

CALIFORNIA COASTAL COMMISSION

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Susan Stachan
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Subject: Draft Environmental Impact Report for the Phillips 66 Santa Maria Refinery Demolition and Remediation Project (C-DRC2022-0048)

Dear Ms. Stachan:

California Coastal Commission (Commission) staff has reviewed the Draft Environmental Impact Report (DEIR) for the Phillips 66 Santa Maria Refinery (SMR) Demolition and Remediation Project (C-DRC2022-0048) dated March 2024. We appreciate the opportunity to provide the following comments for your consideration. The project proposes to demolish above ground infrastructure at the SMR and remediate the site to industrial standards, consistent with the site's Industrial land use designation per both the General Plan and the Local Coastal Program (LCP).

Jurisdiction and Permitting

As the project is further defined, it will be critical to identify all applicable jurisdiction and permitting pathways for Coastal Act and/or LCP consistency as applicable, including which agency has lead jurisdiction (i.e., the Commission or the County) and what is the appropriate standard of review for the proposed action (i.e., Federal Consistency¹, Coastal Act, or LCP), as well as any appellate oversight. Section 2.8 of the DEIR identifies some of the regulatory permits, approvals, and reviews that are anticipated for the project. However, there is no identification or discussion of possible Commission review of the project. Commission staff would note that previous projects associated with the SMR have been reviewed by the Commission through its Coastal Development Permit (CDP) authority (e.g., CDP 9-16-0464), Federal Consistency authority, or when a County CDP is appealed to the Commission (e.g., A-3-SLO-13-014). Specifying the appropriate Commission review is important as it affects the regulatory standard of review and applicable provisions governing cleanup and development of the site.

¹ <https://www.coastal.ca.gov/fedcd/fedcndx.html>

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Project Alternatives

The DEIR relies on the General Plan's Conservation and Open Space Element (namely Policy Air Quality 3.3) to support its decision that the proposed project is the environmentally superior alternative. That policy requires a project to avoid a net increase in criteria air pollutant emissions in planning areas designated as Level of Severity II or III for Air Quality by the County's Resource Management System (RMS). As discussed in the DEIR, since the Nipomo Mesa is classified as Level of Severity III, any net increase of fugitive dust on the Nipomo Mesa is not allowed under this General Plan policy. The DEIR goes on to state that most of the alternatives would increase the level of PM or duration of PM, and that the proposed project has the lowest severity associated with PM impacts, but that none of the alternatives would eliminate or reduce the severity of impacts related to the creation of fugitive dust on the Nipomo Mesa. We have some serious concerns and questions regarding this conclusion.

The DEIR does not appear to provide the fugitive dust totals associated with any of the other project alternatives, nor does it provide any discussion regarding how significantly the fugitive dust emissions of the alternatives exceed the emissions of the proposed project, either in terms of total volume or over time. Additionally, we question why one singular policy is the arbiter for decision making, rather than a more holistic analysis of all General Plan and LCP provisions governing new development to determine the environmentally superior alternative. When viewed in this light, we do not understand why full site cleanup and restoration is not the identified environmentally superior alternative, including because it would seemingly reduce air pollution, promote the health of adjacent sensitive biological communities, and provide a foundation for a broad range of potential future Coastal Act and LCP-priority land uses (e.g., public access and recreation, visitor-serving development, etc.) at the site better than any other alternative, particularly when compared with one that presumes the site will remain a low-LCP priority general industrial use. In sum, the EIR needs to be modified to provide a much more thorough evaluation of all alternatives and fully explain how and why each alternative does and does not meet the Coastal Act/LCP as a whole. This information is critical to ensure that decision makers and the public are best informed about the range of possible alternatives at this critically important site.

Preliminary Policy Consistency Analysis

Section 4.11, Land Use and Planning, includes Table 4.11.3 which lists the relevant policies of the County's planning documents and provides a preliminary consistency determination of the proposed project with respect to those policies. Table 4.11.3 identifies several of the applicable policies of Chapter 3 of the Coastal Act, including Sections 30232, 30253, 30260, and 30263, but does not include any reference or discussion of other applicable Chapter 3 policies, including those related to public access and recreation (Sections 30210 through 30224) and to the protection and enhancement of environmentally sensitive habitat areas (ESHA) in Section 30240. We find this a bit puzzling, including as these seminal policies guide new development at this site. The DEIR must identify and evaluate consistency with all of the applicable Chapter 3 policies, and identify impacts, issues, and potential project mitigations/alternatives to ensure such consistency.

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Access and Recreation

In Section 4.14, the DEIR discusses a land use permit previously issued for the Phillips 66 Throughput Increase Project from 2013 which included a condition requiring an Offer to Dedicate (OTD) for vertical access from State Route 1 to the Phillips 66 western property line. That requirement was imposed to comply with the coastal access provisions of Section 23.04.20.d.1.ii, which requires an accessway to be provided for each mile of frontage for development in rural areas where a site has more than one mile of coastal frontage. The DEIR goes on to state that the OTD was recorded in April 2015 and is valid for 21 years, and that the OTD will expire in 2036 unless the Applicant or its successor-in-interest meet all of the condition requirements to construct the coastal access by April 2036.

Later in the analysis of access and recreation, the DEIR applies Section 23.04.420 differently than in the County's approval of the 2013 project, finding that since the Phillips 66 property does not include any shoreline area and does not currently prevent or impede public access to the coast, there is not a sufficient nexus or rough proportionality for requiring construction of a vertical access trail. This finding is based, in part, on previous studies, and the County's analysis in the DEIR, which analyzed the difficulties associated with constructing a vertical access trail within the confines of the recorded OTD. The DEIR states that staff would later address this policy requirement by requiring a future owner of the site to extend the duration of the OTD in perpetuity.

The OTD has an irrevocable term of 21 years. After the passage of the 21 years, the OTD can still be accepted, unless the property owner files to revoke the OTD. So, the OTD would not expire in 2036, rather, it would become revocable at that point, and the findings of the DEIR should be updated to reflect the terms of the OTD. Also, recordation of the OTD was required as a County condition of approval for the 2013 throughput increase project. Decommissioning of the SMR is a completely different project from that 2013 approval. As such, the OTD that was recorded pursuant to the throughput increase project should not serve as mitigation for the proposed project.

The analysis in the DEIR concerning the constraints associated with construction of the trail are outdated and narrow in scope. A significant amount of the discussion regarding feasibility of constructing the trail is focused on the Oceano Dunes State Vehicular Recreation Area (ODSVRA) and building the potential future trail to accommodate associated Off-Highway Vehicle (OHV) uses and vehicle access. However, the OSDVRA should not dictate the parameters for construction of the trail, including as access and recreation amenities there are being reimagined. In fact, the project site would appear to serve as a way to increase public access by better connecting it with State Parks' lands, and we recommend the DEIR explore these potential connections and access enhancements. We also recommend the DEIR analyze less impactful trail designs, including comprehensive pedestrian and/or bicyclist trails that allow connections to adjacent uses, that could be developed and managed consistent with the topography and ESHA on the property. Additionally, the potential difficulties of obtaining Union Pacific Railroad (UPRR) consent and California Public Utilities Commission

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(CPUC) approval of a railroad crossing should not deter any reasonable analysis of trail opportunities at the site. Nor should the difficulties of obtaining UPRR consent preclude the DEIR from exploring what it would take to put together an application for authorization of an at grade crossing for the public.

In sum, the site's location between the sea and first public road make consistency with the Coastal Act's public access and recreation requirements all the more germane, and the DEIR needs to evaluate project components for consistency with these requirements. And to be clear, these requirements require such access not just to be provided or encouraged, but to be maximized. The DEIR appears lacking in terms of a thorough visioning of the site and how it can best house a host of access offerings for the general public. The DEIR should explore other opportunities to develop access at the site, including as mitigation for adverse impacts from the project, and in terms of how future uses of the site may connect with other protected public lands in the area. For example, the project could be required to develop a plan and designs for construction of a future vertical access trail. This approach could result in a vertical access trail design that would be "shovel ready" for a future owner and developer of the site to implement.

Environmentally Sensitive Habitat Areas (ESHA) and Wetlands

We appreciate the attention given to mapping ESHA and special-status species at the project site. The LCP's Coastal Plan Policy document incorporates the ESHA protection policy of the Coastal Act, Section 30240, which requires only uses dependent on ESHA are allowed within ESHA. Thus, for development to occur in ESHA, that development must be a resource-dependent use of the ESHA. In the past, and dependent on site-specific facts related to the project, the Commission has considered restoration of ESHA to be a resource-dependent use of the ESHA. The project description should detail how the proposed development qualifies as a resource-dependent use within ESHA. Section 2.5.12 mentions reseeded, but this should also be accompanied by other typical restoration requirements such as monitoring for performance standards. Certain remediation actions listed, such as soil grading, would not necessarily qualify as restoration if not paired with other restoration actions.

Given that 67.4 acres of ESHA has been identified on-site, and potentially 26.5 acres may be disturbed, a future habitat restoration and revegetation plan (BIO.1-3) should identify compensatory mitigation for impacts to wetlands, ESHA, and associated buffers, including restoration areas for mitigation ratios >1:1. Mitigation ratios >1:1 are often used for impacts that include major vegetation removal. Section 4.4.1.3 states WL-1 and WL-2 did not rise to the classification of a wetland. Further elaboration of the status of these sites and lack of hydrology or wetland vegetation should be reported. It should also be noted that if coke continues to be exported offsite, and former coke pile areas become vegetated or exhibit dune-like characteristics, they could be considered ESHA in the future. Again, however, we repeat the need for the EIR to evaluate a full cleanup and restoration option, including because it would appear that such an option would be most Coastal Act and LCP consistent with respect to the protection of ESHA. Such an

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option would also appear most consistent with the public access and recreation provisions of the Coastal Act as well, including as low-intensity and well managed public access go hand in hand with sensitive habitat protection.

Hazards and Hazardous Materials

Section 4.9.5 describes the environmental impacts resulting from spills of contaminated soils by rail and truck as less than significant because soils are not fluids and would generally be controlled within the specific accident site. However, this description does not take into account the possibility of a spill occurring within an area defined as an ESHA. Similar to accidental releases from equipment, we believe that impacts from transportation accidents involving contaminated soils are better described as potentially significant.

We appreciate the consideration of our previous comments with respect to oil/hazardous material spill response planning and want to recognize the inclusion of Mitigation Measure HAZ.2-1 in the DEIR. As described, a Spill Contingency Plan that demonstrates that effective prevention, protection, containment, and clean-up equipment and procedures will be in place during the project to protect coastal resources in the event of such spills.

Thank you for your consideration of these preliminary comments. We look forward to working with the County and applicant to restore and reclaim this important coastal site.

Sincerely,

Devon Jackson
Central Coast District Planner
California Coastal Commission