduce potential impacts to nesting birds and other species, [Special Condition 11](#) requires Dynegy to limit any artificial lighting used during project activities to the minimum needed for worker safety and to shield and direct downward any nighttime lighting used during the project.

### **Conclusion**

With measures included as part of the proposed project and as conditioned to minimize adverse effects on sensitive habitat areas, the Commission finds that the project will be protective of those habitat values. For the reasons above, the Commission therefore finds that the project is consistent with Sections 30233 and 30240 of the Coastal Act.

## **G. PUBLIC ACCESS AND RECREATION**

Coastal Act Section 30210 states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Coastal Act Section 30214 states, in relevant part:

*The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place and manner of public access...*

Coastal Act Section 30220 states:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland areas shall be protected for such use.*

The proposed project involves activities on a beach and within coastal waters used for public access and recreation. The City's Morro Rock Beach extends along several thousand feet of the shoreline north of Morro Rock. It is a popular site for beachgoing activities and the offshore area is used for surfing, swimming, diving, and small boat use. There are three nearby parking areas that provide public access to Morro Rock Beach and other adjoining parts of the shoreline.

### Onshore effects

The project's excavations, its use of heavy machinery, project-generated noise, and other similar activities will unavoidably result in adverse effects to public access and recreation along the shoreline. However, these activities and their adverse effects will be temporary and can be mitigated through several construction best practices included with the project and through several IS/MND mitigation measures, such as scheduling delivery and hauling activities outside peak travel times (i.e., between 7:00 and 9:00 a.m. and between 4:00 and 6:00 p.m.), placing warning signs to alert the public to project truck traffic, and prohibiting construction activities during state and federal holidays. Dynegy plans to conduct the bulk of project activities after Labor Day, which will avoid times of peak summer use of the beach. Dynegy's use of an approximately 100- by 200-foot area of the nearby parking area at the north end of the Embarcadero for project staging and laydown will also displace some existing public access. This will result in a temporary loss of parking used for public access to the shoreline, but the area Dynegy plans to use represents a small proportion of available parking spaces – about two dozen out of several hundred. This will therefore be a relatively minor adverse impact, particularly as most of it will occur after the peak summer season.

Measure [T-3](#) of the project IS/MND requires Dynegy to prepare a Traffic Safety Plan that identifies specific traffic control and safety measures it will implement as part of the project to minimize traffic disruptions. [Special Condition 12](#) requires Dynegy to include in that Traffic Safety Plan all additional measures it will implement to ensure the project results in no more than minimal adverse effects on public access to the shoreline.

Most of the beach will remain accessible during project activities, as the project's approximately 200-foot wide work corridor covers just a small proportion of the overall several thousand linear feet of beach area. Additionally, because Dynegy will be excavating the pipelines beneath the beach in approximately 200-foot-long segments, the project will not prevent ongoing lateral beach access. During these activities on the beach, Dynegy will place temporary and high-visibility construction fencing around the active work areas and will maintain the fencing throughout the excavation, removal of pipeline segments, and restoration of those beach areas. These safety measures during the temporary limitations on public access conform to Coastal Act Section 30210's requirement to provide public access consistent with public safety needs.<sup>8</sup>

### Offshore effects

Dynegy's offshore activities will result in the loss of access to areas used for recreational fishing, boating, and diving, although the area of lost access would cover a relatively small part of Estero Bay and would occur for no more than about three months during the fall. To ensure potential recreational users of this area are adequately notified, [Special Condition 1](#) incorporates the

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<sup>8</sup> The City's LCP, which the Commission may use for guidance in this consolidated permit review, includes a similar public safety provision in Shoreline Access and Recreation Policy 1.01, which states, in relevant part:

*“For new developments adjacent to the bayfront or ocean, public access from the nearest public roadway to the shoreline and along the coast shall be provided except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources...”*

IS/MND's Measure [T-8](#) requiring Dynegy to provide adequate notice for the U.S. Coast Guard's Local Notice to Mariners. Additionally, [Special Condition 13](#) requires Dynegy to post notices of its planned activities at nearby recreational venues, including parks and the Morro Bay Harbor.

### **Conclusion**

With measures included as part of the proposed project and as conditioned to minimize adverse effects on access and recreation, the Commission finds that the project will be protective of recreation and public access to the shoreline. For the reasons above, the Commission therefore finds that the project is consistent with Sections 30210, 30214, and 30220 of the Coastal Act.

## **H. TRIBAL CULTURAL RESOURCES**

Coastal Act Section 30244 states:

*Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The project site is within what are considered two "core areas" of the proposed Chumash Heritage National Marine Sanctuary.<sup>9</sup> Core Area 6 extends along the shoreline from the Morro Bay area south to Point San Luis and contains hundreds of sites associated with the Chumash. Core Area 2 extends several miles offshore and is believed to contain Chumash villages, possible solstice alignments, and other sites that were submerged during the last several thousand years of sea level rise (about 20,000 years ago, sea levels were about three hundred feet lower than current levels). Nearby Morro Rock is considered by several tribes to be a sacred tribal cultural property.<sup>10</sup>

There have been at least four cultural resource surveys conducted within portions of the overall project site, though none identified resources within areas that will be disturbed by the proposed project activities.<sup>11</sup> However, based on a records search from the Central Coast Information Center of the California Historical Resources Information System ("CCIC-CHRIS"),<sup>12</sup> there are several known tribal cultural resources located within a quarter-mile radius of the project site,

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<sup>9</sup> "Core areas" are key land and water areas within National Marine Sanctuaries that are so vital to the functioning of the sanctuary that they must be under a sufficient level of control to ensure long-term viability. See 15 CFR 921.11(c)(3).

<sup>10</sup> See, for example, January 20, 2018 letter re: State Lands IS/MND from Wendy Giddens Teeter, PhD, Curator of Archaeology, Fowler Museum at the University of California, Los Angeles.

<sup>11</sup> The four surveys were conducted in 1977, 1991, 1999, and 2001. See Table 3.5-1 of the project's IS/MND.

<sup>12</sup> CCIC-CHRIS is an affiliate of the State Office of Historic Preservation and is located at the University of California, Santa Barbara. It is the official State repository of archaeological and historic records for San Luis Obispo and Santa Barbara counties. Records searched during the project's CEQA review include those from the State Historic Property Data Files, National Register of Historic Places, National Register of Determined Eligible Properties, California Points of Historic Interest, and the California Office of Historic Preservation Archaeological Determinations of Eligibility.

including an extant seasonal shellfish collecting and processing site and a habitation site, along with a shell mound that is believed to have been destroyed. There may also be unrecorded tribal cultural sites located in the offshore project area, though the potential for finding any during project activities is likely low, as much of this part of Estero Bay was disturbed during construction of the Morro Bay Strand during the early 1900s.

During the project's CEQA review, staff of the State Lands Commission contacted seven tribes with known or potential interest in the project area and received comments from two tribal representatives regarding the need to protect potential tribal cultural resources.<sup>13</sup> Coastal Commission staff also contacted these representatives, and based in part on the concerns expressed during these exchanges, this CDP includes two Special Conditions that are based on those included in the State Lands Commission's IS/MND and that are meant to ensure that any tribal cultural resources discovered during project activities are minimally damaged and are properly handled. [Special Condition 14](#) requires Dynegy to prepare, in consultation with tribal representatives, a monitoring plan that ensures one or more tribal monitors are on site during all project ground-disturbing activities, that ensures the tribal monitor(s) can provide guidance to project workers on identifying tribal cultural resources, and that requires implementation of a treatment plan should any tribal cultural resources be found. [Special Condition 15](#) specifies the measures that are to be included in that treatment plan, including notification procedures, temporary work stoppages as necessary to protect the resources, securing the site, and other similar requirements.

### **Conclusion**

As proposed and conditioned, the Commission finds that the project will be protective of archaeological resources and consistent with Section 30244 of the Coastal Act.

## **V. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which will substantially lessen any significant adverse effect which the activity may have on the environment.

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<sup>13</sup> The seven tribes identified by the California Native American Heritage Commission with traditional lands or cultural places within San Luis Obispo County, are listed below, with an asterisk denoting those that responded:

- Barbareno/Ventureno Band of Mission Indians
- Coastal Band of the Chumash Nation
- Northern Chumash Tribal Council\*
- Salinan Tribe of Monterey and San Luis Obispo Counties
- Santa Ynez Band of Mission Indians
- Xolon Salinan Tribe
- yak tityu tityu – Northern Chumash Tribe\*

Because the proposed project has the potential to result in significant adverse environmental impacts, the Commission has identified and adopted seventeen special conditions necessary to avoid, minimize, or mitigate these impacts. With the inclusion of these special conditions, the Commission finds that, within the meaning of the California Environmental Quality Act of 1970, there are no further feasible alternatives or feasible mitigation measures available which will substantially lessen any significant adverse effect which the proposed project may have on the environment. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA.

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## **APPENDIX A: Substantive File Documents**

File for Coastal Development Permit No. 9-18-0157

State Lands Commission, Initial Study/Mitigated Negative Declaration – Dynegy Morro Bay, LLC: Morro Bay Power Plant Marine Terminal Decommissioning Project, February 2018

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## **APPENDIX B: Applicable Mitigation Measures from the State Lands Commission’s 2018 certified *Mitigated Negative Declaration for Dynegy Morro Bay, LLC – Morro Bay Power Plant Marine Terminal Decommissioning Project.***

**AES-1: Lighting Plan (Offshore).** The Applicant shall submit to the California State Lands Commission (CSLC) a Lighting Plan, subject to CSLC review and approval prior to commencement of construction activities for the Offshore Segment. The Applicant shall prepare a Lighting Plan to specify that outdoor light intensity on the derrick barge anchored or moored overnight shall be limited to nautical lights necessary for vessel safety and that barge security shall be shielded where feasible or directed downwards.

**BIO-1: Environmental Awareness Training.** The approved biological monitor(s) shall be responsible for conducting an environmental awareness training for all Project personnel to familiarize workers with surrounding common and special-status species and their habitats, applicable regulatory requirements, and measures that must be implemented to avoid or minimize potential impacts to biological resources.

**BIO-2: Biological Survey and Monitoring.** A qualified biological monitor shall be present on site to survey the work area prior to the commencement of Project activities to minimize the potential for impacts to any sensitive species or other wildlife that may be present during Project implementation. In addition, the biological monitor shall be on site at all times during Project operations. If at any time during Project operations special-status species (including but not

limited to western snowy plovers and California least terns) are observed within the Project site, or within a predetermined radius surrounding the onshore portion of the Project site (as to be determined by the on-site biologist), all work shall be stopped or redirected to an area within the Project site that would not impact these species.

**BIO-3: Delineation of Work Limits.** Prior to the start of the Project construction, the limits of the onshore construction area shall be clearly flagged and limited to the minimum extent necessary. Natural areas outside of the construction zone shall not be disturbed. Designated equipment staging and fueling areas shall also be delineated at this time.

**BIO-4: Morro Creek.** In the event that Morro Creek is in direct contact with the ocean or flows beneath one of the pipelines, the following measures shall be implemented to avoid and minimize impacts to migrating steelhead or tidewater goby:

- A pre-construction aquatic survey shall be conducted by a USFWS-approved biologist to determine the presence or absence of steelhead and tidewater goby within Morro Creek. The survey will involve a visual survey of the stream channel both upstream and downstream of the proposed work area. If conditions allow (i.e., sufficient water depths), sein-netting surveys would also be conducted within the upstream estuarine portion of the stream channel to determine approximate abundance and distribution of special-status and native fish species in the Project vicinity.
- Sediment filter fabric or a fine-mesh screen or block net (3-millimeter [mm] mesh) will be placed between the lagoon and the pipeline at the south outlet. The screen's bottom edge will be anchored with rebar or other weights and covered with sand. Poles will support the upper part of the screen. After placing the screen, the area will be seined to remove any trapped fish, which will be placed in the lagoon. The screen should remain in place until a sandy berm is constructed to isolate the pipelines.
- The following measures shall be implemented to the extent feasible based on environmental conditions at the time of pipeline removal operations within the active stream channel of Morro Creek.
  - Heavy equipment operation within the stream channel shall be minimized to the extent feasible during Project operations. As necessary, equipment access through the stream channel shall be limited to the mouth of Morro Creek below the mean high tide line to avoid impacts to the bed and banks of the active channel.
  - Pipelines shall be cut on both sides of the active creek channel using construction methodologies congruent with those procedures proposed for nearshore abandonment to avoid or reduce potential contamination that would occur from risk of upset (e.g., covered pipe ends, containment). The shortened segment shall be covered and removed by lifting it vertically or pulling it horizontally out of the stream channel in a gradual, slow motion to minimize or avoid the short-term turbidity impacts within the stream channel.
  - In the event surface water is present within Morro Creek, the Project Stream Diversion Plan (see Appendix H) shall be implemented to avoid and minimize impacts to waters (see HWQ-1).

**BIO-5: Nesting Birds.** To the extent feasible, onshore Project activities shall be conducted during the fall months (September through October) to reduce potential impacts to nesting birds, including western snowy plover. In the event that some or all of the proposed operations need to occur during the summer months, the following conditions designed to protect special-status bird species shall be implemented.

- No more than 1 week prior to the start of the Project construction, an intensive survey of the flagged construction area shall be conducted by a qualified biologist to determine the presence or absence of active nests or foraging activities by western snowy plovers or other birds. In addition, daily pre-activity nesting bird surveys shall be conducted to identify active nests within or near the work areas. If active snowy plover nests are found, all areas within a 500-foot radius of the nesting site shall be clearly marked and avoided during construction. If active nests of other bird species are identified, a protective buffer of 200 feet (or other appropriate length as determined by a qualified biologist) shall be established around the nest. No disturbances shall occur within the protective buffer(s) until all young birds have fledged, as confirmed by the biologist.
- A qualified biological monitor shall be retained by Dynergy and shall be on site at all times during Project operations. If at any time during Project operations special-status species (including but not limited to western snowy plovers and California least terns) are observed within the Project site or within a predetermined radius surrounding the onshore portion of the Project site (as to be determined by the on-site biologist), all work shall be stopped or redirected to an area within the Project site that would not impact special-status birds.

**BIO-6: Site Restoration Plan.** Procedures identified in the Site Restoration Plan prepared for the Project shall be implemented to reduce impacts to existing vegetation and plant communities to a less than significant level.

**BIO-8: Pre- and Post-Decommissioning Seafloor Debris Survey and Debris Removal.**

Decommissioning activities shall begin and end with seafloor debris surveys. The Applicant's contractor shall perform a side-scan sonar (with 400 percent coverage) and bathymetric survey, or multi-beam sonar survey, of the underwater work area prior to the arrival of the contractor's marine equipment spread on the work area. The survey shall encompass the entire underwater worksite bordered by the contractor's planned derrick barge anchorages plus an offset of approximately 500 feet. Derrick barge anchorages shall be positioned to avoid rock outcroppings and seagrass beds. A map shall be produced by the surveyor and shall serve as the baseline for the seafloor conditions at the underwater worksite prior to the start of work.

All surveys employing low-energy geophysical equipment, including remotely operated vehicle surveys, must be conducted by an entity holding a valid geophysical survey permit under the CSLC OGPP (see [www.slc.ca.gov/Programs/OGPP.html](http://www.slc.ca.gov/Programs/OGPP.html)). Therefore, the Applicant shall obtain a valid permit prior to initiating the surveys.



**BIO-9: Marine Wildlife Contingency Plan. (MWCP).** A MWCP shall be prepared for review and approval by California State Lands Commission staff prior to the commencement of decommissioning activities. The MWCP would include, but not be limited to the following elements:

- Description of the pre-decommissioning training seminar that will be provided to educate Project personnel on identifying marine wildlife in Project area and to provide an overview of the wildlife mitigation measures to be implemented
- Qualifications, number, location, and authority of onboard Marine Wildlife Monitors (MWMs)
- Acoustic safety zone radius that will be enforced by the MWMs during dynamic pipe ramming (DPR) activities.
- Protocols on how DPR operations will be ceased if marine wildlife enter the acoustic safety zone
- Distance, speed, and direction of transiting vessels will maintain when in proximity to a marine mammal or reptile
- Discussion of how impacts associated with marine wildlife entanglement in Project vessel anchor lines will be minimized
- Observation recording procedures and reporting requirements in the event of an observed impact to marine wildlife

**BIO-10: Dynamic Pipe Ramming (DPR) Soft-Start and Ramp-Up Procedure.** A soft start shall be used during DPR to give marine mammals, sea turtles, fish, and birds an opportunity to move out of the area away from the sound source. The contractor conducting DPR operations shall begin the procedure at a reduced level and repeat the sound producing activity, gradually increasing the intensity of the operation prior to initiating normal operating levels. The duration of the ramp-up during Project operations shall be determined by a qualified marine biologist and based upon the findings of a sound source characterization study for DPR. This procedure will be used any time DPR operations are initiated.

**BIO-11: Dynamic Pipe Ramming Sound Source Characterization.** At the start of DPR operations, a marine acoustics specialist shall be retained to conduct underwater noise measurements during a trial operation of the equipment at the Project site. In coordination with National Marine Fisheries Service (NMFS), the results of the underwater noise measurements shall be used to determine exclusion and safety zone radii for marine wildlife (mammals and reptiles) during DPR operations based on NMFS's acoustic thresholds in place at the time of Project operations for permanent threshold shifts and behavioral harassment. A copy of the sound source characterization study shall be provided to California State Lands Commission and NMFS within 2 weeks of completion.

**BIO-12: Marine Wildlife Monitoring During Sound Source Characterization and Dynamic Pipe Ramming (DPR).** Qualified marine wildlife monitors (MWMs) shall be on site and present throughout sound source characterization and DPR operations. During sound source characterization, the initial exclusion zone will be 1,000 meters. The final exclusion and safety zones to be implemented during DPR will be modified as necessary based on results from the sound source characterization and will reflect the permanent hearing threshold shifts, temporary

hearing threshold shifts, and behavioral harassment thresholds in place at the time of Project operations. Once the marine wildlife exclusion and safety zone radii have been determined, MWMs shall be located such that he or she has a clear view of the marine waters within the safety zone and beyond. The MWMs shall indicate that a designated exclusion and safety zone is clear of marine wildlife (mammals and reptiles) prior to the start of DPR operations and shall have the authority to stop DPR operations if marine wildlife is observed at any time within the exclusion zone.

**BIO-13: Dive Surveys.** At least 1 month prior to the initiation of decommissioning activities, a dive survey shall be conducted at proposed anchor locations to ensure that avoidance of sensitive species and hard bottom habitat areas is achieved and to determine the presence or absence of the invasive algae (*Caulerpa taxifolia*) and seagrasses. The results of the pre-activity dive survey shall be documented in a report for distribution to the appropriate regulatory agencies. If sensitive seagrass species are identified, anchor locations will be relocated to avoid impacts to these protected habitats and post-decommissioning surveys would be conducted to verify seagrass beds had not been impacted by Project-related activities.

**BIO-14: Prevent Introduction of Non-Native Aquatic Species (NAS).** All Project vessels will: (1) originate from Morro Bay Harbor, San Francisco Bay area harbors, or Port of Long Beach/Los Angeles area; (2) be continuously based out of Morro Bay Harbor, San Francisco Bay area harbors, or Port of Long Beach/Los Angeles area since last dry docking; or (3) have underwater surfaces cleaned before entering California waters at vessel origination point and immediately prior to transiting to the Project site. Additionally, and regardless of vessel size, ballast water for all Project vessels must be managed consistent with CSLC ballast management regulations, and Biofouling Removal and Hull Husbandry Reporting forms shall be submitted to CSLC staff. Project vessels shall also be available for inspection by CSLC staff for compliance. Further, as part of the Project kickoff meeting, a qualified marine biologist, approved by CSLC staff, will provide information to all Project personnel about the spread of NAS in California waters and the programs that will be implemented to minimize this hazard.

**HAZ-1: Contaminated Materials Management Plan.** The Contaminated Materials Management Plan shall be submitted to the County of San Luis Obispo County Environmental Health Services Department (SLOEHS) for review and approval prior to the initiation of construction activities. The Contaminated Materials Management Plan shall be used if contaminated materials are encountered during the course of the Project. The plan shall identify the actions and notifications to occur if evidence of soil contamination is encountered during onshore excavation. Action and notification steps will include, at a minimum, sampling and analysis by a qualified environmental consultant and State-certified analytical laboratory to confirm the nature and extent of contamination. The Applicant shall notify SLOEHS within 24 hours of discovery of contaminated materials encountered during the course of Project construction activities.

**HAZ-2: Hydrocarbon Contaminated Soil.** Should hydrocarbon contaminated soil be encountered during construction activities, the Air Pollution Control District must be notified as soon as possible and no later than 48 hours after affected material is discovered to determine if an Air Pollution Control District 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 other TPH-non-permeable barrier such as plastic tarp. No headspace shall be allowed where vapors could accumulate.
- Covered piles shall be designed in 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 Air Pollution Control District's construction phase thresholds.
- During soil excavation, odors shall not be evident to such a degree as to cause a public nuisance.
- Clean soil must be segregated from contaminated soil.

**HAZ-3: Oil Spill Response Plan.** The Applicant shall ensure the Oil Spill Response Plan for the Project will be activated in the event of a release of oil or contaminants during pipeline removal activities.

**HAZ-4: Hazardous Materials Management and Contingency Plan.** The Applicant shall develop and implement hazardous materials management and contingency plan measures for onshore operations. The measures shall be provided to the California State Lands Commission (CSLC) staff prior to Project implementation, and subject to CSLC review and approval. Measures shall include, but not be limited to, identification of appropriate fueling and maintenance areas for equipment, daily equipment inspection schedule, a spill response plan, and spill response supplies to be maintained onsite.

**HAZ-5: Asbestos Work Plan.** The Applicant shall retain a certified asbestos consultant to prepare an Asbestos Work Plan for the Project. The Asbestos Work Plan shall be used if asbestos containing material requires disposal during the course of the Project. The Asbestos Work Plan shall be submitted to the San Luis Obispo County Air Pollution Control District for review and approval as part of a National Emissions Standard for Hazardous Air Pollutants Asbestos Demolition Notification at least 10 working days prior to start of removal of asbestos-containing materials.

**T-3: Traffic Safety Plan.** Prior to commencement of onshore construction activities, a Traffic Safety Plan shall be submitted to the California State Lands Commission and City of Morro Bay Recreation Services Department for review and approval. It shall include measures, such as appropriate signage, traffic cones, and flaggers to reduce potential hazards to motorists and workers during construction.

**T-8: Publication of U.S. Coast Guard (USCG) Local Notice to Mariners.** The Applicant shall ensure that its contractor submits to the USCG District 11

(<https://www.navcen.uscg.gov/?pageName=InmDistrict&region=11>) a request to publish a Local Notice to Mariners, 14 days prior to operation, that includes the following information:

- Type of operation (i.e., dredging, diving operations, construction)
- Location of operation including Latitude and Longitude and geographical position if applicable
- Duration of operation including start and completion dates (if these dates change, the Coast Guard needs to be notified)
- Vessels involved in the operation
- VHF-FM Radio Frequencies monitored by vessels on scene
- Point of Contact and 24-hour phone number
- Chart Number for area of operation