

MINUTE ITEM

This Calendar Item No. C26 was approved as Minute Item No. 26 by the California State Lands Commission by a vote of 3 to 0 at its 02/02/04 meeting.

MINUTE ITEM
C26

02/02/04
PRC 1390 WP 1390.1
J. SMITH

DUKE ENERGY MORRO BAY LLC
(APPLICANT)

Calendar Item 26: The Commission was asked to approve a five-year lease for a Duke Energy pipeline. The lease was approved by unanimous vote but amended to reflect: 1) shorten the proposed lease from five years to two years, 2) require that the environmental review necessary for removal or determination by the Commission as to what to do with the physical improvements would be completed -- begun and completed in time so that it would be available at the end of the two-year lease, and 3) that should any reuse of the pipeline be proposed by Duke, such as for a fiber-optic cable, that the Commission charge market-rate rent for use of those facilities, charge Duke that much.

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02/02/04
PRC 1390 WP 1390.1
J. Smith

GENERAL LEASE - INDUSTRIAL USE

LESSEE:

Duke Energy Morro Bay, LLC
1290 Embarcadero Road
Morro Bay, California 93442

AREA, LAND TYPE, AND LOCATION:

5.23 acres, more or less, of sovereign lands in the Pacific Ocean, Estero Bay,
San Luis Obispo County.

AUTHORIZED USE:

Continued maintenance of existing offshore marine terminal facilities in caretaker
status.

LEASE TERM:

Five years, beginning May 26, 2003.

CONSIDERATION:

\$14,570 per year.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in the amount of \$1,000,000 per occurrence for bodily
injury and \$5,000,000 for property damage.

Bond:

\$100,000

OTHER PERTINENT INFORMATION:

1. Lessee owns or has the right to use the uplands adjoining the lease
premises.
2. The original 49-year lease (Lease PRC 1390.1) for the offshore marine
terminal facilities was issued to Pacific Gas & Electric Company (PG&E)

CALENDAR ITEM NO. C26 (CONT'D)

and began on May 26, 1954. The marine terminal facilities were constructed to transfer fuel oil from vessels to onshore tanks, for storage and use at the Morro Bay Power Plant. The offshore marine terminal and a portion of the pipelines extending from the terminal are located on ungranted sovereign lands under the Commission's jurisdiction. The pipelines continue across sovereign lands that have been legislatively granted to the city of Morro Bay, pursuant to Chapter 1076, Statutes of 1947.

In the early 1990s, the power plant was converted to natural gas fuel. Some of the facilities appurtenant to the marine terminal were removed, the pipelines were cleaned, and the marine terminal was officially placed in caretaker status, which status remains today.

In 1998, the Commission authorized the assignment of Lease PRC 1390.1 from PG&E to the Lessee, in conjunction with their acquisition of the Morro Bay Power Plant.

The marine terminal is subject to annual inspection by staff of the Commission's Marine Facilities Division. Based on the most recent inspection that occurred on April 9, 2003, Commission staff is satisfied with its current condition.

The original 49-year lease expired on May 25, 2003, and is presently in holdover status. The Lessee has submitted an application to the Commission for a five-year lease to continue to maintain the remaining marine terminal facilities in caretaker status. The primary purpose of the short-term lease is to allow the Lessee a period of time to evaluate options for the remaining facilities and develop a plan for its ultimate disposition. There is no restriction on public use of the water area over which the facilities reside.

The power plant's oil tanks have been cleaned and are in the process of being demolished. The Lessee has no plans to restore fuel oil capabilities at the power plant or the marine terminal. Should the Lessee wish to reactivate the marine terminal, an application would have to be submitted to Commission staff and such application would be subject to compliance with the California Environment Quality Act and formal authorization by the Commission.

CALENDAR ITEM NO. C26 (CONT'D)

The Lessee is currently negotiating an agreement with the city of Morro Bay, which would include a new lease for the cooling water outfall system and the oil pipelines that are within the City's jurisdiction. The cooling water outfall system is located entirely on granted sovereign lands, and, as such, is not a component of the application being considered by the Commission.

The Lessee is currently seeking a license from the California Energy Commission (CEC) to construct a new combined-cycle natural gas-fired plant. The new plant, if approved, would be located northwest of the existing plant and would continue to utilize the existing intake/discharge lines that are located on granted sovereign lands. The CEC's Proposed Decision, which was released on April 30, 2003, recommends certification of the new plant. A final decision from the CEC is expected in the first half of 2004.

3. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905(a)(2).

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300 and Title 2, California Code of Regulations, section 2905.

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Location and Site Map
- B. Land Description

PERMIT STREAMLINING ACT DEADLINE:

N/A

CALENDAR ITEM NO. C26 (CONT'D)

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (a)(2).

SIGNIFICANT LANDS INVENTORY FINDING:

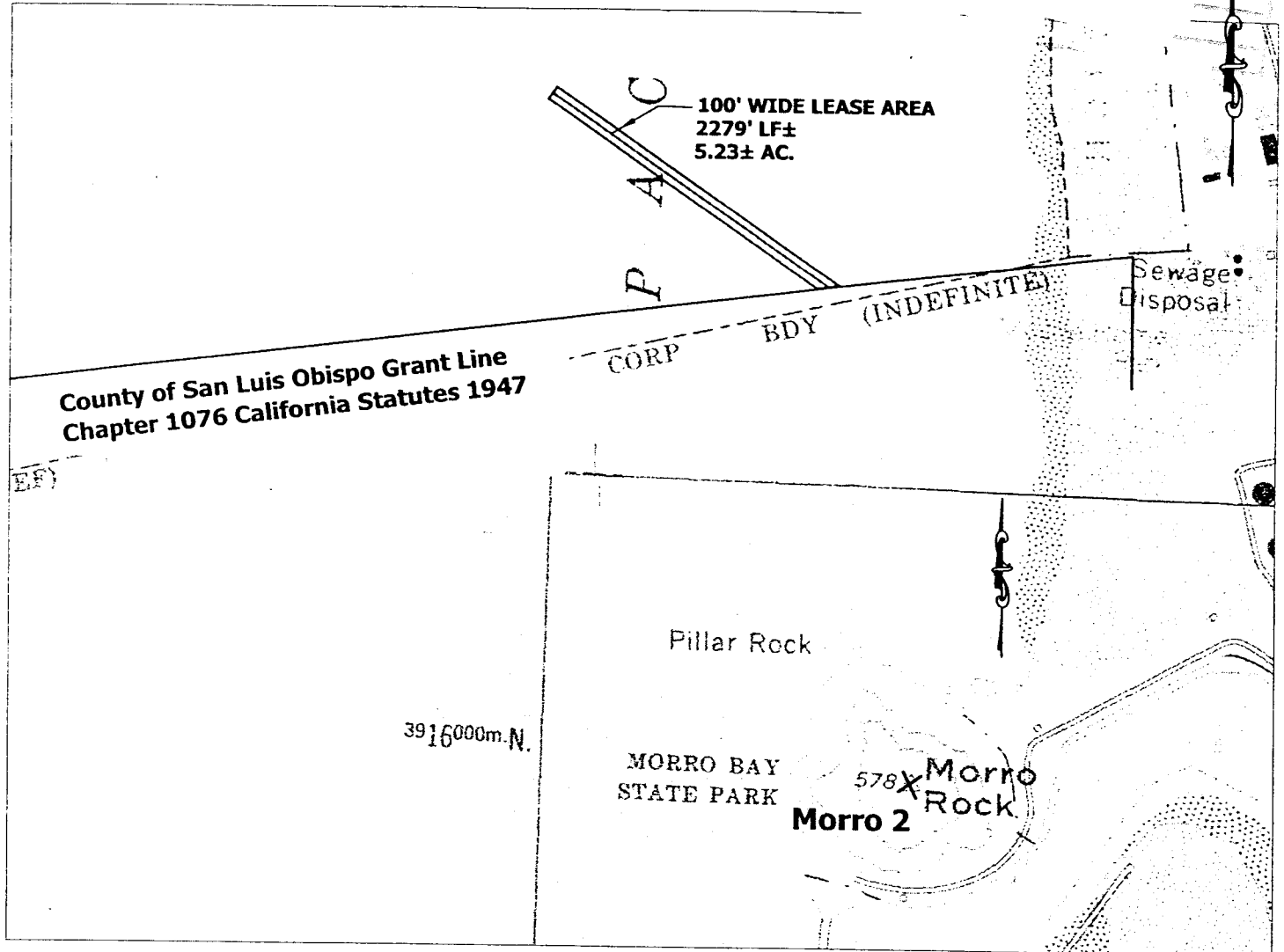
FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

AUTHORIZE ISSUANCE TO DUKE ENERGY MORRO BAY, LLC OF A GENERAL LEASE - INDUSTRIAL USE, BEGINNING MAY 26, 2003, FOR A TERM OF FIVE YEARS, FOR CONTINUED MAINTENANCE OF THE OFFSHORE MARINE TERMINAL FACILITIES IN CARETAKER STATUS, ON THE LAND DESCRIBED ON EXHIBIT B ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; ANNUAL RENT IN THE AMOUNT OF \$14,570; SURETY BOND IN THE AMOUNT OF \$100,000; LIABILITY INSURANCE IN THE AMOUNT OF \$1,000,000 PER OCCURRENCE FOR BODILY INJURY AND \$5,000,000 FOR PROPERTY DAMAGE.

NO SCALE

SITE



DUKE ENERGY MORRO BAY LLC

NO SCALE

LOCATION

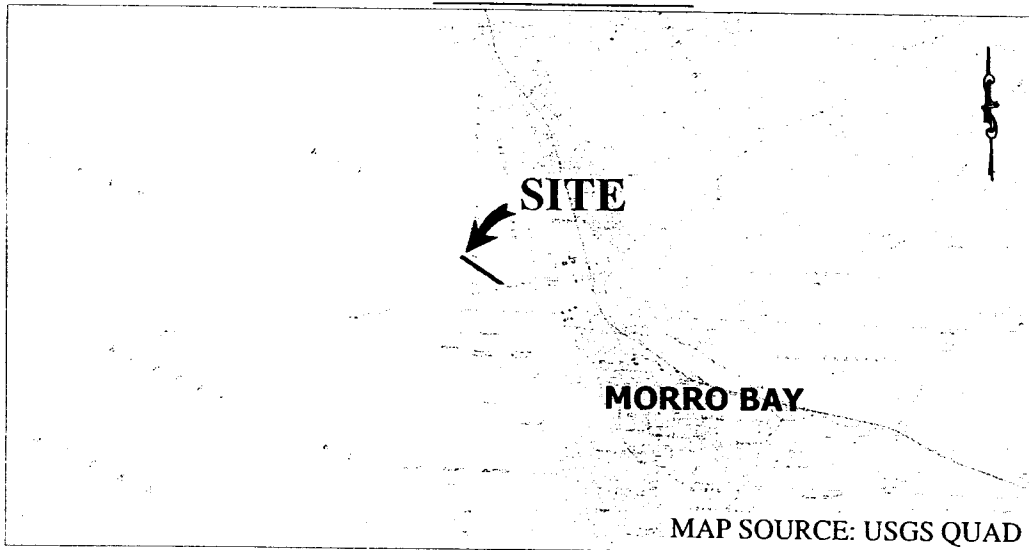


Exhibit A

WP 1390
 Duke Energy Morro Bay LLC
 INDUSTRIAL USE
 ESTERO BAY
 SAN LUIS OBISPO CO.



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

EXHIBIT "B"

LAND DESCRIPTION

A strip of submerged land 100 feet wide, in the bed of Estero Bay, County of San Luis Obispo, California, said strip laying 50 feet on each side of the following described centerline:

BEGINNING at a point from which the U.S.C. & G.S. triangulation station "Morro 2", having California Coordinate System 1927, Zone 5 coordinates of X=1,145,458.88 and Y= 692,530.27, bears South 27°44'05" East, 5272.99 feet; thence South 55°42'58" East, 2279.37 feet to a point in the northerly boundary line of the Grant to the County of San Luis Obispo as described in Chapter 1076, California Statutes 1947, amended by Statutes 1957 Chapter 1874, and as shown on the map recorded in Book 1 of Misc. Maps at page 2, San Luis Obispo County Records; the side lines of said strip of land shall be lengthened or shortened at the southeasterly termini thereof so as to terminate in said northerly boundary line.

END OF DESCRIPTION

