

**9.0 DEIR Comments and Responses**

This Draft Environmental Impact Report (EIR) was prepared by the County of San Luis Obispo Department of Planning and Building, Decommissioning Division (County) staff, with assistance from MRS Environmental, Inc. (MRS) under contract to the County. Comments letters received on the Draft EIR were assigned comment identifiers (indicated in the margins) and are addressed below. Table 9.1 lists the comments and their respective comment codes

**Table 9.1 List of Draft EIR Commentors**

<b>Commentor Code</b>	<b>Commentor</b>
<i><b>Agencies</b></i>	
CCC	California Coastal Commission
CDFW	California Department of Fish and Wildlife
Caltrans	California Department of Transportation
CSP	California State Parks
CCRWQCB	Central Coast Regional Water Quality Control Board
APCD	San Luis Obispo Air Pollution Control District
SBCAPCD	Santa Barbara County Air Pollution Control District
<i><b>Organizations</b></i>	
CBD	Friends of Oso Flaco/California Center for Biological Diversity
TNC	The Nature Conservancy
REACH	Reach Central Coast
SC	Sierra Club
SURF	Surfrider
<i><b>Individuals</b></i>	
Wyatt	Commissioner Wyatt
JE	Jeff Edwards

**9.1 Agencies**

Comments letters received from agencies are listed below, along with the respective responses to the comments immediately following.

## 9.0 DEIR Comments and Responses

---

### 9.1.1 California Coastal Commission

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877  
WEB: WWW.COASTAL.CA.GOV

**May 6, 2024**

Susan Stachan  
Nuclear Power Plant Decommissioning Manager  
County of San Luis Obispo Department of Planning and Building  
976 Osos Street, Room 300  
San Luis Obispo, CA 93408  
P66refinery@co.slo.ca.gov

**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 Consistency<sup>1</sup>, 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.

CCC-1

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

**Phillips 66 Santa Maria Refinery Demolition and Remediation Project  
(C-DRC2022-0048)**

**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.

CCC-2

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.

CCC-3

**Phillips 66 Santa Maria Refinery Demolition and Remediation Project  
(C-DRC2022-0048)**

**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.

CCC-4

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

CCC-5

**Phillips 66 Santa Maria Refinery Demolition and Remediation Project  
(C-DRC2022-0048)**

(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.

CCC-5  
(cont.)

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.

CCC-6

**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.

CCC-7

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 projection of ESHA. Such an

CCC-8

**Phillips 66 Santa Maria Refinery Demolition and Remediation Project  
(C-DRC2022-0048)**

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.

CCC-8  
(cont.)

**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.

CCC-9

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

Responses

Code	Response
CCC-1	<p>The Coastal Commission has certified the San Luis Obispo County land use plans and accompanying ordinances including Title 23, which transferred to the County the authority to issue coastal development permits (CDPs) for projects within the coastal zone. After transfer of permit authority to the County, certain actions taken by the County in implementing the Local Coastal Plan remain appealable to the Coastal Commission pursuant to Section 30603 of the Coastal Act. Likewise, the Coastal Commission retains authority over certain areas such as tidelands, other areas below the mean high tide line, and specific areas where the Coastal Commission has retained jurisdiction.</p> <p>The Project is located within the area of the coastal zone that is under the jurisdiction of the County’s Local Coastal Plan. None of the Project is in areas that are within the Coastal Commission’s retained jurisdiction.</p> <p>As discussed in the Chapter 2.0, Project Description, the Applicant has applied to the County for a Development Plan (DP) and Coastal Development Permit (CDP). Any person can appeal a Board of Supervisors decision on a CDP to the California Coastal Commission pursuant to Section 30603 of the Coastal Act. The Coastal Commission can also be the party that appeals the decision. The Coastal Commission has been added as a regulatory agency to Table 2.15 in the Draft EIR, indicating a potential for review and action on the DP/CDP if appealed from the Board of Supervisors.</p>
CCC-2	<p>Section 15126.6 of the CEQA Guidelines states that an EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives. The focus of the analysis in the EIR is not a singular policy, but that under CEQA, the focus of the alternatives analysis is to avoid or substantially lessen any significant and unavoidable effects.</p> <p>For the Project, the only significant and unavoidable effect that was identified was associated with the General Plan’s Conservation and Open Space Element, Policy Air Quality 3.3 that 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 Section 4.3, Air Quality, the Nipomo Mesa has ongoing serious air quality issues related to particulate matter emissions (PM<sub>10</sub> and PM<sub>2.5</sub>). The most recent County Resource Management Report has classified particulate matter emissions on the Nipomo Mesa as Severity III. Therefore, the focus in selecting the environmentally preferable alternative</p>



**9.0 DEIR Comments and Responses**

<b>Code</b>	<b>Response</b>
	<p>was to minimize to the extent feasible the significant and unavoidable impact associated with particulate matter.</p> <p>The Project and all the alternatives (except the No Project Alternative) would generate temporary increases in particulate matter emissions. These emissions would occur during the period of construction activities. As discussed in Section 5.2, Environmental Analysis of Selected Alternatives, the peak day and peak quarterly particulate matter emissions would be the same as the Project for most of the alternatives (Full Removal Alternative, Removal of Offshore Facilities Alternative, Additional Remediation Alternative). This is driven by the fact that similar levels of activities would occur for the peak day and peak quarter for the alternatives. However, for many of the alternatives (Full Removal Alternative, Removal of Offshore Facilities Alternative, Additional Remediation Alternative, and Conservative Removal Alternative), the total duration of the construction activities would be longer than the Project which would increase the total particulate matter emissions. This would result in a longer period of exposure to increased particulate matter emissions on the Nipomo Mesa, thereby increasing the overall severity of the identified significant and unavoidable impact. In addition, an alternative that requires “full site cleanup and restoration” would likewise increase other impacts due to greater construction activities. The suggestion that an alternative that requires “full site cleanup and restoration” equates to the environmentally superior alternative ignores these additional impacts and inappropriately elevates the future condition setting over the actual environmental impacts associated with that alternative.</p> <p>CEQA does not require each alternative to be evaluated in every aspect if it is evident that the alternative would create greater impacts or fails to meet Project objectives.</p> <p>The text in Section 5.2 has been expanded to include more discussion on the level and duration of particulate matter emission for each of the relevant alternatives.</p>
CCC-3	<p>The section of Table 4.11.3 that includes direct reference to various Coastal Act Policies is addressing policies that are discussed as part of the County Coastal Plan Policies, which is part of the County’s Local Coastal Program and Land Use Element. This section of the policy consistency analysis has been expanded to address additional Coastal Act policies from Chapter 3.0 that are applicable to the Project. These include applicable policies covering public access, recreation, and environmentally sensitive habitat.</p> <p>Many of the policies discussed in the County Coastal Plan Policies document are also addressed as part of the various elements of the County’s General Plan in the consistency analysis.</p>

Code	Response
	<p>Several of the recreational policies listed in the comment letter would not be applicable to the Project since they deal with oceanfront land and recreational boating use.</p>
CCC-4	<p>The core of this comment is that the County applied Section 23.04.420 differently in the Throughput Increase Project than in this Demolition and Remediation Project DEIR, and that the two projects are “completely different”. The “difference” lies not in interpretation of the ordinance, but rather, in perceived differences between the two projects and their impacts under CEQA.</p> <p>The Throughput Increase Project (DRC2008-00146) submitted June 2009 authorized a 10% higher production output with virtually no construction or physical modifications to the site. On approval, the design capacity of the existing facility and equipment (with the exception of some air quality control modifications) remained the same while the pipeline conveyance of incoming crude and outgoing semi-refined project was increased. New truck trips for the small increase to by-products (sulfur and coke) was a minor 9.5% increase in trips over existing operations. The Project’s approval by the Board of Supervisors on February 26, 2013, resulted in no site changes; therefore, the Project did not generate a nexus for full design and construction of vertical public access. Instead, this project was required to provide an Offer to Dedicate (OTD) for a 10-foot-wide easement (10 feet is the minimum width required) as specified in Conditions 17 of the Throughput Increase Coastal Development Permit. The Coastal Commission found “no substantial issue” of the County’s approval on 9/11/2013.</p> <p>Phillips 66 moved forward with some limited condition compliance on the Throughput Increase permit prior to receiving a notice to proceed from the County. This included a requirement for recording an OTD an access easement in two segments: one segment runs from the first public road to the eastern side of railroad tracks owned and operated by Union Pacific, and the second segment runs from the western side of the railroad tracks to the western property line. On March 25, 2015, the Coastal Commission in a letter to the County approved an OTD an easement in the two segments as subsequently recorded by Phillips 66 on April 2, 2015. Currently no entity has accepted the OTD.</p> <p>Both the County and the Coastal Commission has found that Phillips 66 has met the requirements of Condition 17 of CDP DCR 2008-00146, as detailed in the Coastal Commission staff report for the Phillips 66 Remediation Project (A-3-SLO-21-0017), dated 2/19/2021. The staff report states, “<i>the Applicant is in compliance with the OTD condition, and there is no violation requiring resolution under CZLUO Section 23.01.034(c).</i>”</p>

**9.0 DEIR Comments and Responses**

Code	Response
	<p>On January 15, 2021, Phillips formally notified the County that it was abandoning and discontinuing the Throughput Increase Permit. This ended the requirement for implementation of deferred or ongoing permit conditions associated with the Throughput Increase Permit (CZLUO Section 23.02.052(a)3). Abandonment of this permit did not affect the OTD since it has already been recorded prior to abandonment of the permit.</p> <p>The Rail Spur Project (DRC2012-00095) was initially submitted to the County in April 2013 and proposed significant modifications to the SMR facilities along with increased rail activity. This Project included construction of several miles of on-site parallel rail spur track to enable three to five additional 80-car trains per week to deliver heavy crude, and an unloading facility, pipelines and other on-site improvements. The FEIR for the Rail Spur project included Section 9.0 Vertical Coastal Access, which expanded on the Arcadis coastal access study to analyze various access alternatives. The analysis evaluated the environmental impacts associated with docent-led access, bicycle/pedestrian access, and motor vehicle access as if it was a project subject to CEQA. The analysis found that docent-led access was the preferred option. The Rail Spur Project was denied by the Board of Supervisors in March 2017, and the FEIR was not certified, and as such there was no requirement to construct any coastal access improvements that would have been needed for docent-led access.</p> <p>The Phillips 66 Remediation Project (“2021 Remediation Project”) (A-3-SLO-21-0017) involved removal of contaminated soil, transportation of the material via truck and rail for off-site disposal, and revegetation and restoration of the affected area. The project did not involve any permanent development or improvements. No coastal access was required, and the 2021 Remediation Project was also found consistent with required County LCP provisions covering coastal access at the Project site.</p> <p>Regarding the current application, the proposed Phillips 66 SMR Demolition and Remediation Project would result in removal of most of the existing aboveground site facilities, remediation of the site and removal of belowground debris only where the soil is impacted by contamination. The Project does not include any new permanent development or improvements. The County has determined that the Project’s proposed removal of aboveground structures and retaining hardscape surfaces and features such as pavement, base and concrete, rail spurs, perimeter fencing, substation, and other items as described is consistent with the Industrial land use and with the Project’s goals, including maintaining site viability for a future use. Site Remediation, as applicable, would be required with any of the alternatives. The focused, “surgical” cleanup approach proposed is the least environmentally impactful method for remediation as it minimizes the earthwork and replaces existing surface cover in-kind to maintain and</p>

Code	Response
	<p>preserve the site for future development. The Applicant is not proposing, nor is the County approving, a subsequent use. Rather, the site would be made ready for a subsequent use that is consistent with the Industrial land use designation. Alternatively, the site could be rezoned in the future by a subsequent owner or the County.</p> <p>The Project would reduce site activity, employees and other growth-inducing factors to a fraction of the operational facility, and in the long term would eliminate most of the current environmental impacts associated with the operation of the refinery. Therefore, in this case, there is no nexus under CEQA to require additional coastal access, and given this, the existing OTD is not serving as mitigation for the Project. Coastal access such as that required by LCP Section 23.04.420, can only be required if 1) there is also a reasonable nexus (i.e., that the project leads to a public access impact requiring mitigation), and; 2) any required access mitigation is roughly proportional to the impact being mitigated (see e.g. <i>Nollan v. California Coastal Commission</i> (1987) 483 U.S. 825; <i>Dolan v. City of Tigard</i> (1994) 512 U.S. 374).</p> <p>The CCC’s comment letter states that “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.”</p> <p>This comment is in reference to DEIR Impacts LUP.4 and REC.2, each of which discuss extending the duration of the existing OTD from 21 years to in perpetuity. The EIR states that the change in the duration of the OTD could be recommended as a condition of approval for the Project and included as part of the Findings for consideration by the decision makers.</p> <p>Any proposed new development of the Project site would likely include a permit condition to design and construct the coastal access. The text in the EIR has been modified to better reflect this intent.</p> <p>The timing of the sale to another landowner is unknown, and the Conditions of Approval run with the land. The benefit of possible modifications to the OTD is to ensure that a future owner and/or developer understands the requirements of development. Any proposed modifications to the existing OTD would be done as part of the staff report for the project would not be considered requirements of the CEQA document.</p> <p>Lastly, to address the comment regarding the irrevocable term of the OTD, text in Impact LUP.4 and REC.2 has been modified to reflect the fact that the current OTD does not expire in April 2036, but rather the OTD becomes revocable after 2036, and remains in place unless or until the property owner files to revoke the OTD.</p>

**9.0 DEIR Comments and Responses**

<b>Code</b>	<b>Response</b>
CCC-5	<p>The Project site is zoned Industrial. As stated in FEIR Chapter 2.0, Project Description, the Applicant intends to remove the majority of the aboveground structures and surgically remove belowground structures to accommodate soil remediation. Some aboveground Project features would remain since they are considered assets for a future industrial use. The Project includes no permanent development or improvements. The Applicant is not proposing, nor is the County approving, a subsequent use. Rather, the site would be made ready for a subsequent use that is consistent with the Industrial land use designation. In the case of this Project, the activities do not provide a nexus for requiring coastal access.</p> <p>In addition, there are constraints associated with coastal access extending from the Project site to the shoreline. The key constraints discussed in the DEIR for construction of public access from the Phillips 66 property are issues associated with crossing of the Union Pacific Railroad (UPRR) right-of-way and gaining access through the California Department of Parks and Recreation (CDPR), which is west of the Phillips 66 property. Access to this property would be required for the construction of a public access to the sea. Both constraints are still relevant, based upon the following:</p> <p>UPRR’s legal counsel provided a letter dated August 6, 2013, which was included as Appendix 2 in the 2013 Arcadis Coastal Access Feasibility Review. This letter expresses firm opposition to an at-grade crossing at this location. The UPRR Company’s position on this issue has not changed at the present time and there is no current public easement over the UPRR property. County staff reached out to Peggy Ygbuhay, Sr. Director, Public Affairs at Union Pacific to confirm the company’s position, as stated in the August 2013 letter, has not changed. An email response dated July 2, 2024, from Ms. Ygbuhay indicated that Union Pacific remains firmly opposed to an at-grade public crossing at this location.</p> <ol style="list-style-type: none"> <li>1. County staff reached out to CA. Public Utilities Commission (CPUC) Rail Safety Division staff Eyitejumade Sogbesan. The CPUC policy on new at-grade crossings is designed to enhance safety. While they don’t outright prohibit new crossings, they heavily prioritize reducing the total number of at grade crossings and strongly encourage grade separators. Each crossing proposal is evaluated on its specific characteristics and if an at grade crossing is allowed, the CPUC generally requires the closure of at least one or more crossings on the same rail line. With regard to the UPRR mainline that transects the Phillips property, the CPUC indicated that private at-grade RR crossing on the Phillips parcel, would require an underpass or overpass to convert to public use. In other, recent cases where a public at-grade crossing has been permitted (Del Mar 2022, Santa Claus Lane 2023), there was clear evidence of frequent, ongoing and</li> </ol>

Code	Response
	<p>unpermitted public crossings occurring along a section of railroad where an under or overpass was not feasible, such that the creation of an at-grade public crossing with signage and safety signals helped to improve safety. Public trespass over the UPRR has not been an issue at the Phillips 66 location, as the State Parks/Oceano Dunes State Vehicular Recreation Area (ODSVRA) has an agreement with the Applicant’s predecessor to ensure that the area acts as a buffer (the “TOSCO Agreement”) over the Phillips 66 property west of the railroad. The terms of the buffer agreement, which the State manages, does not allow the public to cross or enter the ODSVRA or the buffer without permission, and Phillips 66 also does not allow the public to enter their property without permission.</p> <p>2. According to the California State Parks Draft 2020 Public Works Plan (PWP) General Plan Amendment, Section 3.3.14, the State Parks Plan for the ODSVRA requires approval of a General Plan Amendment in order to create a new point of access for visitors to enter from the Phillips 66 property. The State’s current 1975 Plan identifies potential locations but does not authorize additional entrances into the Park. The existing Coastal Development Permit (CDP) A-4-82-300-A5, issued in 1982 for the entry kiosks and perimeter fencing projects, provided direction for park compliance with the California Coastal Act. The 1982 permit has been amended five times and has outdated annual reporting requirements. The 2020 Draft PWP for the ODSVRA has not been adopted, and that document notes that any access into the Park from the Phillips 66 property is strictly conceptual and that access would only occur once the property is fully remediated and acquired by the State. In 2021, the Coastal Commission amended CDP phasing out OHV use at the ODSVRA, however, that decision was successfully challenged in Superior Court and the Superior Court’s decision is currently on appeal in the Court of Appeals.</p> <p>3. The adjacent western portion of the Project site to the west of the railroad tracks is currently conserved through several applicable existing measures, including 1) the establishment of mapped Environmentally Sensitive Habitat Areas (ESHA) in the area; 2) the land use designation as open space; and 3) the existing, currently in-force Tosco agreement, which “<i>grants to the State the right ... to occupy and prevent further development</i>” of [the Buffer Zone]. The Tosco Agreement, a 1998 update by Phillips 66 of the original 1980 Union Oil Co. agreement with State Parks, states “<i>Such right, estate, and interest shall endure for a term of five (5) years .... and shall be automatically renewed for additional periods of one year, unless notice of non-renewal is given in writing, by TOSCO to STATE</i>”. As no notice of non-renewal has been entered since</p>

**9.0 DEIR Comments and Responses**

Code	Response
	<p>the agreement date, it continues to be in force and protection of the western “buffer area” continues currently. In the event that Phillips 66 should file a notice of non-renewal during or following demolition and remediation, the property west of UPRR would remain in Open Space land use. The entire Phillips 66 land holding is subject to South County Coastal Planning Area Standards for Industrial, items 1-5, including the Buffer Zone requirements under #4.</p> <p>The other major constraints identified in the Vertical Coastal Access analysis prepared as part of the Rail Spur Project EIR, were impacts to mapped ESHA just west of the Phillips 66 property (in the buffer property), and potential public hazards from having a public access trail near an active refinery. With the implementation of the Project, the public hazard constraint posed by the current industrial use would be eliminated. All the other major constraints would remain and are still valid and up to date, including the site zoning which allows for industrial uses. Any subsequently-proposed use would be evaluated as to whether further public access is warranted based on the scope of the project. This level of analysis is outside the purview of this EIR, because no future use is identified or proposed with this project.</p> <p>The FEIR Section 4.14.1.3, which covers coastal access, discusses (1) the ODSVRA coastal access issues, and (2) the project site coastal access history. The discussion regarding feasibility of constructing off-road vehicle access from the project site to the ODSVRA is provided in the background section, which discusses the current conditions. In no way does this background discussion dictate the parameters for the future type of access.</p> <p>The FEIR for the Rail Spur project included Section 9.0 Vertical Coastal Access, which analyzed various access options and designs. The analysis evaluated the environmental impacts associated with docent-led access, bicycle/pedestrian access, and motor vehicle access as if it were a project subject to CEQA. The analysis addressed impacts in each applicable issue area for both construction and operation and developed mitigation measures to address the significant impacts that were identified for each of the access options. The analysis also included a comparison of the various access options and found that docent-led access was preferred since it resulted in the least environmental impacts.</p> <p>While the UPRR crossing is a significant constraint for completing any of the access alternatives, the coastal access analysis that was part of the Rail Spur Project EIR addressed various options for addressing this constraint, include the construction of an overpass.</p> <p>The coastal access analysis that was part of the Rail Spur EIR is still relevant and accurate today and has been incorporated into this Phillips 66 SMR</p>

Code	Response
	<p>Demolition and Remediation FEIR by reference. As such, the EIR provides an analysis of a range of access options, including two that are less impactful than vehicle access.</p> <p>In order to provide access to the sea, a coastal access trail on the Phillip 66 property would only be able to connect with the ODSVRA property, to reach shoreline that is over a mile west of the easement terminus on Phillips property. Significant inter-agency planning and coordination, and potentially State acquisition of public trail rights, would be required for any trail from the Phillips 66 property to the sea to be designed and constructed, to avoid building a “trail to nowhere” that leads people across the Phillips 66 property that ends at the ODSVRA. This would be the case no matter what type of trail access is pursued, even if it were docent-led.</p>
CCC-6	<p>As discussed above in Response CCC-4 and CCC-5, the Coastal Commission and County previously found that both the Throughput Increase Project and the 2021 Remediation Project were consistent with the County’s LCP provisions covering coastal access at the Project site, and that no nexus occurred which required coastal access development. Much of the analysis and findings made by the County and Coastal Commission for these projects also apply to the Project. The preliminary consistency analysis in the EIR has shown that the Project is consistent with the County’s LCP provisions covering coastal access. As indicated in the FEIR, Chapter 2.0, Project Description, future uses of the site and “visioning” of future site activities, is speculative and premature and was not examined as part of this Project. Any proposed future use will require CEQA analysis and permitting and be required to be consistent with County policies.</p> <p>Also, see Responses to CCC-4 and CCC-5.</p>
CCC-7	<p>Portions of the Project are within areas considered to be unmapped ESHA (CZLUO Section 23.11.030). Under the County’s Coastal Zone Land Use Ordinance (CZLUO), activities that would involve the restoration of damaged habitats (Section 23.07.170(e)(1.v)) or the creation and enhancement of habitats (Section 23.07.170(e)(1.iv)) are allowed with ESHA areas. The activities that would occur in the areas of unmapped ESHA are remediation and restoration, which would qualify as restoration of damaged habitats or creation/ enhancement of habitat. This is the same determination that was made by the County and approved by the Coastal Commission for the Guadalupe Remediation Project, which is primarily all mapped ESHA.</p> <p>This is separate from the activities that are considered resource-dependent uses, which is a separate allowed use in ESHA per the CZLUO (Section 23.07.170(e)(1.i)). Though one could argue that the proposed remediation and restoration activities are resource-dependent since the contamination is located within an area of unmapped ESHA and therefore its removal and restoration is dependent upon the resource because of its location.</p>



**9.0 DEIR Comments and Responses**

<b>Code</b>	<b>Response</b>
	<p>The Project Description includes a description of the Project activities as proposed by the Applicant. Section 2.6, Project Activities: Site Stabilization and Restoration, provides general information on revegetation methods, plant palette and seed mix, planting schedule, irrigation, weed abatement, and monitoring and repair. All these are key elements of a restoration and monitoring plan. ESHA requirements are discussed in Section 4.4, Biological Resources, which provided details on the restoration plan including monitoring, performance standards, etc.</p>
<p>CCC-8</p>	<p>The EIR through the application of multiple mitigation measures, provides for habitat creation within the Phillips 66 property (for Nipomo Mesa lupin) and the Nipomo Dunes Complex (for California Rare Plant Rank (CRPR) 1-4 species), including the following:</p> <ul style="list-style-type: none"> <li>• BIO.1-2: Prepare and Submit a Biological Resources Adaptive Management &amp; Monitoring Plan,</li> <li>• BIO.1-3: Habitat Restoration and Revegetation Plan,</li> <li>• BIO.2-3: Nipomo Mesa Lupine Habitat Mitigation and Creation,</li> <li>• BIO.3-3: CRPR 1-3 Plant Species Habitat Creation,</li> <li>• BIO.3-4: CRPR 4 Plant Species Habitat Creation, and</li> <li>• BIO.12-1: ESHA Protection Plan.</li> </ul> <p>These measures ensure that any impacts of the Project are fully mitigated through the development, and ensure conservation in perpetuity, of restoration areas within the Dunes complex. Areas that would be a part of the mitigation creation areas have not been established at this time as the amount of impacted areas will not be defined until the Project site sampling program and associated remediation activities have been completed.</p> <p>Several of the biological mitigation measures require mitigation ratios greater than 1:1. These include:</p> <ul style="list-style-type: none"> <li>• BIO.2-3: 3:1 for Nipomo Lupine Habitat,</li> <li>• BIO.3-3: 2:1 for CRPR-1-3 Plant Species Habitat,</li> <li>• BIO.11-1: 2:1 for Coastal Dune Scrub,</li> <li>• BIO.12-1: 2:1 for Sensitive Plant Communities in area of ESHA, and</li> <li>• BIO.15-1: 4:1 for Tree Replacement with trunks equal to or greater than eight inches.</li> </ul> <p>The text in Section 4.4.1.3, Potential Jurisdictional Features, of the DEIR that referred to the two NWI-mapped wetland areas as “WL-1 and WL-2” was incorrect. WL-1 and WL-2 are wetland data points that were used as part of the wetland delineations discussed below. FEIR Figure 4.4-5 shows the location of the two NWI-mapped wetland areas in the southern portion of the</p>

Code	Response
	<p>site, in addition to WL-1 and WL-2, and how they were classified in the database.</p> <p>Detailed information of the evaluation of potential wetlands at the site is documented in the Biological Resources Technical Report prepared by ERM as part of the project application to the County (ERM 2023). Wetland delineations were performed during the June 2022 site visits and characteristics such as dominant plant species, surface soils (visual observations only), and hydrologic indicators were noted, if present, as potential indicators of wetlands. Areas suspected of being wetlands were surveyed using guidance from the routine on-site methodology described in the United States Army Corps of Engineers (USACE) Wetlands Delineation Manual and Arid West Region Supplement (Environmental Laboratory 1987; USACE 2008).</p> <p>The two National Wetland Inventory (NWI) mapped wetland areas were characterized as freshwater emergent wetland and freshwater forested/shrub wetland in the database. Both these sites were evaluated as part of the wetland delineation work at the site. Neither area exhibited characteristics of a wetland when observed during the surveys. Both areas contain upland vegetation species with sandy soils. The vegetation alliance in these areas is poison oak scrub, and its associated species (e.g., deerweed [<i>Acmispon glaber</i>], blue elderberry, black sage, and coyote brush) are considered upland species. Based on field observations, including a dominance of upland species and no wetland hydrology observed, the two areas mapped in the NWI database are considered upland habitat (ERM 2023).</p> <p>The text in Section 4.4.1.3 has been modified to better describe the two NWI-mapped wetland areas, and why they were not considered wetlands.</p> <p>It is speculative as to what might happen in the future with the coke pile areas under a future project, if they become vegetated or exhibit dune-like characteristics, and whether the area would then be considered unmapped ESHA under a future project. Project activities and remediation at the coke pile site are defined by the Central Coast Regional Water Quality Control Board (Central Coast Water Board) and required to be protective of groundwater and meet industrial soil contamination requirements. Future ESHA determinations under a future project could only be determined in the future, when and if the area becomes vegetated.</p> <p>The Project would remediate the site to industrial standards. Site cleanup standards vary depending on the specifics of a site, its proximity to environmental receptors, the depth of the contamination, depth to the groundwater, groundwater use, contaminant types, etc., and must be approved by the Central Coast Water Board.</p>

## 9.0 DEIR Comments and Responses

---

Code	Response
	<p>Section 5.2.4 of the EIR evaluated an alternative that would remediate and clean up the site to residential standards, which are some of the most restrictive. As such this alternative would be considered “full remediation”. Full remediation does not mean the removal of all the contamination, which in most cases is not physically possible, just removal of contamination to below established standards.</p> <p>In evaluating consistency with County policies, CEQA requires the analysis to determine if the proposed action is consistent with the applicable policies. The consistency analysis in the EIR has found that the Project would be consistent with the County’s LCP policies as they relate to ESHA, coastal access, and recreation.</p>
CCC-9	<p>As discussed in Section 4.9.5, Impact HAZ.2, the contaminated material being transported off site via truck or rail would be soil, which does not represent a major threat to the environment if spilled since (1) the contamination is contained within the soil; and (2) the soil does not have fluid properties that would allow it to spread into the surrounding environment. Typically spills of soil are contained in close proximity to the accident/spill location, which is usually the road or railroad right-of-way. Spills of soil tend to be much easier to contain and clean up as compared to spills of material that have fluid properties. For these reasons, the impact from soil spills during transportation was found to be less than significant.</p> <p>Oil/Hazardous Material Spill Contingency Plan (Spill Contingency Plan) that is required by mitigation measure HAZ.2-1, has been modified in the FEIR to require that the plan addresses spills associated with transportation, including truck and rail. This measure would serve to reduce any impacts that occurred in the event of a soil spill during transportation.</p>

**9.1.2 California Department of Fish and Wildlife**



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



May 24, 2024

Cindy Chambers, Environmental Planner  
County of San Luis Obispo Department of Planning and Building  
976 Osos Street  
San Luis Obispo, California 93408  
805-781-5608  
[cchambers@co.slo.ca.us](mailto:cchambers@co.slo.ca.us)

**Subject: Draft Environmental Impact Report (DEIR)  
Phillips 66 Santa Maria Refinery Demolition & Remediation Project  
(C-DRC2022-00048)  
SCH: 2023050020**

Dear Cindy Chambers:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from San Luis Obispo County for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that San Luis Obispo County still consider our comments.

### **CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

*Conserving California's Wildlife Since 1870*

Cindy Chambers, Environmental Planner  
County of San Luis Obispo Department of Planning and Building  
May 24, 2024  
Page 2

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, section 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

## PROJECT DESCRIPTION SUMMARY

**Proponent(s):** Phillips 66

**Objective:** The Project proposes the demolition of aboveground and belowground facilities, equipment, and associated infrastructure to the Santa Maria Refinery except for any essential infrastructure (e.g., outfall line) or utilities required to be kept in place by regulatory authorities or for use by subsequent site occupants. The Project also includes soil remediation that meets applicable risk-based industrial standards. The proposed Project estimates approximately 243,150 cubic yards of concrete, asphalt, mixed debris, and impacted soil will be demolished and removed from the site.

**Location:** The Project site is located at 2555 Willow Road, in Arroyo Grande. The Project site includes Assessor's Parcel Numbers (APNs): 091-141-062; 091-192-034; 092-391-034, -020, -021; 092-401-011, -005, -013; and 092-411-005, -002.

**Timeframe:** N/A.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist San Luis Obispo County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

Cindy Chambers, Environmental Planner  
 County of San Luis Obispo Department of Planning and Building  
 May 24, 2024  
 Page 3

CDFW previously commented on the Notice of Preparation (NOP) for the Project in a letter dated June 26, 2023 (Attachment 1), regarding potential impacts to special-status animal species including, but not limited to, the State and federally endangered marsh sandwort (*Arenaria paludicola*) and Nipomo Mesa lupine (*Lupinus nipomensis*), the State endangered and fully protected, and federally endangered California least tern (*Sternula antillarum browni*), the State threatened and fully protected California black rail (*Laterallus jamaicensis coturniculus*), the State threatened and federally endangered La Graciosa thistle (*Cirsium scariosum var. loncholepis*), the State species of special concern and federally threatened California red-legged frog (*Rana draytonii*), the State candidate-listed as endangered western bumble bee (*Bombus occidentalis*), and the federally proposed candidate for listing monarch butterfly (*Danaus plexippus plexippus*).

CDFW would like to highlight that the regular coordination with San Luis Obispo County has resulted in many of CDFW's species recommendations from the NOP being incorporated into the DEIR. CDFW appreciates San Luis Obispo's County's due diligence and efforts in working collaboratively on this Project. Although the majority of CDFW's recommendations have been incorporated into the DEIR, CDFW provides the following recommendations and mitigation measures to be added for consideration in the Final Environmental Impact Report (FEIR).

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status animal species, including the Nipomo Mesa Lupine (NML).

CDFW also has concerns about portions of the proposed Project, namely that certain underground structures would remain after Project activities are complete and the site would be revegetated, yet the Project site will not be protected in perpetuity. These concerns are provided in more detail below.

## **Nipomo Mesa Lupine**

### **Comment 1: Incidental Take Permit**

The DEIR states that, "If take were necessary, the Applicant must first obtain all necessary approvals and concurrence with the CDFW that are required for the take of a federal and state-listed plant". Additionally, Mitigation Measure BIO. 2-2 states that, "The following measure shall be contained in the BRAAMP, implemented as part of the biological monitoring and shall be reproduced on all plans. Known locations of Nipomo Mesa lupine shall be avoided unless all necessary approvals and concurrence with the CDFW that are required for the take of a federal and state-listed plant are first obtained.

CDFW-1

Cindy Chambers, Environmental Planner  
 County of San Luis Obispo Department of Planning and Building  
 May 24, 2024  
 Page 4

Known population areas plus a 25-foot buffer shall be identified on all plans submitted to the County for approval. The known population boundaries mapped in previous years, plus any expansions observed during surveys conducted in the year of Project activities, would constitute the known population area to be avoided (which is different than the presumed occupied area). A minimum of a 25-foot buffer shall be placed around all known population areas within 100-foot of Project activities to avoid potential indirect impacts and changes to microhabitats that support the species. These buffers shall be flagged/fenced and avoided during construction. A qualified biologist shall conduct preconstruction surveys in all areas and verify that all known population areas plus a 25-foot buffer are properly flagged/fenced and shall have the authority to expand this buffer as needed based on site conditions and observed plants. Tracking shall be done through daily monitoring logs and summarized in annual reports as described in measure BIO.1-2.” CDFW does not concur that this measure is sufficient to mitigate for impacts to NML within the suitable habitats located throughout the Project site.

CDFW-1  
(cont)

As noted in the DEIR, NML is limited to a single population within the Guadalupe-Nipomo Dunes Complex and one of the last remaining occurrence areas is located within the BSA. Additionally, it was noted that NML is likely to persist in the seed bank for long periods of time and the species observed distribution is highly variable from year to year. The DEIR also notes that, “Given this information, and the occurrence of a persistent seed bank, it is difficult to fully delineate the spatial extent of occupied habitat without multiple years of surveys during varying weather conditions.” CDFW does not concur that Mitigation Measure BIO. 2.2 is adequate to mitigate impacts to NML as the species has the potential to germinate within any areas of suitable habitat within the Project site. It is likely that remediation activities would remove or significantly alter the species seed bank from several portions of the Project site and potentially disturb or alter germination in subsequent years. As NML has a very limited distribution, it’s known to be highly variable where it occurs (i.e., germinates) from year to year, and any impacts to NML or its habitat (i.e., seed bank) is likely to be considered significant, CDFW strongly recommends early consultation and that the Project obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) prior to any ground disturbing activities.

CDFW-2

## **Comment 2: Habitat Mitigation and Creation**

Mitigation measure BIO.2-3 requires the preparation of a Nipomo Mesa Lupine Habitat Mitigation and Creation plan, that is to be included as part of the overall Habitat Restoration and Revegetation Plan (HRRP) as part of the Project. CDFW concurs with including Nipomo Mesa Lupine habitat mitigation and creation as part of the overall HRRP and recommends that the HRRP, including mitigation efforts for NML, be prepared in coordination with CDFW, and during the ITP consultation process, to

CDFW-3



Cindy Chambers, Environmental Planner  
County of San Luis Obispo Department of Planning and Building  
May 24, 2024  
Page 5

determine mitigation components such as NML mitigation locations, ratios, and success criteria.

CDFW-3  
(cont)

**Removal of underground facilities**

**Comment 3: Cumulative Impact Concerns and Recommendation for Conservation of Project Site in Perpetuity**

The DEIR provides a detailed Project description for demolition, remediation, and restoration efforts and notes that underground infrastructure would remain intact outside of identified remediation areas to minimize impacts to Environmentally Sensitive Habitat Areas (ESHAs) and special-status species. The DEIR also notes that “potential future uses of the SMR site once the Project is complete are unknown and are speculative at this time; therefore, future uses are not considered in this Project.” CDFW is concerned that the DEIR did not adequately evaluate cumulative impacts to biological resources within in the DEIR, specifically from foreseeable future uses of the Project site, and is concerned about the long-term uses of the site once remediation efforts are complete.

CDFW-4

As a large portion of the underground infrastructure is to remain intact, there is a high likelihood that other industrial users, such as oil companies, could purchase and develop the Project site. As such, there is a considerable potential that any restoration and/or onsite mitigation efforts would be temporary in nature, as future development could potentially impact restored or avoided areas, and the intact underground infrastructure could be modified, upgraded, excavated, or removed at a later date. These future activities would have the potential to contribute to cumulative impacts to the sensitive biological resources within the Project site, including NML habitat and known subpopulations. As noted above, it is likely that any change in land uses that facilitate disturbance and or development would significantly impact NML, and the species seed bank. As such, CDFW concurs with portions of Mitigation Measure BIO-2.3, which requires conservation of all remediated and restored areas, and strongly recommends that the Project proponent conserve all ESHAs, NML occurrences, and all native and/or suitable habitat within the Project site in perpetuity with a conservation easement. Please note that CDFW is available to discuss this recommendation in more detail.

CDFW-5

**Editorial Comments and/or Suggestions**

**Lake and Streambed Alteration:** Based on the information provided in the DEIR, the Project area contains a stream located along the southern portion of the Project site. Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW’s regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or

CDFW-6

Cindy Chambers, Environmental Planner  
County of San Luis Obispo Department of Planning and Building  
May 24, 2024  
Page 6

obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

CDFW-6  
(cont)

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

CDFW-7

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, Section 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

CDFW-8

## FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

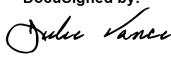
CDFW-9

Cindy Chambers, Environmental Planner  
County of San Luis Obispo Department of Planning and Building  
May 24, 2024  
Page 7

## CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist San Luis Obispo County in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Evelyn Barajas-Perez, Environmental Scientist, at (805) 503-5738 or [Evelyn.Barajas-Perez@Wildlife.ca.gov](mailto:Evelyn.Barajas-Perez@Wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

ec: Steve Henry, USFWS/ [steve\\_henry@fws.gov](mailto:steve_henry@fws.gov)  
CDFW CESA/ [R4CESA@wildlife.ca.gov](mailto:R4CESA@wildlife.ca.gov)

State Clearinghouse  
Governor's Office of Planning and Research  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



June 26, 2023

Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
976 Osos Street  
San Luis Obispo, California 93408  
805-781-5608  
cchambers@co.slo.ca.us

**Subject: (NOP) C-DRC2022-00048 Phillips 66 Santa Maria Refinery Demolition & Remediation Project**  
**SCH: 2023050020**

Dear Cindy Chambers:

The California Department of Fish and Wildlife (CDFW) received a request for comments from San Luis Obispo County Department of Planning and Building for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code. CDFW appreciates the County granting a short extension to the timeline to reply to the NOP for this Project and hopes that this letter will help the County to adequately scope the Draft Environmental Impact Report (DEIR).

### **CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7,

---

<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

*Conserving California's Wildlife Since 1870*

Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
June 26, 2023  
Page 2

subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

### **Nesting Birds**

CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

### **PROJECT DESCRIPTION SUMMARY**

**Proponent(s):** Phillips 66

**Objective:** The Project proposes the demolition of aboveground and belowground facilities, equipment, and associated infrastructure to the Santa Maria Refinery except for any essential infrastructure (e.g., outfall line) or utilities required to be kept in place by regulatory authorities or for use by subsequent site occupants. The Project also includes soil remediation that meets applicable risk-based industrial standards. The proposed Project estimates approximately 243,150 cubic yards of concrete, asphalt, mixed debris, and impacted soil will be demolished and removed from the site.

**Location:** The Project site is located at 2555 Willow Road, Arroyo Grande, CA at the following parcels: 091-141-062; 091-192-034; 092-391-034, -020, -021; 092-401-011, -005, -013; 092-411-005, -002.

**Timeframe:** N/A.

Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
June 26, 2023  
Page 3

## COMMENTS AND RECOMMENDATIONS

CDFW is concerned regarding potential impacts to special-status species, including but not limited to, the State and federally endangered marsh sandwort (*Arenaria paludicola*) and Nipomo Mesa lupine (*Lupinus nipomensis*), the State and federally endangered and fully protected California least tern (*Sternula antillarum browni*), the State threatened and fully protected California black rail (*Laterallus jamaicensis coturniculus*), the State threatened and federally endangered La Graciosa thistle (*Cirsium scariosum* var. *loncholepis*), the State species of special concern and federally threatened California red-legged frog (*Rana draytonii*), the State candidate-listed as endangered western bumble bee (*Bombus occidentalis*), and the federally proposed candidate for listing monarch butterfly (*Danaus plexippus plexippus*).

### Nipomo Mesa Lupine

Nipomo Mesa lupine and its associated habitat and seedbank has the potential to be impacted by Project activities (CDFW 2023a). Nipomo Mesa lupine is a small, hairy annual lupine with a blooming season from December to May. This species is an edaphically restricted endemic, and it exclusively inhabits stabilized coastal sand dunes in Nipomo Mesa, in San Luis Obispo County (USFWS 2019). Its range of distribution is limited to approximately 5.2 square kilometers (two square miles) within the base of the Nipomo Mesa in the Guadalupe Nipomo Dunes Complex (USFWS 2019). According to the Nipomo Mesa lupine 5-year review, there are clusters of Nipomo Mesa Lupine colonies that occur within the bounds of the Project site.

There are several threats to the Nipomo Mesa lupine including climate change, development activities, seed predation, stochastic loss and extinction, and displacement and habitat loss from invasive species (USFWS 2021). The African veldt grass (*Ehrharta calycina* Smith) is the primary invasive species of concern as it is rapidly invading the Guadalupe Nipomo Dunes Complex, taking vital habitat away from the already limited specialized habitat for this lupine (Whitaker 2016). This Project could further propagate this already problematic invasive plant through soil disturbance, as this invasive grass can propagate not only through seed but through their roots. Unless certain precautions are taken, this grass could take over lupine habitat (Alba and Chapman 2019).

CDFW recommends having a qualified biologist conduct additional botanical surveys. CDFW strongly recommends conducting two consecutive years of botanical surveys to determine the presence of special status plants at the Project site. Although botanical surveys were conducted in March 2022 and in June 2022, CDFW recommends conducting a late bloom survey (May to December) for late blooming Nipomo Mesa lupine to maximize detection. Consultation with CDFW would be warranted for guidance on take avoidance, minimization, and mitigation measures. CDFW recommends

Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
June 26, 2023  
Page 4

referring to the United States Fish and Wildlife Service's Nipomo Mesa Recovery Plan (USFWS 2021).

### **California Black Rail**

California black rail (CBR) has the potential to be found at the Project site. Aerial photos show that there is suitable habitat around the Project site and records from the California Natural Diversity Database (CNDDDB) document occurrences (CDFW 2023a). Most recorded populations have been found from San Pablo Bay to southern California and Arizona. CBR lives predominately near water in marsh areas where plants such as pickleweed, gumplant, alkali bulrush, and cattails are found (Evens et al. 1991; Conway and Sulzman 2007). They typically place their nests a couple of inches above shallow water, on moist soil, and or among dense vegetation (Spautz et al. 2005). CDFW recommends that a habitat assessment for CBR be conducted by a qualified biologist, knowledgeable with CBR, and that any potentially suitable habitat areas be surveyed by a qualified biologist for the potential presence of this species as part of the biological technical studies conducted in support of the CEQA document. If the species is found, CDFW should be consulted to identify and implement appropriate avoidance and minimization measures to avoid any impacts to this species. CBR is fully protected, therefore, no "take", incidental or otherwise, can be authorized by CDFW.

### **California Least Tern**

California least tern (CLTE) has the potential to be found adjacent to the Project site. This species' breeding habitat includes the Pacific Coast ranging from San Francisco to Baja California, Mexico, and CNDDDB occurrences indicate that that the CLTE has the potential to be found near the Project site (CDFW 2023a). These migrating birds arrive to their breeding grounds around late April and begin nesting mid-May and migrate south of the U.S./Mexico border for winter in late July or early August (Massey 1971). CLTE nest in colonies on open beaches where their nests are simply made, with either a scrape in the sand or with shell fragments (USFWS 2006). CDFW recommends that a habitat assessment be conducted by a qualified biologist knowledgeable with CLTE during the biological technical studies conducted in support of the CEQA document. If the species is found, CDFW should be consulted to identify and implement appropriate avoidance and minimization measures to avoid any impacts to this species. CLTE is fully protected, therefore, no "take", incidental or otherwise, can be authorized by CDFW.

### **California Red-Legged Frog**

Occurrences from the CNDDDB document California red-legged frog (CRLF) approximately 1 mile west of the Project site (CDFW 2023a). In addition, there is suitable habitat adjacent to the Project site; CRLF could potentially be found at the Project site's run-off basin or pond. CRLF requires a variety of habitats including aquatic

Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
June 26, 2023  
Page 5

breeding habitats and upland dispersal habitats. Breeding sites of the CRLF are in aquatic habitats including pools and backwaters within streams and creeks, ponds, marshes, springs, sag ponds, dune ponds, lagoons and the species will also breed in ephemeral waters (Thomson et al. 2016). Additionally, CRLF frequently breed in artificial impoundments such as stock ponds (USFWS 2005). Breeding sites are generally found in deep, still, or slow-moving water (greater than 2.5 feet) and can have a wide range of edge and emergent cover amounts. CRLF can breed at sites with dense shrubby riparian or emergent vegetation, such as cattails or overhanging willows or can proliferate in ponds devoid of emergent vegetation and any apparent vegetative cover (i.e., stock ponds). CRLF habitat includes nearly any area within 1 to 2 miles of a breeding site that stays moist and cool through the summer; this includes non-breeding aquatic habitat in pools of slow-moving streams, perennial or ephemeral ponds, and upland sheltering habitat such as rocks, small mammal burrows, logs, densely vegetated areas, and even, man-made structures (i.e., culverts, livestock troughs, spring-boxes, abandoned sheds) (USFWS 2017).

CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the CEQA document, to determine if the Project site or the immediate vicinity contain suitable habitat for CRLF. If suitable habitat is present, CDFW recommends that a qualified biologist conduct protocol surveys for CRLF as part of the biological technical studies conducted in support of the CEQA document. Depending on the results of the protocol surveys and the time period between them and the beginning of construction, CDFW recommends conducting pre-construction surveys within 48 hours prior to commencing work (two-nights of surveys immediately prior to Project implementation or as otherwise required by USFWS) in accordance with the USFWS Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog (USFWS 2005). If any CRLF are found during pre-Project surveys or at any time during Project activities, CDFW recommends that Project activities cease and that CDFW be contacted to discuss avoidance measures. CDFW advises that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 and March 31).

### **Western Bumble Bee**

Western bumble bee (WBB) has the potential to be found on or within the vicinity of the Project site. WBB was once commonly found in western United States, Canada, North Dakota, and throughout Alaska, however, it now appears to be absent from most of these areas as there has been a 93% decline in occupancy in the last two decades.

WBB primarily nest in late February through late October underground in abandoned small mammal burrows but may be found under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014, Hatfield et al. 2015). Overwintering sites utilized by WBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf



Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
June 26, 2023  
Page 6

litter or other debris (Williams et al. 2014). Therefore, potential ground disturbance and vegetation removal associated with project implementation may significantly impact local WBB populations.

CDFW recommends that a qualified biologist conduct focused surveys for WBB and their requisite habitat features using the CDFW survey protocol during their colony active period (highest detection probability) from April to September (CDFW 2023b) as part of the biological technical studies conducted in support of the CEQA document. CDFW recommends that the CEQA document then evaluate impacts resulting from potential ground- and vegetation-disturbing activities that may result from this Project.

If WBB need to be captured or handled as part of the survey effort, please note that a 2081(a) Memorandum of Understanding (MOU) with CDFW will be needed (CDFW 2023b). If any WBB are killed in the process of being captured or handled stop all work and contact CDFW for further guidance.

### **Monarch Butterfly: Overwintering Site**

Project-related activities have the potential to impact monarch butterfly and its overwintering habitat. Monarch butterfly is a candidate species under the federal Endangered Species Act (FESA). Monarchs can be found overwintering along the California coast in groves of trees primarily dominated by non-native eucalyptus (*Eucalyptus* spp.), with additional native species including Monterey pine (*Pinus radiata*) and Monterey cypress (*Hesperocyparis macrocarpa*) (Griffiths and Villablanca 2015, Pelton et al. 2016). Overwintering groves have specific microclimatic conditions that support monarch populations (Fisher et al. 2018). Overwintering monarchs have been documented 300 ft and 1 mile from the Project site (CDFW 2023a).

During the last three decades, the western migratory monarch population that overwinters along the California coast has declined by more than 99% (Marcum and Darst 2021). Habitat loss and fragmentation, including grove senescence, are among the primary threats to the population (Thogmartin et al. 2017). Monarch overwintering sites have specific microclimate conditions that are influenced by the configuration of trees and other foliage near the site (Griffiths and Villablanca 2015). Alteration of the site and surrounding areas could impact microclimate conditions, thereby reducing the suitability of the site for monarchs (Weiss et al. 1991). CDFW recommends that the CEQA document for this Project address potential impacts to monarch butterflies.

CDFW recommends a qualified biologist be retained to conduct a habitat assessment as part of the biological technical studies conducted in support of the CEQA document. The qualified biologist may need to determine if the Project site or its immediate vicinity contains habitat suitable to support monarchs or if monarchs have been known to historically use the Project site. CDFW recommends the qualified biologist assess habitat following the Xerces Management Guidelines for Monarch Butterfly

Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
June 26, 2023  
Page 7

Overwintering Habitat (Xerces Society 2017) or other protocols. If suitable habitat for monarch butterflies is present, CDFW advises determining the primary roosting trees and other structural components and identifying the flora integral to maintaining microclimate conditions. These areas should then be marked and avoided during Project activities. If monarch butterflies are detected within the Project site, CDFW advises that the monarch overwintering habitat be avoided by delineating and observing a no-disturbance buffer of at least ½ mile from the outer edge of the habitat (Marcum and Darst 2021).

### **Nesting birds**

CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1<sup>st</sup> through September 15<sup>th</sup>), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a general habitat assessment for nesting birds be conducted as part of the biological technical studies conducted in support of the CEQA document. Depending on the results of that assessment, CDFW further recommends that the CEQA document for this Project include that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the Project area would be concealed from a

Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
June 26, 2023  
Page 8

nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

### **Special-Status Plant Species**

There is potential for multiple special status plant species to occur on the Project site. CDFW recommends that the Project site be surveyed for special-status plants by a qualified botanist following the “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities” (CDFG 2018) during biological technical studies completed in support of the CEQA document and these plant surveys are recommended to be repeated for two survey seasons to maximize detectability. CDFW further recommends that, depending on the time between these initial survey efforts and project construction, the special status plant surveys be repeated the survey season prior to construction as a minimization measure to be included in the CEQA document due to the difficulty in detecting special status plants species and the variability of climatic conditions conducive to special status plant growth.

This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. Further, CDFW recommends special status plant species be avoided whenever possible by delineating and observing a no disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species. If a State or federally listed plant species is identified during botanical surveys, it is recommended that consultation with CDFW and/or the USFWS be conducted to determine permitting needs.

### **Federally Listed Species**

CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, marsh sandwort, Nipomo Mesa lupine, California least tern, La Graciosa thistle, California red-legged frog, and monarch butterfly. Take under the FESA is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
June 26, 2023  
Page 9

## Lake and Streambed Alteration

The Project may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent, as well as those that are perennial in nature. For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593 or [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov). It is important to note, CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement (LSA Agreement). If inadequate or no environmental review has occurred for Project activities that are subject to notification under Fish and Game Code 1602, CDFW will not be able to issue the Final LSA Agreement until the CEQA analysis for the Project is complete. This may lead to considerable Project delays.

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

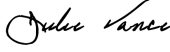
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist the County of San Luis Obispo Department of Planning and Building in scoping the necessary efforts related to biological resources and identifying and mitigating the Project's impacts on resources that may be present.

Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
June 26, 2023  
Page 10

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Evelyn Barajas-Perez, Environmental Scientist, at the address provided on this letterhead, by telephone at (805) 503-5738, or by electronic mail at [Evelyn.Barajas-Perez@wildlife.ca.gov](mailto:Evelyn.Barajas-Perez@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

ec: Patricia Cole, USFWS  
[patricia\\_cole@fws.gov](mailto:patricia_cole@fws.gov)

CDFW LSA/1600  
[R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov)

State Clearinghouse, Governor's Office of Planning and Research  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
June 26, 2023  
Page 11

## LITERATURE CITED

- Alba C. and D. Chapman. 2019. Ehrharta Calycina SM. EPPO Bulletin. 49, 55–60.
- California Department of Fish and Game. 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. California Department of Fish and Game, March 2018.
- California Department of Fish and Wildlife (CDFW). 2023a. Biogeographic Information and Observation System (BIOS). Accessed June 6, 2023.  
<https://www.wildlife.ca.gov/Data/BIOS>.
- CDFW. 2023b. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species, (available at  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline>).
- Conway, C. and C. Sulzman. 2007. Status and Habitat Use of the California Black Rail in the Southwestern USA. Wetlands, 27(4), 987-998.
- Evens, J., Page G., Laymon S., and R. Stallcup. 1991. Distribution, relative abundance and status of the California black rail in western North America. The Condor 93:952–66.
- Fisher, A., Saniee, K., van der Heide, C., Griffiths, J., Meade, D., and F. Villablanca. 2018. Climatic niche model for overwintering monarch butterflies in a topographically complex region of California. Insects, 9(4).  
<https://doi.org/10.3390/insects9040167>.
- Griffiths, J., and F. Villablanca. 2015. Managing monarch butterfly overwintering groves: Making room among the eucalyptus. California Fish and Game, 101(1), 40–50.
- Goulson, D. 2010. Bumblebees: behaviour, ecology, and conservation. Oxford University Press, New York. 317pp.
- Hatfield, R., Jepsen, S., Thorp, R., Richardson, L. and S. Colla. 2015. Bombus crotchii. The IUCN Red List of Threatened Species.
- Marcum, S., and C. Darst. 2021. Western Monarch Butterfly Conservation Recommendations.
- Massey, B. W. 1971. A breeding study of the California least tern. Calif. Dep. Fish and Game, Sacramento., Wildl. Manage. Branch Adm. Rep. 71-9. 22pp.

Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
June 26, 2023  
Page 12

- Pelton, E., Jepsen, S., Schultz, C., Fallon, C., and S. Black. 2016. State of the monarch butterfly overwintering sites in California. In The Xerces Society for Invertebrate Conservation. <http://www.xerces.org/state-of-the-monarch-butterflyoverwintering-sites-in-california/>.
- Spautz, H., Nur, N. and D. Stralberg. 2005. California Black Rail (*Laterallus jamaicensis coturniculus*) Distribution and Abundance in Relation to Habitat and Landscape Features in the San Francisco Bay Estuary. USDA Forest Service.
- Thogmartin, W., Wiederholt, R., Oberhauser, K., Drum, R., Diffendorfer, J., Altizer, S., Taylor, O., Pleasants, J., Semmens, D., Semmens, B., Erickson, R., Libby, K., and L. Lopez-Hoffman. 2017. Monarch Butterfly Population Decline in North America: Identifying the threatening processes. Royal Society Open Science, 4(9). <https://doi.org/10.1098/rsos.170760>.
- Thomson, R., Wright A., and B. Shaffer. 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press: 84–92.
- United States Fish and Wildlife Service (USFWS). 2005. Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog. August 2005.
- USFWS. 2006. California Least Tern 5- Year Summary and Evaluation. [5-Year-Review-2006-2.pdf \(biologistshandbook.com\)](https://www.fws.gov/biology/5-Year-Review-2006-2.pdf)
- USFWS. 2017. Species Account for California Red-legged frog. March 2017. 1 pp.
- USFWS. 2019. Nipomo Mesa Lupine (*Lupinus nipomensis*) 5-year review: U.S. Fish & Wildlife Service. FWS.gov, (available at <https://www.fws.gov/node/260057>).
- USFWS. 2021. Recovery plan for Nipomo Mesa Lupine (*Lupinus nipomensis*); notice of document availability: U.S. fish & wildlife service. FWS.gov, (available at <https://www.fws.gov/species-publication-action/draft-recovery-plan-nipomo-mesa-lupine-lupinus-nipomensis-notice>).
- Weiss, S., Rich P., Murphy D., Calvert W., and P. Ehrlich. 1991. Forest Canopy Structure at Overwintering Monarch Butterfly Sites: Measurements with Hemispherical Photography. Conservation Biology, 5(2), 165–175. <https://doi.org/10.1111/j.1523-1739.1991.tb00121.x>
- Whitaker L. 2016. The preservation and protection of native biodiversity in Guadalupe Nipomo Dunes Complex, doi:10.15368/theses.2016.172.

Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
June 26, 2023  
Page 13

Williams, P., Thorp R., Richardson L., and S. Colla. 2014. Bumble bees of North America: An Identification guide. Princeton University Press, Princeton, New Jersey. 208pp.

Xerces Society. 2017. Protecting California's Butterfly Groves: Management Guidelines for Monarch Butterfly Overwintering Habitat.



**Attachment 1**

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM  
(MMRP)**

**PROJECT: (NOP) Phillips 66 Santa Maria Refinery Demolition &  
Remediation (Project)  
SCH No.: 2023050020**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<b><i>Before Disturbing Soil or Vegetation</i></b>	
<b>Mitigation Measure: Nipomo Mesa Lupine</b>	
Nipomo Mesa Lupine consultation	
Nipomo Mesa Lupine take authorization	
<b>Mitigation Measure: California Black Rail (CBR)</b>	
CBR consultation	
CBR surveys	
<b>Mitigation Measure: California Least Tern Bird (CLTE)</b>	
CLTE consultation	
CLTE surveys	
<b>Mitigation Measure: California Red-Legged Frog (CRLF)</b>	
CRLF consultation	
CRLF surveys	
<b>Mitigation Measure: Monarch Butterfly Overwintering Site</b>	
Monarch Butterfly habitat assessment/surveys	
<b>Mitigation Measure: Western Bumble Bee</b>	
Western Bumble Bee habitat assessment/surveys	
<b>Mitigation Measure: Nesting Birds</b>	
Nesting birds habitat assessment	
<b>Mitigation Measure: Special-status plants</b>	
Special-status plants consultation	
Special-status plants take authorization	
<b><i>Before Impacting the Bed, Bank, or Channel of any Stream or River</i></b>	
Mitigation Measure: Notification to CDFW's Lake and Streambed Alteration Program	
<b><i>During Construction</i></b>	
<b>Mitigation Measure: Special-status plants</b>	
Special-status plants avoidance buffer	
<b>Mitigation Measure: Nipomo Mesa Lupine</b>	

Nipomo Mesa Lupine avoidance buffer	
<b>Mitigation Measure: Nesting Birds</b>	
Nesting birds avoidance buffer	
<b>Mitigation Measure: Monarch Butterfly Overwintering</b>	
Monarch Butterfly avoidance buffer	
<b>Mitigation Measure: Western Bumble Bee</b>	
Western Bumble Bee avoidance buffer	

**9.0 DEIR Comments and Responses**

**Responses**

Code	Response
CDFW-1	<p>Section 4.4, Biological Resources, mitigation measure BIO.2-2 Nipomo Mesa lupine Avoidance is edited in the FEIR to address comment CDFW-1. Specifically, the term “known populations” was changed to “suitable habitat,” and defines suitable habitat as the known Nipomo Mesa lupine population boundaries from previous surveys and future surveys, including a 25-foot buffer. Specifically, mitigation measure BIO.2-2 now reads:</p> <p>“The known population boundaries mapped in previous years, plus any expansions observed during surveys conducted in the year of Project activities, would constitute suitable habitat to be avoided.” In addition, the 25-foot buffer and other provisions in the comment were added to the mitigation measure.</p>
CDFW-2	<p>Section 4.4, Biological Resources, mitigation measure BIO.2-2, the statement describing the need for an Incidental Take Permit (ITP) was edited to require that an ITP be obtained for Nipomo Mesa lupine. Specifically, the mitigation measure reads in part: “The Applicant shall consult with the CDFW to obtain an Incidental Take Permit (ITP) pursuant to Fish and Game Code Section 2081 subdivision (b). The Applicant shall submit copies of the CDFW 2081 agreement and ITP to the County prior to issuance of any permit authorizing grading or belowground disturbance. The requirements of the ITP shall be included in the BRAAMP and HRRP”.</p> <p>Also see Response to CDFW-1.</p>
CDFW-3	<p>Section 4.4, Biological Resources, mitigation measure BIO.2-3 related to habitat creation and mitigation, text has been added to require the Mitigation and Creation Plan to be developed in consultation with CDFW and during the ITP process in order to determine mitigation components such as NML mitigation locations, ratio, and success criteria.</p>
CDFW-4	<p>Under CEQA, the cumulative impacts analysis must consider “the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.” (Guidelines, § 15355, subd. (b). Although CEQA does not define what a “reasonably foreseeable probable future project” is, the court in <i>Gray v. County of Madera</i>, (167 Cal.App.4th 1099, 85 Cal.Rptr.3d 50) defined the term as “any future project where the applicant has devoted significant time and financial resources to prepare for any regulatory review” (<i>Id.</i> at pp. 1127–1128, 85 Cal.Rptr.3d 50.). <i>City of Maywood v. LAUSD</i>, (208 Cal.App.4th 362, 145 Cal.Rptr.3d 567) additionally required “evidence that the Project is both probable and sufficiently certain to allow for meaningful cumulative impacts analysis.” (<i>Id.</i> at p. 399, 145 Cal.Rptr.3d 567.)</p> <p>Comment CDFW-4 raises the concern that the “DEIR did not adequately evaluate cumulative impacts to biological resources...specifically from</p>

Code	Response
	<p>foreseeable future uses of the Project site, and is concerned about the long-term uses of the site once remediation efforts are complete.” As discussed in Chapter 2.0, Project Description, page 2-3, “Potential future uses of the SMR site once the Project is complete are unknown and are speculative at this time; therefore, future uses are not considered in this Project”. The EIR cannot conduct a cumulative analysis on a project that does not exist or for which there are no details, and an applicant has not devoted time or financial resources to prepare for. Any future project would need to apply for permits and undergo the CEQA process at that time. Potential impacts would be determined as part of that process.</p>
CDFW-5	<p>Section 4.4, Biological Resources, mitigation measure BIO.2-3 fully mitigates the potential on-site impacts through the creation and development of restoration areas, which would be protected in perpetuity. These mitigation requirements are specific to the impacts of the Project, i.e., disturbance of ESHA or Nipomo Mesa lupine habitat or plants. The Project proposes to demolish the facility and potentially impact sensitive areas. Mitigation addresses these potential impacts. There is no nexus between the current Project, which will have limited impacts to sensitive areas, that would legally support the County requiring Phillips 66 to fully conserve the entire site acres. If a future use is proposed and additional conservation is needed in order to protect the area from that future use beyond the land use restrictions that are already in place, then those additional measures would occur and be imposed at that time.</p> <p>The FEIR requires that these mitigation areas are to be located within the larger area owned by Phillip 66, which encompasses most of the NML populations, and would therefore enhance the existing recover efforts. It also stipulates that if on-site habitat creation is not feasible or would not be biologically viable and therefore would not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity shall be identified and shall be within the Nipomo Dunes complex. A future project within the fenceline (the 218-acre Project site) would have impacts identified and mitigated as part of the future CEQA process for that project.</p>
CDFW-6	<p>There are no streams or natural drainage systems on the Project site. The closest stream is the Oso Flaco Creek Tributary, which is 0.4 mile south/southeast of the SMR fence at its closest point (see Figure 4.4-2 Regional Setting and Figure 4.10-1 Regional Topography and Drainage of Project Area). All site drainage is directed into the man-made holding ponds (Potential Wetland 1 and Potential Wetland 2 on Figure 4.3-5), with no runoff going off site (See EIR Section 4.10, Hydrology and Water Quality). There is no potential for Project activities to directly or indirectly affect the bed, bank or channel of these features.</p>

## 9.0 DEIR Comments and Responses

---

<b>Code</b>	<b>Response</b>
	The following was added/edited in Section 4.4.1.3, Potential Jurisdictional Features, in the FEIR: “The closest are the Oso Flaco Creek Tributary and the main Oso Flaco Creek, located approximately 0.4 mile south/southeast and 0.6 mile southwest, respectively, of the SMR, at the closest point (see Figure 4.4-2 Regional Setting).”
CDFW-7	See response to comment CDFW-6 in regard to lakes or streams potential impacts and added text to the FEIR.
CDFW-8	Information reporting as required under CEQA Public Resources Code Section 21003 has been added to Section 4.4, Biological Resources, Regulatory Setting, in the FEIR.
CDFW-9	Information on filing fees requirements has been added to Section 4.4, Biological Resources, Regulatory Setting, in the FEIR.

**9.1.3 California Department of Transportation**

## California Department of Transportation

CALTRANS DISTRICT 5  
50 HIGUERA STREET | SAN LUIS OBISPO, CA 93401-5415  
(805) 549-3101 | FAX (805) 549-3329 TTY 711  
[www.dot.ca.gov](http://www.dot.ca.gov)



May 1, 2024

SLO SR 1  
SCH: 2023050020

Susan Strachan, Decommissioning Project Manager  
County of San Luis Obispo  
976 Osos St, Room 300  
San Luis Obispo, CA 93408  
Via Email: [sstrachan@co.slo.ca.us](mailto:sstrachan@co.slo.ca.us)

RE: Caltrans Comments on the County of San Luis Obispo's Draft Environmental Impact Report (DEIR)

Dear Susan Strachan:

The California Department of Transportation (Caltrans) appreciates the opportunity to review the Draft Environmental Impact Report (DEIR) for the Phillips 66 Santa Maria Refinery Demolition and Remediation Project. Caltrans offers the following comments:

Caltrans recommends revising the language on Pg 4.15-12, mitigation measure TR1-1 of the DEIR to specifically include that a Caltrans Encroachment Permit must be obtained to provide traffic control on the State Highway System. Additionally, it is recommended that the Construction Management Plan identify the number of truck trips to occur per day as well as the classification of said trucks. A truck restriction is in place between Valley Road and Division Street on State Route 1 (See attached documents highlighting the restrictions) which should also be taken into consideration.

Please be aware that if any future work is completed in the State's right-of-way it will require an encroachment permit from Caltrans and must be done to our engineering and environmental standards, and at no cost to the State. The conditions of approval and the requirements for the encroachment permit are issued at the sole discretion of the Permits Office, and nothing in this letter shall be implied as limiting those future conditions and requirements. For more information regarding the encroachment permit process, please visit our Encroachment Permit Website at: <https://dot.ca.gov/programs/traffic-operations/ep>.

We look forward to continued coordination with the County of San Luis Obispo on this effort. Should you have any questions regarding this letter, or need further clarification on items discussed above, please contact me at (805) 903-3395 or [Shelby.Fredrick@dot.ca.gov](mailto:Shelby.Fredrick@dot.ca.gov).

CalTrans  
1

Susan Strachan  
May 1, 2024  
Page 2

Sincerely,

*Shelby Fredrick*

Shelby Fredrick  
Local Development Review Coordinator  
Caltrans, District 5

Cc:  
State Clearinghouse  
Veronica Lezama, Caltrans D5 Branch Chief for Regional Planning and Local  
Development Review



# TRUCK NETWORKS on California State Highways







## DISTRICT 5

Map 5 of 12

Not to scale

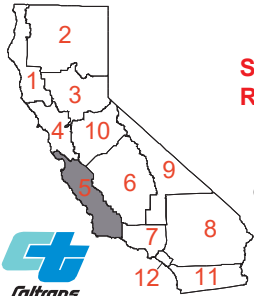
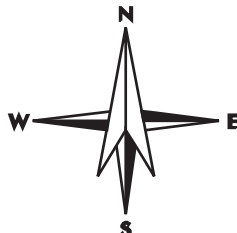
Last revised June 13, 2023

### LEGEND (CLICK HERE FOR MORE DETAILED LEGEND)

-  National Network (STAA)
-  Terminal Access (STAA)
-  65' California Legal Route
-  65' Ca Legal \*KPR A Advisory
-  30 \*KPR A Advisory
-  Special Restrictions  
(Click on **SPECIAL RESTRICTION** for more details)

### Safety Roadside Rest Area

\*KPR A = kingpin-to-rear-axle distance



California Department of Transportation  
Legal Truck Access




# Truck Map Legend

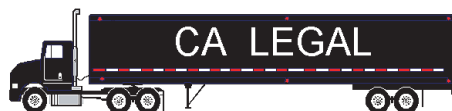
## Truck Lengths & Routes



State of California  
Department of Transportation

Click here for the [Truck Network Map](#)

 California Legal Routes California Legal trucks (black trucks) can travel on STAA routes (green and blue routes), CA Legal routes (black routes), and Advisory routes (yellow routes). CA Legal trucks have access to the entire State highway system except where prohibited (some red routes).



### California Legal Truck Tractor - Semitrailer

Semitrailer length : no limit  
 KPRA\* : 40 feet maximum for two or more axles,  
 38 feet maximum for single-axle trailers  
 Overall length : 65 feet maximum \*(KPRA = kingpin-to-rear-axle)




### California Legal Truck Tractor - Semitrailer - Trailer (Doubles)

Option A  
 Trailer length : 28 feet 6 inches maximum (each trailer)  
 Overall length : 75 feet maximum  
 Option B  
 Trailer length : one trailer 28 feet 6 inches maximum  
 other trailer may be longer than 28 feet 6 inches  
 Overall length : 65 feet maximum



CA Legal Advisory Routes - CA Legal trucks only; however, **travel not advised** if KPRA length is over posted value. KPRA advisories range from 30 to 38 feet.

 STAA Routes The STAA Network allows the “interstate” STAA trucks which are the green trucks shown below. The STAA Network consists of the National Network (green routes, primarily interstates) and Terminal Access routes (blue, primarily State routes). (“STAA” = federal Surface Transportation Assistance Act of 1982.)

(Click here for the [Truck Network Map](#))



### Interstate “STAA” Truck Tractor - Semitrailer

Semitrailer length : 48 feet maximum  
 KPRA\* : no limit  
 Overall length : no limit \*(KPRA = kingpin-to-rear-axle)



Semitrailer length : over 48 feet up to 53 feet maximum  
 KPRA : 40 feet maximum for two or more axles,  
 38 feet maximum for single-axle trailers  
 Overall length : no limit



### Interstate “STAA” Truck Tractor - Semitrailer - Trailer (Doubles)


Trailer length : 28 feet 6 inches maximum (each trailer)  
 Overall length : no limit



Terminal Access - Interstate “STAA” trucks may travel on State highways that exhibit this sign.



Service Access - Interstate “STAA” trucks may travel up to one road mile from the off ramp to obtain services (food, fuel, lodging, repairs), provided the route displays this sign.

 Special Restrictions - Route restricted for vehicle length or weight, cargo type, or number of axles.  
 (Click here for the list of [Special Restrictions](#))

## 9.0 DEIR Comments and Responses

---

### Responses

Code	Response
Caltrans-1	<p data-bbox="431 304 1430 531">Mitigation measure TR.1-1 in Section 4.15, Transportation, has been modified in the FEIR to require a Caltrans encroachment permit, if applicable, and to require identification of the number and type of trucks to occur per day. The truck restriction regarding the length of tractor trailers between Valley Road and Division Street on State Route 1 is also noted. Information on the truck restrictions can be found at:</p> <p data-bbox="431 579 1430 644"><a href="https://dot.ca.gov/-/media/dot-media/programs/traffic-operations/documents/trucks/truckmap-d05-a11y.pdf">https://dot.ca.gov/-/media/dot-media/programs/traffic-operations/documents/trucks/truckmap-d05-a11y.pdf</a></p>

**9.1.4 California State Parks Department**


## [EXT]Phillips 66 Santa Maria Refinery Demolition and Remediation Project Draft EIR Comments

Glick, Ronnie@Parks <Ronnie.Glick@parks.ca.gov>

Fri 5/3/2024 10:06 AM

To:PL\_p66refinery <PL\_p66refinery@co.slo.ca.us>

Cc:Jacobs, Roger@Parks <Roger.Jacobs@parks.ca.gov>;Bronson, Danielle@Parks <Danielle.Bronson@parks.ca.gov>

 1 attachments (346 KB)

Phillips 66 Comment Letter\_Letterhead Final Signed.pdf;

You don't often get email from ronnie.glick@parks.ca.gov. [Learn why this is important](#)

**ATTENTION:** This email **DID NOT** originate from County Staff. Please proceed with caution when interacting with any embedded links or attachments.

Attached please find comments on the Draft EIR from California State Parks.

Ronnie Glick  
Senior Environmental Scientist  
California Department of Parks and Recreation  
Oceano Dunes District  
340 James Way, Suite 270  
Pismo Beach, CA 93449  
Cell (805) 365-5284



Susan Strachan  
San Luis Obispo County Department of Planning & Building  
976 Osos St., Rm 300,  
San Luis Obispo, CA 93408

Sent by e-mail 5/3/2024

Subject: Draft Environmental Impact Report (DEIR) for Phillips 66 Santa Maria Refinery Demolition and Remediation Project (State Clearinghouse # 2023050020)

Dear Ms. Strachan,

These comments are submitted on behalf of the California Department of Parks and Recreation (State Parks), Oceano Dunes District, regarding the Draft Environmental Impact Report (DEIR) for Phillips 66 Santa Maria Refinery Demolition and Remediation Project, herein referred to as the Project. State Parks appreciates this opportunity to provide comments regarding the DEIR.

The Oceano Dunes District owns and manages the property adjacent to the refinery and leases a portion of property on the west side of the railroad tracks as part of Oceano Dunes State Vehicular Recreation Area (Leasehold/Leased Lands). The outfall pipeline traverses leased land and State Park owned lands. Oceano Dunes District staff manages the Phillips 66 leasehold area with the primary focus of natural resource management. This includes the monitoring and management of several sensitive species which inhabit the area including the State and Federally Endangered Nipomo Mesa Lupine (*Lupinus nipomensis*).

Specific Comments on Proposed Project

- 1. Plant Palette and seed mix should only include native dune scrub species collected within the Nipomo Guadalupe Dunes Complex (NGDC) to preserve local genetics (Section 2.6 Project Activities: Site Stabilization and Restoration)**

CSP-1

The Plant Palette and Seed Mix as described states that “local genetic sources of native plant materials would be used to the extent practicable.” (Pg. 2-56) However, what is “practicable” is open for interpretation. Since the habitat in question contains several locally endemic plant species, introducing viable plant materials, even California natives, that are not locally collected within the NGDC should not occur. Not importing viable seed and allowing for natural recruitment of natives from the existing seed bank and surrounding area or using sterile seeds would be preferable to introducing genetic material from outside of the NGDC.

- 2. Recently described sensitive species blushing layia (*Layia erubescens*) CRPR 1B.2 should be evaluated and considered as Special-Status Plant Species with Suitable Habitat Present in BSA (Section 4.4.1.5 Sensitive Plant Species)**

CSP-2

Blushing layia, a sensitive plant species documented within the ODSVRA leasehold property was described in 2022 (Baldwin 2022) and given a CRPR 1B.2 rare plant ranking in 2024 (CNDDDB 2024). This species was not evaluated within Table 4.4.2 Special-Status Plant Species with Suitable Habitat Present in BSA. Park staff has documented a healthy population of blushing laying with well over 1000 individual plants flowering in April 2024 directly west of Area 5 (Sulfur) and Area 6 (Coke Storage) on the west side of the Union Pacific railroad tracks within the immediate vicinity of the outfall pipeline and on both sides of the outfall pipeline maintenance road. Due to its close proximity of the BSA, blushing layia should be included as a sensitive species with potential to occur within the project area.

CSP-2  
(cont.)

## Citations:

Baldwin, B. G. 2022. A new species of Layia (Compositae) from the central coast of California.

Madroño 69: 88–94.

California Natural Diversity Database (CNDDDB). April 2024. Special Vascular Plants, Bryophytes, and Lichens List. California Department of Fish and Wildlife. Sacramento, CA.

### **3. Demolition & Remediation Activity Management Plan (DRAMP) stabilization methods should not use viable grass seed because it will displace sensitive native vegetation (AQ.1-1)**

AQ.1-1.10 states, “Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with a fast germinating, non-invasive grass seed and watered until vegetation is established”. Given the unique assemblage of documented sensitive plant species, including State and Federally Endangered Nipomo Mesa lupine and seven other California Rare Plant Ranks (CRPR) plants, and State Sensitive Silver Dune Lupine-Mock Heather scrub habitat (Tables 4.4.3 and 4.4.4), viable grass seed, even if it is “non-invasive” should not be used for stabilization because it will displace sensitive native species and alter sensitive native habitat. In such a sensitive habitat, even non-invasive grasses will continue to proliferate and displace endemic vegetation. Annual and perennial grass species inherently compete with sensitive native forbs like Nipomo Mesa lupine which “seems to prefer pockets of open sand between widely spaced individuals of dune-heather (Pg. 4.4-28).” Instead of “non-invasive grass seed”, sterile grass seed (example: Quickguard brand sterile triticale) that will not proliferate or temporary stabilization measures that will not have a permanent impact, such as seed free hydromulch or certified weed-free straw blankets, should be used and then replaced with permanent restoration methods.

CSP-3

### **4. The Habitat Restoration and Revegetation Plan should salvage all usable topsoil for revegetation (BIO.1-3)**

The requirements for BIO.1.3 Habitat Restoration and Revegetation Plan state, “Any usable topsoil with the potential to hold the seeds of sensitive species would be

CSP-4

salvaged and used when revegetating the area.” Based on the documented presence of multiple sensitive plant species throughout the BSA, including Nipomo Mesa lupine, which as previously stated, “is difficult to delineate the spatial extent of occupied habitat,” all useable topsoil should be assumed to hold seeds of sensitive species and should therefore be salvaged, stockpiled and returned to the location from which it was removed for seed bank preservation. Discretion as to whether or not topsoil has the “potential” to hold seed should not be included within the Habitat Restoration and Revegetation Plan and all topsoil should be assumed to include seeds of sensitive species. If topsoil is found to be contaminated and removed, then mitigation measures should be in place to replenish the potential seed bank.

**5. Weed Management Plan should specify herbicide mode of action to avoid impacts to sensitive native species (BIO.1-4)**

BIO.1.4 states that the Weed Management Plan shall specify manual and chemical removal methods and that “all proposed weed control methods must minimize the extent of any disturbance to native vegetation,” however, these methods are not identified. The Weed Management Plan should specify herbicide mode of action and require that herbicide applications to manage invasives throughout the Project area only use post-emergent herbicides and not pre-emergent herbicides in order to avoid disruption of native seed germination. Also, only grass specific herbicides (i.e. selective graminicides) should be used where sensitive broadleaf plants are present to avoid impacts to sensitive species.

CSP-5

**6. Nipomo Mesa lupine occurrence map does not include all known locations for sensitive species (BIO.2-2)**

Mapping of Nipomo Mesa lupine within the BSA is insufficient as it is based on limited recent survey data from 2022 through 2023 and does not include all available location data. The DEIR acknowledges that as an annual, “the observed distribution in any given year does not always accurately represent its full distribution across habitats” and “it is difficult to fully delineate the spatial extent of occupied habitat without multiple years of surveys during varying weather conditions (Pg. 4.4-29).” This section also acknowledges that annual surveys were conducted by Land Conservancy of San Luis Obispo County (LC-SLO) from 2007 to 2017. However, the mapped distribution of Nipomo Mesa lupine for the DEIR does not include these locations or locations documented in CNDDDB particularly within the vicinity of the helicopter pad on the northeastern corner of Area 3. Only point locations from three limited surveys in 2022 and 2023 were used, one of which was conducted out of season on June 20, 2022 when all plants would have already likely desiccated (in 2023 all plants within the leasehold west of the BSA had desiccated by the final survey on June 15<sup>th</sup>). All available point location data including the LC-SLO data set should be included within the mapped locations for Locations of Special-Status Plant Species (Figures 4.4-9 through 4.4-12) and for BIO.2-2 Nipomo Mesa Lupine Avoidance under “known population boundaries mapped in previous years.”

CSP-6



## **7. The Nipomo Mesa lupine mitigation criteria metric is not biologically appropriate for Nipomo Mesa lupine (BIO.2-3)**

BIO.2-3 proposes Nipomo Mesa Lupine mitigation “at a 3:1 ratio (based on square feet cover of individual plant) for permanent impacts to individuals (Pg. 4.4-78).” However, given its small size, irregular shape and seasonal nature, plant size is not an appropriate metric for assessing permanent impacts to individuals. Measurements would vary considerably depending on season and method of measurement due to wide growth fluctuations caused by varying rainfall and other seasonal conditions. Also, given that Nipomo Mesa lupine is an annual plant, only a fraction of the population in a given year may set seed and the plant numbers will vary considerably. Instead of square feet cover, the number of reproductive plants (i.e. plants that set seed) at a 3:1 ratio over a 5-year average would be a more appropriate mitigation metric. At a minimum, the California Department of Fish and Wildlife and the United States Fish and Wildlife Service should be consulted to determine a mitigation metric that will be measurable and appropriate for the recovery of the species.

CSP-7

### Discussion of Wastewater Outfall Pipeline as it pertains to the Proposed Project and the Project Alternatives

Approximately 0.8 miles of wastewater outfall pipeline lies below the ground surface within the ODSVRA leasehold and approximately 1.5 miles lies within the public use area of the ODSVRA. Under the Proposed Project the outfall pipeline would remain in place and continue to be subject to the maintenance requirements under the existing California State Lands Commission (CSLC) lease which expires in 2028. Under the Full Removal Alternative (5.1.2) and the Removal of Offshore Facilities Alternative (5.1.3) the outfall pipeline would be removed. In order to have a meaningful comparison of the environmentally superior alternatives, the existing baseline conditions must be accurately represented. However, the DEIR does not include the outfall pipeline corridor within the BSA and minimizes the potential impacts, both positive and negative, that the removal would have on recreation, biological resources and cultural resources. Section 5.2.2 and 5.2.3 states that impacts to biological resources “would be similar but greater than the Project as more soil movement and grading would occur” and that impacts to parks and recreation facilities “would be similar to the Project.”

CSP-8

### **1. Recreation within the vicinity of the outfall pipeline was not adequately addressed in the environmentally superior Alternatives discussion.**

Section 5.2.3 states that “maintenance of the outfall pipeline onshore historically has involved driving the pipeline route and occasional movement of sands with a bulldozer to ensure proper cover by sand.” However, this statement minimizes the required maintenance and, therefore, does not accurately represent the existing conditions. In order to maintain proper burial within the approximately 1.0 mile section of outfall pipeline within the public recreation area of the ODSVRA, weekly sand pushes are typically required. Should the pipeline be exposed, it would pose a significant hazard to visitors recreating in this area and would need to be clearly marked if not buried, thus creating a significant impact on recreational activities within the park. This existing level

CSP-9

of maintenance represents the CEQA baseline from which impacts from this alternative should be evaluated.

## **2. Biological and cultural resources within the vicinity of the outfall pipeline were not adequately addressed in the environmentally superior Alternatives discussion.**

Though the DEIR acknowledges that impacts to biological resources and cultural resources would be greater than the proposed Project for Full Removal Alternative (5.1.2) and the Removal of Offshore Facilities Alternative (5.1.3), the outfall pipeline and pipeline maintenance road was not included in the BSA and therefore, the potential for additional sensitive species or cultural resource to occur under these alternatives and the potential associated impacts were not evaluated.

CSP-10

Several protected species occur within the vicinity of the western most portion of the outfall pipeline that do not occur within BSA including migratory shorebirds, marine mammals and nesting populations of State and Federally Endangered and California Fully Protected California Least Tern (*Sternula antillarum browni*) and the Federally Threatened Western Snowy Plover (*Anarhynchus nivosus nivosus*). Furthermore, the western most portion of the outfall pipeline lies within Critical Habitat for Western Snowy Plover and much of the eastern portion lies within Critical Habitat for La Graciosa Thistle. In addition, multiple sensitive plant resources occur within the vicinity of the outfall pipeline that were not documented within the BSA including red sand-verbena (*Abronia maritima*) (CRPR 4.2), suffrutescent wallflower (*Erysimum suffrutescens*) (CRPR 4.2), blushing layia (*Layia erubescens*) (CRPR 1B.2), crisp monardella (*Monardella undulata ssp. crispa*) (CRPR 1B.2), and Dune mat vegetation alliance (Rarity Rank G3 S3).

Furthermore, two sub-populations of Nipomo Mesa lupine occur on the ground surface directly above the outfall pipeline within the leasehold area, one of which has consistently had the greatest number of individuals of any subpopulation within the leasehold, making it critical to the recovery of the species. For context on the potential impact of removal of the pipeline for the recovery of Nipomo Mesa lupine, from 2007 to 2017, during which time LC-SLO conducted annual census surveys of the range wide extant population, 11% of all identified individuals were located within 50-feet of the outfall pipeline and pipeline maintenance road. State Parks estimates that to date for the 2024 growing season, 41% of all individuals within the leasehold are located within 50-feet of the outfall pipeline and pipeline maintenance road. Categorizing potential impacts of removing this section of pipeline as “similar but greater” minimizes the potential impacts associated with the removal of the outfall pipeline.

Finally, the potential for impacts to cultural resources from these two alternatives has not been adequately addressed along the entire length of the outfall pipeline. A literature and records search was conducted for the DEIR within a 0.25-mile radius of the Project

area and field surveys were limited to within the Santa Maria Refinery fence (Sections 4.5.1.4 and 4.5.1.7). This leaves the entire outfall pipeline without a field survey and the majority without a literature and records search. Without a proper field survey and records search it is not possible to adequately compare the Alternatives.

CSP-10  
(cont.)

### 3. Discussion of environmentally superior alternatives

Under the Full Removal Alternative (5.1.2) or the Removal of Offshore Facilities Alternative (5.1.3) impacts to the aforementioned biological resources, cultural resources, and public recreation should be evaluated. Removing the section of pipeline within the public recreation area could have negative impacts on recreation in the short term by limiting recreation opportunities within the area during the removal process but would have a long-term positive impact by removing the need for regular maintenance that currently limits recreation opportunities on a weekly basis. Removing the westernmost section of the pipeline has the potential to have increased short term negative impacts on biological resources, specifically Western Snowy Plover nesting, California Least Tern nesting and Critical Habitat for western snowy plover. However, these impacts could be mitigated by limiting removal activities to times outside of the typical nesting season for these species and with standard biological monitoring and avoidance measures. Removing the section of pipeline within the leasehold could have negative impacts to populations of Nipomo Mesa lupine and other sensitive plant species. By only removing sections of pipeline that would have net positive impacts to recreation and leaving the sections of the pipeline capped in place that would have negative impacts to biological resources, a superior environmental alternative could be reached.

CSP-11

### Conclusion

Thank you for the opportunity to submit comments for this DEIR. We look forward to working with the San Luis Obispo County Department of Planning and Building, along with other valuable partners, for the issuance of an EIR that cooperatively addresses and accommodates our concerns.

If you have any questions or would like to discuss these comments in more detail, please contact myself or Ronnie Glick, Senior Environmental Scientist at 805-365-5284

Sincerely,

DocuSigned by:  
*Kevin Pearce*  
19F79DF29FFF46C...

Kevin Pearce, Acting Superintendent  
California State Parks, Oceano Dunes District

**9.0 DEIR Comments and Responses**

**Responses**

Code	Response
CSP-1	In Chapter 2.0, Project Description, Subsection 2.6, Project Activities: Site Stabilization and Restoration, Plant Palette and Seed Mix, the statement has been changed in the FEIR to read: “Native plant materials would be collected from the Nipomo Guadalupe Dunes Complex to preserve the local genetics of plant communities and populations.”
CSP-2	Additional species have been added to Section 4.4, Biological Resources, Table 4.4-2 Special Status Plant Species with Suitable Habitat Present in BSA. In addition, Figures 4.4-8 for NML only and Figures 4.4-9 through 4.4-12, for all species and historical occurrences, in the FEIR have also been updated with the revised information.
CSP-3	FEIR Section 4.2, Air Quality, mitigation measure AQ.1-1, item 10 has been edited to replace “non-invasive” with ”sterile” and also added the suggested information as follows: “Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with a fast germinating, sterile grass seed that will not proliferate (for example: Quickguard brand sterile triticale) and watered until vegetation is established, or other temporary stabilization methods (such as seed-free hydromulch or certified weed-free hydroblankets) until permanent restoration methods can be implemented.”
CSP-4	<p>In FEIR Section 4.4, Biological Resources, mitigation measure BIO.1-3, the following text has been deleted: “with the potential to hold the seeds of sensitive species”. The sentence has been revised to read: “Any usable topsoil would be salvaged, stockpiled, and returned to the area from which it was removed for seed bank preservation.”</p> <p>If topsoil is contaminated, the seed bank could not be salvaged as the soil would need to be removed to satisfy Central Coast Water Board requirements. However, mitigation measures BIO.1-3, BIO.2-3, BIO.3-3, and BIO.3-4 require the establishment of habitat creation area(s) protected in perpetuity with success criteria, in order to fully mitigate any potential impacts to sensitive plant species. These habitat creation area(s) for NML would be located on the larger Phillips 66 owned property, outside of the 218-acre Project site, or within the Nipomo Dunes (for other species). Additional mitigation measures associated with the seed bank within contaminated topsoil have not been included since any impacts to the suitable habitat which has both contaminated soils and a seed bank would be included in the acreage calculation for which habitat creation would be required.</p>
CSP-5	In FEIR Section 4.4, Biological Resources, mitigation measure BIO.1-4, the following was added to the paragraph describing the chemical control section of the Weed Management Plan (WMP): “The WMP shall specify the herbicide mode of action and require only post-emergent herbicides be used in and within 50-feet of revegetation and natural areas in order to avoid

Code	Response
	<p>disruption of native seed germination. Also, only grass-specific herbicides (graminicides) shall be used where sensitive broad-leaved plants are present to avoid impacts to sensitive plant species.”</p>
CSP-6	<p>Section 4.4, Biological Resources, Figure 4.4-8 and Figures 4.4-9 through 4.4-12 in the FEIR have been modified to show the results of the 2022, 2023, and 2024 surveys conducted within the BSA, as well as focused surveys for special status plants, including Nipomo Mesa lupine, conducted by the Land Conservancy of San Luis Obispo from 2007 to 2017 in areas west, north, and east of SMR, and surveys conducted by State Parks ODSVRA biologists from 2020 through 2024. The intent of these figures is to show the extent of historically occupied areas of sensitive plants in the area and within the Project site. Information on the results of these surveys has been added to the FEIR, Section 4.4, Biological Resources.</p> <p>In addition, mitigation measure BIO.2-2 has been modified to require that locations of Nipomo Mesa lupine, in currently or historically occupied habitat, must be avoided unless an ITP from CDFW for Nipomo Mesa lupine is first obtained.</p> <p>Note: Additional data and information for other special status plant species outside the BSA is also included in the Biological Resources Technical Report (ERM 2023).</p>
CSP-7	<p>Section 4.4, Biological Resources, has been edited to address the comment. First, the description of Nipomo Mesa lupine habitat in Section 4.4.1.5, Special Status Plant Species, in the FEIR was edited to address survey results included on Figure 4.4-8 (including the 2024 surveys). This includes surveys conducted by the Land Conservancy (2007–2017), State Parks ODSVRA (2020–2024), the ERM survey data from 2023 and 2024, and CNDDDB. It also includes information from USFWS maps with an explanation of the USFWS occurrences.</p> <p>In addition, mitigation measure BIO.2-3 Nipomo Mesa Lupine Habitat Mitigation and Creation was edited to have the mitigation be based on the impacts to suitable habitat areas (defined as areas where NML have historically occurred plus a 25-foot buffer) as well as requirements for establishment of the number of reproductive plants. The mitigation measure now reads, in part: “The County-approved HRRP (BIO.1-3) shall include methods for compensating for loss of Nipomo Mesa lupine suitable habitat area (including the 25-foot buffer) affected by the Project, at a minimum 3:1 ratio. Compensation for loss of individuals if project activities impact a location where plants have currently or historically been located, shall be based the average number of reproductive plants that set seed over the previous 5-year period, or as determined by the CDFW.”</p>

**9.0 DEIR Comments and Responses**

Code	Response
	Also see response to CDFW-1 and CDFW-2 regarding consultation on metrics.
CSP-8	<p>The outfall removal alternatives (Full Removal and Removal of Offshore Alternatives) discuss the potential for additional ESHA and associated activity impacts. As the area is within Combining Designation-mapped Sensitive Resource Area (SRA) which is ESHA, there is no need for a species-specific analysis of potential impacts as it is required by ordinance to treat these areas as ESHA. Given the mapped and unmapped ESHA on and surrounding the Project site, the mitigation measures proposed under the Project would be equally applicable. Note that these mitigation measures (see CBD-1 above) require surveys, avoidance, and habitat creation/restoration. The areas within the SMR Project site (the 218 acres within the fenceline) and the Biological Study Area (BSA), which includes the Project site with a 100-foot buffer) have previously known and unmapped ESHA plant populations and therefore surveys were conducted as part of the EIR process. The outfall pipeline, however, passes directly through known, mapped ESHA and these potential impacts and mitigation measures are still applicable. Detailed analysis is not needed to determine potential impacts that are appropriately classified as potentially significant but mitigable (Class II).</p> <p>CEQA indicates that alternatives do not need to be described or analyzed at the same level of detail as the proposed project (CEQA Guidelines Section 15126.6(d)). However, they need to be described in enough detail to allow a comparative analysis of the alternatives against the proposed project (see Residents Ad Hoc Stadium Committee v. Board of Trustees (1979)). They must be in sufficient detail for the Lead Agency to differentiate the impacts between the alternatives and to select the Environmentally Preferred Alternative (see Laurel Heights Improvement Association v. Regents of the University of California (1988)). The alternatives in the FEIR achieve these requirements allowing for a comparison of the potential impacts and the applicability of the mitigation measures.</p> <p>Regarding biological resources for full removal of the outfall, surveys of the corridor area would be required, as are required for the Project under the existing applicable mitigation measures. Identification of additional sensitive species would occur under these programs for the alternatives. For example, mitigation measure BIO.1-2 requires the development of a Biological Resources Adaptive Management &amp; Monitoring Plan that shall address “<i>Baseline biological conditions including sensitive vegetation and special-status species that have been recorded or could potentially occur on the Project site</i>” and “<i>that encompasses all aspects of the biological resources protection and management at the site</i>”. For the alternatives, these mitigation measures would also address the outfall pipeline areas and not be limited to</p>

Code	Response
	<p>only the designated Project site, as would be the case for all mitigation measures if the alternative is selected. As the additional grading impacts for outfall removal would clearly increase impacts to ESHA, it is not necessary to precisely identify how much greater the impacts to ESHA would be for pipeline removal to rule out those alternatives as environmentally superior.</p> <p>As additional soil movement would be required under these alternatives, there would also be the potential for impacts to cultural resources, similar to those associated with the Project. The Alternative section indicates that the mitigation measures associated with cultural, under impacts CT.2 through CT.4 related to archaeological resources, human remains, and tribal impacts, would be similar but greater than the Project as more soil movement and grading would occur. Mitigation measures associated with impacts CT.2, CT.3, and CT.4 would still apply and these impacts would be reduced to less than significant with the mitigation measures, the same as the Project.</p> <p>Recreational impacts could occur during removal but would be temporary. Text has been added to the FEIR indicating that removal of the outfall pipeline would require limited duration, temporary activities in the recreational area that would not substantially exceed historical baseline outfall pipeline maintenance issues and would not have a recreational impact.</p> <p>Additional text has been added to the alternatives discussion to reflect the approach for biology and the SRA Combining Designation of the Buffer Area defining it as mapped ESHA.</p>
CSP-9	<p>Ongoing maintenance of the outfall pipeline is a part of the existing baseline. The Project and alternatives which retain the outfall pipeline would continue this level of maintenance, and no additional impacts would occur over the existing baseline conditions. No additional impacts to recreation would occur. Text has been added to Chapter 5.0, Alternatives, for the applicable alternatives to ensure this analysis is clear.</p>
CSP-10	<p>See response to comment CSP-8 above. In response to the statement in CSP-10, paragraph 3, “Furthermore, two sub-populations of Nipomo Mesa lupine occur on the ground surface directly above the outfall pipeline within the leasehold area, one of which has consistently had the greatest number of individuals of any subpopulation within the leasehold, making it critical to the recovery of the species”: NML is known to readily establish in disturbed sandy areas, and this consistently dense population in the pipeline corridor seems to support ongoing outfall maintenance as beneficial.</p> <p>CEQA indicates that alternatives do not need to be described or analyzed at the same level of detail as the proposed project (CEQA Guidelines Section 15126.6(d)). See response to CSP-8.</p>

**9.0 DEIR Comments and Responses**

<b>Code</b>	<b>Response</b>
	<p>Regarding biological resources for full removal of the outfall, surveys of the corridor area would be required, as are required for the Project under the existing applicable mitigation measures. See response to CSP-8.</p> <p>In addition, for cultural resources mitigation measures, there are requirements for Archaeological Monitors and a Cultural Resources Monitoring and Discovery Plan (CRMDP) in mitigation measures CT.2-1, CT.2-2, and CT.2-3, which requires that no ground disturbance can occur before approval of any construction-related permits by the County. These ground disturbances would also include the outfall pipeline if one of those respective alternatives are selected. See response to CSP-8.</p> <p>These potential impacts are therefore addressed by the Project mitigation measures, all of which would also apply to all activities associated with an alternative if one is so selected.</p>
CSP-11	<p>The potential additional impacts to biological resources and recreational resources in the short-term associated with outfall pipeline removal alternatives do not rise to the level of significant and unavoidable and therefore have a minor, if any, role in the selection of the environmentally superior alternative under CEQA. CEQA states that alternatives should be selected which would “<i>feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project</i>” and “<i>capable of avoiding or substantially lessening any significant effect</i>” (CEQA section 15126). With mitigation, recreation and biology are not significant effects of the Project or alternatives. Only air quality particulate emissions are considered to be significant effects of the Project and Alternatives (in addition to black abalone under the outfall removal alternatives) and therefore only air quality particulate emissions increases are considered in the determination of the environmentally superior alternative. Furthermore, the Project proposes to retain the outfall, and the Applicant holds a lease for the offshore outfall with the California State Lands Commission (CSLC) which expires October 2028 with potential for extension. The lease includes a surety bond and conditions for maintenance. The CSLC has not identified any concerns with the Applicant retaining the outfall, in consultation with the County in the DEIR process.</p>



**9.1.5 Central Coast Regional Water Quality Control Board**

## [EXT]SITE CLEANUP PROGRAM: PHILLIPS 66 SANTA MARIA REFINERY, DRAFT ENVIRONMENTAL IMPACT REPORT REVIEW

Hernandez, Christine@Waterboards <Christine.Hernandez@Waterboards.ca.gov>

Mon 5/6/2024 2:06 PM

To: PL\_p66refinery <PL\_p66refinery@co.slo.ca.us>

Cc: Tim.Andreatta@p66.com <Tim.Andreatta@p66.com>; Kristen.M.Kopp@p66.com <Kristen.M.Kopp@p66.com>; Donald.G.Bowman@p66.com <Donald.G.Bowman@p66.com>; James.O.Anderson@p66.com <James.O.Anderson@p66.com>; Sean.H.Hunt@p66.com <Sean.H.Hunt@p66.com>; Trevor Keith <tkeith@co.slo.ca.us>; Cindy A. Chambers <cchambers@co.slo.ca.us>; ecandan@trihydro.com <ecandan@trihydro.com>; Schroeter, Angela@Waterboards <Angela.Schroeter@waterboards.ca.gov>; Harvey.packard\_waterboards.ca.gov <Harvey.packard@waterboards.ca.gov>; Sellinger, Amber@Waterboards <Amber.Sellinger@Waterboards.ca.gov>; Bishop, Greg@Waterboards <Greg.Bishop@waterboards.ca.gov>; Wyatt-Mair, Arwen@Waterboards <Arwen.WyattMair@waterboards.ca.gov>; Lemoine, Leah@Waterboards <Leah.Lemoine@Waterboards.ca.gov>

 1 attachments (346 KB)

05-06-2024\_SCP\_Ph66\_SMRRefinery\_Demo Draft EIR.pdf;

Some people who received this message don't often get email from christine.hernandez@waterboards.ca.gov. [Learn why this is important](#)

**ATTENTION:** This email **DID NOT** originate from County Staff. Please proceed with caution when interacting with any embedded links or attachments.

### **SITE CLEANUP PROGRAM: PHILLIPS 66 SANTA MARIA REFINERY, 2555 WILLOW ROAD, ARROYO GRANDE, SAN LUIS OBISPO COUNTY – DRAFT ENVIRONMENTAL IMPACT REPORT, PHILLIPS 66 SANTA MARIA REFINERY DEMOLITION AND REMEDIATION PROJECT (COUNTY PROJECT NO. C-DRC2022-00048/ED23-054)**

The Central Coast Regional Water Quality Control Board is increasing its efforts to transmit correspondence and other information electronically, reducing the amount of paper used, and increasing the speed of which information is distributed. Therefore, you are receiving the attached correspondence for the subject site from the Central Coast Water Board in a Portable Data Format (PDF) format. If you need help opening this document, please refer to the link below;

<http://www.adobe.com/products/acrobat/readstep2.html>

---

## Central Coast Regional Water Quality Control Board

May 6, 2024

Susan Strachan  
County of San Luis Obispo  
Department of Planning and Building  
976 Osos Street, Room 300  
San Luis Obispo, CA 93408  
Email: [p66refinery@co.slo.ca.us](mailto:p66refinery@co.slo.ca.us)

Sent via Electronic Mail

Dear Susan Strachan:

**SITE CLEANUP PROGRAM: PHILLIPS 66 SANTA MARIA REFINERY, 2555 WILLOW ROAD, ARROYO GRANDE, SAN LUIS OBISPO COUNTY – DRAFT ENVIRONMENTAL IMPACT REPORT, PHILLIPS 66 SANTA MARIA REFINERY DEMOLITION AND REMEDIATION PROJECT (COUNTY PROJECT NO. C-DRC2022-00048/ED23-054)**

The Central Coast Regional Water Quality Control Board (Central Coast Water Board) has reviewed the Draft Environmental Impact Report (DEIR) for the Phillips 66 Santa Maria Refinery Demolition and Remediation Project (Project) issued for public comment on March 22, 2024. The objectives listed in the DEIR for the Project are:

- Demolish the Santa Maria Refinery aboveground facilities (equipment and associated infrastructure).
- Achieve soil remediation at the Project site that meets applicable risk-based industrial standards in a cost-effective manner.
- Minimize ground disturbance by retaining existing surface hardscapes and existing belowground infrastructure, except where removal is necessary for site remediation.
- Retain essential infrastructure or utilities required to be kept in place by regulatory authorities and features retained for site security or for other site uses by potential future users.
- To the extent practicable, minimize costs and maximize economic returns associated with material, facilities, equipment, and other infrastructure removed from Project site.

The Phillips 66 Santa Maria Refinery has active cleanup cases in the Central Coast Water Board's Site Cleanup Program<sup>1</sup>, and staff has reviewed the DEIR with respect to

---

<sup>1</sup> Additional information on the Site Cleanup Program cases can be found on GeoTracker at: [https://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=SL203121248](https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL203121248) and [https://geotracker.waterboards.ca.gov/profile\\_report?global\\_id=T10000017182](https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000017182)

these cases and potential future remediation related to the Project. Based on our review of the DEIR, the Central Coast Water Board provides the following comments:

- 1) **Section 2.4.8.1, Ongoing Remediation and Monitoring Activities** – This section lists areas of known or potential contamination which are also shown on Figure 2-10. Please update this list and Figure 2-10 to clarify which areas are known and which are potential areas of contamination. The Central Coast Water Board is currently overseeing cleanup activities related to the Slop Oil Line Release Area, Northern Inactive Waste Site, and PFAS Investigation Areas. CCRWQCB-1
  
- 2) **Section 2.4.8.5, Slop Oil Line Release (Areas 3, 4, and 5)** –
  - a. This section indicates that the Slop Oil Line Release potentially impacted both soil and groundwater. Please update the text to remove “potentially” since it has been documented that this release impacted soil and groundwater. CCRWQCB-2
  
  - b. The DEIR states that Phillips 66 anticipates transfers from the Santa Maria Refinery about every two months for up to 20 years (per “RWQCB” estimates). In general, these types of cleanup cases do take many years to fully remediate; however, the Central Coast Water Board is not aware of a formal or detailed analysis regarding the estimated time to remediate the Slop Oil Line Release at the site. Therefore, please remove “(per RWQCB estimates)” from this statement or clarify where the estimate of 20 years was obtained. CCRWQCB-3
  
- 3) **Section 2.4.8.6, Site-Wide Groundwater Monitoring** – Please update this section with respect to the status of the PFAS workplan. The DEIR states the workplan is under review, however, the workplan has been reviewed, approved, and completed, and it is the report of findings that is currently under review. CCRWQCB-4
  
- 4) **Section 2.5.3.2, Remediation Planning** – This section indicates that if concentrations of the impacted material are above the level that presents an unacceptable risk to potential future industrial workers, then Phillips 66 would work with the proper oversight agency (i.e., “RWQCB”) to properly address the impacted area. This section should also note that some of the contaminants that may be encountered at the site have San Francisco Bay Regional Water Quality Control Board Environmental Screening Levels, revised in 2019 (SFB RWQCB ESLs)<sup>2</sup> for soil concentrations that leach to groundwater. Please also include that the Central Coast Water Board would be notified if these ESLs are exceeded, and Phillips 66 would work with the Central Coast Water Board to determine whether there is a risk for contaminants to leach to groundwater. CCRWQCB-5
  
- 5) **4.9.1.1 Existing Refinery Operations** – The last paragraph in this section indicates that the EnviroStor database lists a number of facilities in the project site vicinity; however, this list includes project sites from the State Water Resources Control Board GeoTracker database as well. Therefore, please CCRWQCB-6

<sup>2</sup> More information on the SFB RWQCB ESLs, revised in 2019, can be found at the following link: [https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/sitecleanupprogram.html](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/sitecleanupprogram.html).

update this statement to indicate that EnviroStor “and GeoTracker” databases list a number of facilities.

CCRWQCB-6 (cont.)

- 6) **Section 4.10.2.2, State Regulations, State Water Resources Control Board Resolution 92-49** – This section currently has the following text: The State Water Resources Control Board’s Resolution 92-49 sets forth the policies and procedures for investigation and cleanup and abatement of discharges of waste to the waters of the State. It requires cleanup to background levels, unless background levels of water quality cannot be restored. If background levels cannot be restored, dischargers must clean up to the best water quality which is reasonable, which takes into account technological and economic feasibility.

CCRWQCB-7

To provide a more complete description, please revise this text as follows: “State Water Resources Control Board Resolution No. 92-49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304 (Resolution No. 92-49), sets forth the policies and procedures for investigation and cleanup and abatement of discharges of waste to the waters of the State. It requires cleanup to background levels unless background levels of water quality cannot be restored. If background levels cannot be restored, dischargers must clean up to the best water quality which is reasonable, which considers technological and economic feasibility. Any such alternative cleanup level shall: 1) be consistent with maximum benefit to the people of the state; 2) not unreasonably affect present and anticipated beneficial use of such water; and 3) not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State Water Resources Control Board and Regional Water Quality Control Boards.”

- 7) **Section 5.1.2, Full Removal of Facilities Alternative** – Please change “water” to “groundwater” in the statement: The Slop Oil Line Release *water* remediation equipment and other remediation equipment that may be needed as required by the Central Coast Water Board.

CCRWQCB-8

- 8) **Section 5.1.4, Additional Remediation and Cleanup Alternative; Section 5.1.7, Reduced Remediation Alternative; and Section 5.2.4 Additional Remediation and Cleanup Alternative** – These sections indicate that the Project proposes to remediate to industrial standards. It should be clarified throughout the DEIR that the Project proposes that “soil” will be remediated to industrial “cleanup” standards (e.g., United States Environmental Protection Agency Regional Screening Levels [USEPA RSLs] or SFB RWQCB ESLs). If referring to groundwater cleanup levels, it should be clarified in the DEIR that groundwater cleanup will follow the protocols set forth in Resolution No. 92-49 which requires cleanup to background levels unless background levels of water quality cannot be restored and an alternate cleanup level is approved.

CCRWQCB-9

9) **Table 5.1 Full Removal Alternative Facilities Remaining Status** – Under the Facility Column - Groundwater production wells #2, #4, #5, and #6 (used for potable water, fire water, and industrial water at the “SMR”), it is stated “or other wells that may be evaluated to provide vertical conduits for contamination.” Please remove “or other wells that may be evaluated to provide vertical conduits for contamination” and replace with the following, “Prior to the destruction (removal) of groundwater production wells at the site, Phillips 66 would need to request and attain approval from the Central Coast Water Board since groundwater production wells #2 and #5 are currently sampled in accordance with the Monitoring and Reporting Program (MRP)<sup>3</sup> for the site.”

CCRWQCB-10

10) **Section 5.2.2, Full Removal of Facilities Alternative and Section 5.2.3, Removal of Offshore Facilities Alternative** – These sections include removal of the outfall line/offshore facilities which are within the proposed Chumash Marine Sanctuary Area. Therefore, please include reference to the proposed Chumash Marine Sanctuary Area to these sections as presented in Section 5.1.3.

CCRWQCB-11

11) **Section 5.2.4 Additional Remediation and Cleanup Alternative** – This section refers to the “Central Coast Water Board Environmental Screening Levels Tier 1”. References throughout the DEIR to Central Coast Water Board Environmental Screening Levels should be modified to the SFB RWQCB ESLs and in this case the reference should be to the SFB RWQCB Tier 1 ESLs, which are the most stringent.

CCRWQCB-12

12) **Section 5.4.4, Additional Remediation and Cleanup Alternative Comparison** – This section indicates removing contaminated soils to a different level than the Project. Please clarify what is meant by “a different level” (e.g., residential versus industrial cleanup levels) and indicate that this alternative would likely involve removing more contaminated soils as a lower, stricter cleanup standard (e.g., residential cleanup level) would be used.

CCRWQCB-13

If you have any questions, please contact **Amber Sellinger at (805) 549-3866** (email address below).

Sincerely,

**Amber Sellinger**  
 Digitally signed by Amber Sellinger  
 Date: 2024.05.06 13:29:27 -07'00'  
 Water Boards

for Ryan E. Lodge  
Executive Officer

cc list on following page

<sup>3</sup> The MRP can be found on GeoTracker at the following link:  
[https://documents.geotracker.waterboards.ca.gov/regulators/deliverable\\_documents/6166150748/Phil66\\_MRP\\_R3-2008-0070\\_Rev2023.pdf](https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/6166150748/Phil66_MRP_R3-2008-0070_Rev2023.pdf)

cc via email:

Tim Andreatta, Phillips 66 Company, [Tim.Andreatta@p66.com](mailto:Tim.Andreatta@p66.com)  
Kristen Kopp, Phillips 66 Company, [Kristen.M.Kopp@p66.com](mailto:Kristen.M.Kopp@p66.com)  
Donald Bowman, Phillips 66 Company, [Donald.G.Bowman@p66.com](mailto:Donald.G.Bowman@p66.com)  
Jim Anderson, Phillips 66 Company, [James.O.Anderson@p66.com](mailto:James.O.Anderson@p66.com)  
Sean Hunt, Phillips 66 Company, [Sean.H.Hunt@p66.com](mailto:Sean.H.Hunt@p66.com)  
Trevor Keith, County of San Luis Obispo, [TKeith@co.slo.ca.us](mailto:TKeith@co.slo.ca.us)  
Cindy Chambers, County of San Luis Obispo, [CChambers@co.slo.ca.us](mailto:CChambers@co.slo.ca.us)  
Ercan Candan, Trihydro Corporation, [ECAndan@trihydro.com](mailto:ECAndan@trihydro.com)  
Angela Schroeter, Central Coast Water Board, [Angela.Schroeter@waterboards.ca.gov](mailto:Angela.Schroeter@waterboards.ca.gov)  
Harvey Packard, Central Coast Water Board, [Harvey.Packard@waterboards.ca.gov](mailto:Harvey.Packard@waterboards.ca.gov)  
Amber Sellinger, Central Coast Water Board, [Amber.Sellinger@waterboards.ca.gov](mailto:Amber.Sellinger@waterboards.ca.gov)  
Greg Bishop, Central Coast Water Board, [Greg.Bishop@waterboards.ca.gov](mailto:Greg.Bishop@waterboards.ca.gov)  
Arwen Wyatt-Mair, Central Coast Water Board, [Arwen.WyattMair@waterboards.ca.gov](mailto:Arwen.WyattMair@waterboards.ca.gov)  
Leah Lemoine, Central Coast Water Board, [Leah.Lemoine@waterboards.ca.gov](mailto:Leah.Lemoine@waterboards.ca.gov)

GeoTracker SCP files: [https://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=SL203121248](https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL203121248)

Water Board internal file: R:\RB3\Shared\SCP\SITES\SLO Co\Arroyo Grande\2555 Willow-SM Refinery\Decommissioning\2024 DEIR\05-06-2024\_SCP\_Ph66\_SMRRefinery\_Demo Draft EIR.docx

BizFlow Task: M30000 Site Cleanup Program DARTS: 2031200

## 9.0 DEIR Comments and Responses

### Responses

Code	Response
CCRWQCB-1	Section 2.4.8.1 listing of known and potential contamination sites has been edited in the FEIR to indicate which sites are known and which sites are potential. The Figure 2-10 has also been modified to indicate known sites vs. potential sites (known sites are indicated with an asterisk and noted at the bottom of the figure).
CCRWQCB-2	Section 2.4.8.5, Slop Oil Line Release, the text “potentially” has been removed in the FEIR.
CCRWQCB-3	Section 2.4.8.5, Slop Oil Line Release, the text “per RWQCB estimates” has been removed in the FEIR.
CCRWQCB-4	Section 2.4.8.6, Site-Wide Groundwater Monitoring, the status of the PFAS workplan has been updated and the report of finding status added in the FEIR.
CCRWQCB-5	Section 2.5.3.2, Remediation Planning, additional text related to contaminants leaching to groundwater has been added in the FEIR.
CCRWQCB-6	Section 4.9.1.1, Existing Refinery Operations, Geotracker database text has been added to the introduction in this section of the FEIR.
CCRWQCB-7	Section 4.10.2.2, State Regulations, State Water Resources Control Board Resolution 92-49, text has been replaced with recommended text in the FEIR.
CCRWQCB-8	Section 5.1.2, Full Removal of Facilities Alternative, text “water” has been changed to “groundwater” in the FEIR.
CCRWQCB-9	Section 5.1.4, Additional Remediation and Cleanup Alternative; Section 5.1.7, Reduced Remediation Alternative; and Section 5.2.4; Additional Remediation and Cleanup Alternative, text has been added in the FEIR indicating that the industrial standards are for soil, and that groundwater standards follow Resolution No. 92-49.
CCRWQCB-10	Table 5.1 Full Removal Alternative Facilities Remaining Status, text in the table regarding groundwater production wells has been replaced in the FEIR per the comment.
CCRWQCB-11	Text regarding the proposed Chumash Heritage Marine Sanctuary is now included in the FEIR in the introductory Sections 5.1.2 and 5.1.3 for the Full Removal of Facilities Alternative and the Removal of Offshore Facilities Alternative, respectively.
CCRWQCB-12	Section 5.2.4, Additional Remediation and Cleanup Alternative, references to the Central Coast Water Board Tier levels have been changed in the FEIR to the San Francisco Bay RWQCB Tier levels.
CCRWQCB-13	Section 5.4.4, Additional Remediation and Cleanup Alternative Comparison, text has been modified in the FEIR to indicate that residential standards are addressed in this alternative and that this alternative would likely involve removing more contaminated soils.



**9.1.6 San Luis Obispo Air Pollution Control District**

# SLO County APCD Comments RE: Phillips 66 Santa Maria Refinery Demolition and Remediation Project - Draft Environmental Impact Report

Andrew Mutziger <amutziger@co.slo.ca.us>

Mon 5/6/2024 11:48 AM

To: Susan Strachan <sstrachan@co.slo.ca.us>

Cc: Greg Chittick <greg.chittick@mrsenv.com>; Cindy A. Chambers <cchambers@co.slo.ca.us>; Elise E. Lindsay <elindsay@co.slo.ca.us>

📎 1 attachments (483 KB)  
4241-7\_signed.pdf;

Hi Susan,

Thank you for the opportunity to review the Draft EIR for the P66 SMR Demolition and Remediation Project. Please find attached APCD's substantive comments regarding the DEIR.

APCD also has minor DEIR edits I will summarize below:

## Chapter 4-3 Air Quality

- Table 4.3.1 states that the Federal Primary Standard for PM2.5 is 12 µg/m3, annual arithmetic mean. On March 6, 2024, [US EPA change this standard](#) to 9.0 µg/m3, annual arithmetic mean. | APCD-1
- First line in first paragraph on page 4.3-32 has a typo: comparted should be compared. | APCD-2

## Chapter 4-8 Greenhouse Gas Emissions

- First line in first paragraph on page 4.8-7 has a typo: criteria should be GHG. | APCD-3
- Sixth paragraph on page 4.8-19 state that GHG emissions for the construction phase of residential projects are amortized over a 50 year project life. SLO County APCD's 2023 Administrative CEQA Handbook Update incorporated the APCD's 2023 CEQA GHG Guidance that changed the 50 year project live value to 30 years for residential projects. | APCD 4

Thank you and please let me know in you have any questions.

Sincerely,

**Andy Mutziger | Division Manager**

Planning, Monitoring & Grants

SLO County Air Pollution Control District

(805) 781-5956 VM • [amutziger@co.slo.ca.us](mailto:amutziger@co.slo.ca.us) • SLOCleanAir.org



---

**From:** Cindy A. Chambers <cchambers@co.slo.ca.us>

**Sent:** Friday, March 22, 2024 9:31 AM

**To:** Cindy A. Chambers <cchambers@co.slo.ca.us>; Susan Strachan <sstrachan@co.slo.ca.us>

**Cc:** Greg Chittick <greg.chittick@mrsenv.com>

**Subject:** Phillips 66 Santa Maria Refinery Demolition and Remediation Project - Draft Environmental Impact Report

Hello,

This message is to provide notice of public availability of the Draft Environmental Impact Report (DEIR) for the Phillips 66 Refinery project located at 2555 Willow Road in Arroyo Grande. The attached Notice of Availability provides a summary of the Project, details on the public review period, links to access the documents, information regarding the scheduled Planning Commission Study Session hearing, and other information.

# Appendix C Clarifications Regarding AQ Risk - RE: SLO County APCD Comments RE: Phillips 66 Santa Maria Refinery Demolition and Remediation Project - Draft Environmental Impact Report

Andrew Mutziger <amutziger@co.slo.ca.us>

Mon 5/6/2024 4:26 PM

To: Susan Strachan <sstrachan@co.slo.ca.us>

Cc: Greg Chittick <greg.chittick@mrsenv.com>; Cindy A. Chambers <cchambers@co.slo.ca.us>; Elise E. Lindsay <elindsay@co.slo.ca.us>

Hi Susan,

I've been writing up an internal document summarizing the APCD staff that will work with County Planning on review and approvals for AQ.1-1, AQ.3-1, AQ.4-1, and AQ.5-1.

As I was summarizing the metrics for AQ.5-1, I noticed that there seem to be some missing and inconsistent health risk information in Appendix C – Air Quality Report and Information. I called Greg Chittick and described what I was seeing and recommended that for transparency, the appendix should be updated to ensure the risk information reported in Table 4.3.15 and the related discussion in the DEIR's Air Quality chapter is well supported. Here are the items I think are missing in the Appendix:

- Residential receptor 12706: I did not see this receptor listed in Appendix C | APCD-5
- Table 4.3.15 risk values: I was not able to readily find the risk values reported in the table or HARP2 outputs in Appendix C | APCD-6
- Potential Inconsistency: Page 92 (Unmitigated) and 94 (Mitigated) of Appendix C (HARP2 Assumptions Conservative Alternative) have peak daily construction equipment fuel usage of 1118 gals. Page 29 (Unmitigated) in the appendix may be an extraneous HARP2 assumptions summary in that it sets lower peak daily construction equipment fuel usage of 749 gals and there is no similar assumptions page for a Mitigated HARP2 run at 749 gals. | APCD 7

My sense is the DEIR air quality risk conclusions will not need to be changed, but will be more adequately supported with above stated recommended Appendix C updates. As Mr. Chittick looks into these recommendations, he may find other information relative to the HARP2 risk evaluations that would be helpful to add to Appendix C to better support the DEIR's risk assessment conclusions. If in his review, Mr. Chittick finds the risk values in Table 4.3.15 and related discussion need to be updated, would you please let me know. We look forward to seeing these changes in the Final EIR.

Thank you and please let me know if you have any questions.

Sincerely,

**Andy Mutziger | Division Manager**

Planning, Monitoring & Grants

SLO County Air Pollution Control District

(805) 781-5956 VM • [amutziger@co.slo.ca.us](mailto:amutziger@co.slo.ca.us) • [SLOCleanAir.org](http://SLOCleanAir.org)



---

**From:** Susan Strachan <sstrachan@co.slo.ca.us>

**Sent:** Monday, May 6, 2024 12:56 PM

**To:** Andrew Mutziger <amutziger@co.slo.ca.us>

**Cc:** Greg Chittick <greg.chittick@mrsenv.com>; Cindy A. Chambers <cchambers@co.slo.ca.us>; Elise E. Lindsay <elindsay@co.slo.ca.us>

**Subject:** RE: SLO County APCD Comments RE: Phillips 66 Santa Maria Refinery Demolition and Remediation Project - Draft Environmental Impact Report

Thank you, Andy.

**Susan Strachan**  
**Power Plant Decommissioning Manager**  
Direct: (805) 788-2129  
Email: [sstrachan@co.slo.ca.us](mailto:sstrachan@co.slo.ca.us)



COUNTY OF SAN LUIS OBISPO  
PLANNING & BUILDING

---

**From:** Andrew Mutziger <[amutziger@co.slo.ca.us](mailto:amutziger@co.slo.ca.us)>  
**Sent:** Monday, May 6, 2024 11:48 AM  
**To:** Susan Strachan <[sstrachan@co.slo.ca.us](mailto:ssrachan@co.slo.ca.us)>  
**Cc:** Greg Chittick <[greg.chittick@mrsenv.com](mailto:greg.chittick@mrsenv.com)>; Cindy A. Chambers <[cchambers@co.slo.ca.us](mailto:cchambers@co.slo.ca.us)>; Elise E. Lindsay <[elindsay@co.slo.ca.us](mailto:elindsay@co.slo.ca.us)>  
**Subject:** SLO County APCD Comments RE: Phillips 66 Santa Maria Refinery Demolition and Remediation Project - Draft Environmental Impact Report

Hi Susan,  
Thank you for the opportunity to review the Draft EIR for the P66 SMR Demolition and Remediation Project. Please find attached APCD's substantive comments regarding the DEIR.

APCD also has minor DEIR edits I will summarize below:

Chapter 4-3 Air Quality

- Table 4.3.1 states that the Federal Primary Standard for PM<sub>2.5</sub> is 12 µg/m<sup>3</sup>, annual arithmetic mean. On March 6, 2024, [US EPA change this standard](#) to 9.0 µg/m<sup>3</sup>, annual arithmetic mean.
- First line in first paragraph on page 4.3-32 has a typo: comparted should be compared.

Chapter 4-8 Greenhouse Gas Emissions

- First line in first paragraph on page 4.8-7 has a typo: criteria should be GHG.
- Sixth paragraph on page 4.8-19 state that GHG emissions for the construction phase of residential projects are amortized over a 50 year project life. SLO County APCD's 2023 Administrative CEQA Handbook Update incorporated the APCD's 2023 CEQA GHG Guidance that changed the 50 year project live value to 30 years for residential projects.

Thank you and please let me know in you have any questions.  
Sincerely,

**Andy Mutziger | Division Manager**

Planning, Monitoring & Grants  
SLO County Air Pollution Control District  
(805) 781-5956 VM • [amutziger@co.slo.ca.us](mailto:amutziger@co.slo.ca.us) • SLOCleanAir.org



---

**From:** Cindy A. Chambers <[cchambers@co.slo.ca.us](mailto:cchambers@co.slo.ca.us)>  
**Sent:** Friday, March 22, 2024 9:31 AM  
**To:** Cindy A. Chambers <[cchambers@co.slo.ca.us](mailto:cchambers@co.slo.ca.us)>; Susan Strachan <[sstrachan@co.slo.ca.us](mailto:ssrachan@co.slo.ca.us)>  
**Cc:** Greg Chittick <[greg.chittick@mrsenv.com](mailto:greg.chittick@mrsenv.com)>  
**Subject:** Phillips 66 Santa Maria Refinery Demolition and Remediation Project - Draft Environmental Impact Report

Hello,

This message is to provide notice of public availability of the Draft Environmental Impact Report (DEIR) for the Phillips 66 Refinery project located at 2555 Willow Road in Arroyo Grande. The attached Notice of Availability provides a summary of the Project, details on the public review period, links to access the documents, information regarding the scheduled Planning Commission Study Session hearing, and other information.

The Draft EIR is available for review or downloading on the County's Planning Department website at:

[Phillips 66 Santa Maria Refinery Demolition and Remediation Project - County of San Luis Obispo \(ca.gov\)](http://www.slocounty.ca.gov/Planning/Projects/Phillips66/)

Hard copies of the Draft EIR and the DEIR Appendices are available for public review at the County Department of Planning & Building, 976 Osos Street, Rm 200, San Luis Obispo at the permit center from 8:30 a.m. – noon or 1:30 – 4:30 p.m. Monday through Friday. Hard copies and digital thumb drive copies of the Draft EIR are also available for review at the San Luis Obispo County Public Library Main Branch in San Luis Obispo, and at the branch libraries in Arroyo Grande and Nipomo (for hours and locations see SLOLIBRARY.org).

Please direct your comments to this email address: [p66refinery@co.slo.ca.us](mailto:p66refinery@co.slo.ca.us), or send written comments to the mailing address provided in the attached Notice.

If you have questions, please contact us by responding to this email.

**Cindy Chambers**

**Senior Planner**

**Decommissioning Project Team**

(p) 805-781-5608

[cchambers@co.slo.ca.us](mailto:cchambers@co.slo.ca.us)



COUNTY OF SAN LUIS OBISPO  
PLANNING & BUILDING

[www.slocounty.ca.gov](http://www.slocounty.ca.gov)

[www.sloplanning.org](http://www.sloplanning.org)

[Like us on Facebook](#)

[Follow us on Twitter](#)

[Follow us on LinkedIn](#)

[Subscribe on YouTube](#)

The Draft EIR is available for review or downloading on the County's Planning Department website at:

[Phillips 66 Santa Maria Refinery Demolition and Remediation Project - County of San Luis Obispo \(ca.gov\)](http://www.slocounty.ca.gov/Planning/Projects/Phillips_66_Santa_Maria_Refinery_Demolition_and_Remediation_Project)

Hard copies of the Draft EIR and the DEIR Appendices are available for public review at the County Department of Planning & Building, 976 Osos Street, Rm 200, San Luis Obispo at the permit center from 8:30 a.m. – noon or 1:30 – 4:30 p.m. Monday through Friday. Hard copies and digital thumb drive copies of the Draft EIR are also available for review at the San Luis Obispo County Public Library Main Branch in San Luis Obispo, and at the branch libraries in Arroyo Grande and Nipomo (for hours and locations see SLOLIBRARY.org).

Please direct your comments to this email address: [p66refinery@co.slo.ca.us](mailto:p66refinery@co.slo.ca.us), or send written comments to the mailing address provided in the attached Notice.

If you have questions, please contact us by responding to this email.

**Cindy Chambers**

**Senior Planner**

**Decommissioning Project Team**

(p) 805-781-5608

[cchambers@co.slo.ca.us](mailto:cchambers@co.slo.ca.us)



COUNTY OF SAN LUIS OBISPO  
PLANNING & BUILDING

[www.slocounty.ca.gov](http://www.slocounty.ca.gov)

[www.sloplanning.org](http://www.sloplanning.org)

[Like us on Facebook](#)

[Follow us on Twitter](#)

[Follow us on LinkedIn](#)

[Subscribe on YouTube](#)



Air Pollution Control District  
San Luis Obispo County

**VIA EMAIL ONLY**

May 6, 2024

Susan Strachan  
County of San Luis Obispo Department of Planning and Building  
976 Osos Street, Room 300  
San Luis Obispo, CA 93408  
sstrachan@co.slo.ca.us

SUBJECT: APCD Comments Regarding the Phillips 66 Santa Maria Refinery Demolition and Remediation Draft Environmental Impact Report (C-DRC2022-00048/ED23-054)

Dear Susan Strachan:

Thank you for including the San Luis Obispo County Air Pollution Control District (APCD) in the environmental review process. We have completed our review of the proposed Phillips 66 Santa Maria Refinery Demolition and Remediation Draft Environmental Impact Report (DEIR).

The Santa Maria Refinery (SMR or Refinery) is on a portion of property owned by Phillips 66 at 2555 Willow Road in Arroyo Grande, California. The SMR includes petroleum storage and processing facilities, primarily for high-sulfur heavy crude oil. The crude oil historically came primarily from offshore platforms along the California coast and oil fields in and near the Santa Maria Valley. The majority of crude oil was delivered to the Refinery by pipeline. The remainder of petroleum-based products was delivered by truck. The baseline and historic Refinery operations are described in Chapter 4.0 of the DEIR.

Semi-refined liquid products from the SMR have historically been transported by pipeline as feedstocks to the Phillips 66 Rodeo Refinery in Contra Costa County, California for upgrading into finished petroleum products. Other SMR products include petroleum coke (a byproduct of oil refining), which is shipped to off-site market destinations by rail and truck, and granular sulfur (recovered from the crude oil), which is shipped to off-site market destinations by truck.

In 2022, Phillips 66 received approval from Contra Costa County to modify the Rodeo Refinery in that county to process renewable feedstocks into renewable diesel and other renewable products. Since the Rodeo Refinery will no longer process crude oil, product from the SMR is no longer needed.



As a result, in January 2023, Phillips 66 discontinued processing crude oil at the SMR and began to shut down and decontaminate the facility (under separate existing permits). Under the Project, Phillips 66 intends to demolish most of the aboveground structures, facilities, and equipment within the perimeter fence line of the SMR site. Some aboveground features would remain as described in Section 2.4.7 of the DEIR. Once aboveground features are removed, site characterization soil testing would be conducted to determine what areas require soil remediation and what belowground infrastructure would require removal to support the remediation effort. Site characterization cannot be conducted until the aboveground structures are removed, allowing access to conduct the soil testing. As a result, the extent of remediation necessary is not known. Given this, the projected volume of contaminated soil to be removed and exported off site for disposal is estimated at a conservative upper range based on data from previous site assessments and Regional Water Quality Control Board (RWQCB) industrial worker environmental screening levels (ESL). This estimate ensures a conservative evaluation of truck and rail trips for off-site disposal of demolition debris and contaminated soils and associated environmental analyses pursuant to the California Environmental Quality Act (CEQA).

**APCD reviewed the following DEIR sections: Project Description, Air Quality, Greenhouse Gas Emissions, Transportation, and Appendix C – Air Quality Report and Information. Our agency agrees with the modeling assumptions made, the impact analyses, the mitigation definitions, and residual impact conclusions. APCD looks forward to working with SLO County Department of Planning and Building, County Public Health (AQ.1-1), and Phillips 66 on approvals and implementation of Air Quality Mitigation Measures AQ.1-1, AQ.3-1, AQ.4-1, and AQ.5-1.**

Thank you for the opportunity to comment on this proposal. If you have any questions or comments, feel free to contact me at 805-781-5912.

Sincerely,



ANDY MUTZIGER  
Division Manager – Planning, Monitoring, and Grants

AJM/eel

## 9.0 DEIR Comments and Responses

---

### Responses

Code	Response
APCD-1	Section 4.3, Table 4.3.1, the value for PM <sub>2.5</sub> annual arithmetic mean in the FEIR has been changed from 12 to 9 ug/m <sup>3</sup> .
APCD-2	Section 4.3, First line in first paragraph on page 4.3-32, has corrected the typo to “compared” in the FEIR.
APCD-3	Section 4.8, First line in first paragraph on page 4.8-7 typo changed from criteria to GHG in the FEIR.
APCD-4	Section 4.8, sixth paragraph on page 4.8-19 changed the residential projects amortized over a 50-year project life to a 30-year project life in the FEIR, as per SLOCAPCD’s 2023 Administrative CEQA Handbook Update.
APCD-5	Receptors and their associated HARP2 values have been added to Appendix C in the FEIR to allow for identifying receptor values and coordinates.
APCD-6	Table 4.3.15 risk values are included in Appendix C in the FEIR under the listing of gridded values. The grid numbers for each value are added to Table 4.5.15 also. Acute values, which are based on the daily fuel use, were updated in the FEIR. Cancer and chronic values, based on DPM emissions, are the same as what is specified in the DEIR and were not updated.
APCD-7	Fuel use is used only to calculate acute emissions associated with the DPM speciated components of emissions. The fuel values in Table 10.1 have been revised and the acute values updated in the FEIR to reflect a consistent use of the fuel use estimates and the associated health risk calculations.


**9.1.7 Santa Barbara County Air Pollution Control District**

# [EXT]SMR Demolition and Remediation Project EIR Comments

Carly V. Barham <BarhamC@sbcapcd.org>

Fri 4/26/2024 9:59 AM

To:PL\_p66refinery <PL\_p66refinery@co.slo.ca.us>

 1 attachments (283 KB)

04-26-24 SLO SM Refinery Demo DEIR.pdf;

You don't often get email from barhamc@sbcapcd.org. [Learn why this is important](#)

**ATTENTION:** This email **DID NOT** originate from County Staff. Please proceed with caution when interacting with any embedded links or attachments.

Hello Susan,

Attached please find the SBCAPCD's comments on the SMR Demo and Remediation Project EIR. Thank you for the opportunity to review and comment.

Sincerely,  
Carly



**Carly Barham**

Planning Division  
Air Pollution Control District  
Santa Barbara County

[BarhamC@sbcapcd.org](mailto:BarhamC@sbcapcd.org)

805.979.8337

*Out of office Thursdays*

[ourair.org](http://ourair.org) [@OurAirSBC](https://twitter.com/OurAirSBC)  [Twitter](#)  [Instagram](#)

[Sign Up for Air Alerts](#) 

April 26, 2024

Susan Strachan  
Decommissioning Project Manager  
County of San Luis Obispo  
Department of Planning and Building  
976 Osos Street, Room 300  
San Luis Obispo, CA 93408  
Sent Via Email Only: [p66refinery@co.slo.ca.us](mailto:p66refinery@co.slo.ca.us)

**Re: Santa Barbara County Air Pollution Control District Comments on the Draft Environmental Impact Report for the Phillips 66 Santa Maria Refinery Demolition and Remediation Project, SLC No. 2023050020, DP/CDP No. C-DRC2022-00048/ED23-054**

Dear Ms. Strachan:

The Santa Barbara County Air Pollution Control District (District) has reviewed the referenced project, which consists of the demolition of above ground infrastructure at the Santa Maria Refinery (SMR) and the remediation of the site. The SMR includes petroleum storage and processing facilities, primarily for high-sulfur heavy crude oil. Demolition-related equipment and material delivery vehicles and waste hauling trucks would use the existing designated haul route between the refinery entry/exit points and the Willow Road/U.S. 101 interchange. Project activities within Santa Barbara County are limited to truck and rail haul trips for offsite disposal of waste material and debris. For the purpose of the air quality assessment, demolition and remediation activities were assumed to occur continuously over a period of approximately three years and to begin as early as 2025. A substantial amount of the remediation work will be completed in the first three years, and then remediation will likely continue, but at a lower intensity level, over additional years (potentially up to 10 years) to finalize remediation and site grading and restoration. The project is located at 2555 Willow Road (State Route 1) in an unincorporated area of the County of San Luis Obispo, near Arroyo Grande and Nipomo, and approximately five miles west of U.S. Highway 101. The project site occupies approximately 218 acres within portions of two adjoining parcels: Assessor's Parcel Number (APN) 092-401-011 and APN 092-401-005.

The District has the following comments on the Draft EIR:

1. **Section 2.0 Project Description, Designated Haul Routes:** The District supports the designated haul route currently identified for the project of Willow Road to HWY 101. We recommend that the project trucks be restricted to this route unless deviation from this route is necessary due to emergency or other temporary or unforeseen circumstances. In the event, project haul trucks need to deviate from the designated route, we recommend that haul trucks avoid travel south via HWY 1 to Main St through the City of Guadalupe and areas designated by Senate Bill 535 as Disadvantage Communities (DACs) as identified by CalEnviroScreen 4.0 (Census Tract 6083002502).

SBCAPCD  
1

2. **Page 4.3-41, Section 4.3 Air Quality, Mitigation Measure AQ.3-1 Clean Construction**

**Equipment:** The District is supportive of the project’s commitment to achieve an 85% reduction in diesel particulate emissions. However, we have a suggested revision to the allowance for equipment to install CARB Level 3 diesel particulate filters (DPF). To ensure functionality and performance of the control technology, the DPF must be compatible with the engine. The DPF must be verified by CARB to ensure the particular device is applicable to the end-users type of engine (see <https://ww2.arb.ca.gov/our-work/programs/verification-procedure-use-strategies-control-emissions-diesel-engines>). DPF installation on a non-verified engine is unlikely to result in the 85% PM reduction currently assumed and could pose other negative outcomes related to engine performance and operation. Therefore, we suggest that the measure be revised to clarify that equipment should be equipped with a Level 3 DPF that has been *verified* by CARB as compatible with the engine via Executive Order and the *Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines*. Additionally, regarding the option for the applicant to utilize equipment that meets U.S. EPA Tier 4 emission standards to achieve the 85% reduction in diesel particulate emissions, we recommend that the measure be clarified to specify that equipment must be *certified* to meet U.S. EPA Tier 4 emission standards, as equipment “compliant” with Tier 4 standards does not employ the same control technology to ensure the equipment performs at the Tier 4 emission limits.

SBCAPCD  
2

If you or the project applicant have any questions regarding these comments, please feel free to contact me at (805) 979-8337 or via email at [BarhamC@sbcapcd.org](mailto:BarhamC@sbcapcd.org).

Sincerely,



Carly Barham  
Planning Division

cc: Planning Chron File

## 9.0 DEIR Comments and Responses

---

### Responses

Code	Response
SBCAPCD-1	Mitigation measure TR.1-1 in Section 4.15, Transportation, has been modified in the FEIR to restrict truck traffic to Willow Road and to require that in the event haul trucks need to deviate from this route, for emergencies or other circumstances, the City of Guadalupe and areas designated by SB 535 as disadvantaged communities, as identified by CalEnviroScreen 4.0 (CensusTract 6083002502), will be avoided.
SBCAPCD-2	Mitigation measure AQ.3-1 has been modified in the FEIR to address that engines be certified to meet U.S. EPA Tier 4 interim or equipped with CARB Level 3 diesel particulate filters (DPF) that has been verified by CARB as compatible with the engine via Executive Order for each device and utilizing the <i>Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines</i> . (see <a href="http://ww2.arb.ca.gov/our-work/programs/verification-procedure-use-strategies-control-emissions-diesel-engines">http://ww2.arb.ca.gov/our-work/programs/verification-procedure-use-strategies-control-emissions-diesel-engines</a> ).

## 9.2 Organizations

Comments letters received from organizations are listed below, along with the respective responses to the comments immediately following.



## 9.0 DEIR Comments and Responses

---


### 9.2.1 Friends of Oso Flaco

## [EXT]Conservation of the 630-acre Buffer Area as Mitigation for SMR Decom Impacts

friendsofosoflacolake@yahoo.com <friendsofosoflacolake@yahoo.com>

Fri 4/12/2024 4:05 PM

To:PL\_p66refinery <PL\_p66refinery@co.slo.ca.us>

 2 attachments (549 KB)

Santa Maria Refinery DEIR Comments April 2024.docx; Santa Maria Refinery DEIR Comments April 2024 Attachments.pdf;

You don't often get email from friendsofosoflacolake@yahoo.com. [Learn why this is important](#)

**ATTENTION:** This email **DID NOT** originate from County Staff. Please proceed with caution when interacting with any embedded links or attachments.

Dear Decommissioning Manager Strachan:

Please find attached a letter (along with attachments) in support of conservation of the Buffer Area as mitigation for the many impacts associated with the decommissioning of the Santa Maria Refinery.

A copy of the letter/attachments is also being provided via US Mail to 976 Osos Street, Suite 300 in San Luis Obispo.

Thank you,

Friends of Oso Flaco Lake  
Center for Biological Diversity  
Friends of Wild Cherry Canyon



## *Friends of Oso Flaco Lake*



April 12, 2024

Susan Strachan (p66refinery@co.slo.ca.us)  
Decommissioning Manager  
San Luis Obispo County  
Department of Planning and Building  
976 Osos Street, Room 300  
San Luis Obispo, CA 93408

Subject: Comments on the Draft EIR for the Santa Maria Refinery  
Demolition and Remediation Project:  
Conservation of the 630-acre “Buffer Area” as Mitigation for Impacts

Dear Ms. Strachan:

Thank you for this opportunity to provide comments on the draft Environmental Impact Report (EIR) for the Santa Maria Refinery’s Demolition and Remediation Project. We write this letter acknowledging the hard work that was put into preparing the draft EIR, and commend the thorough analysis it contains.

The draft EIR includes a detailed list of impacts related to the demolition and remediation of the project site. But what it doesn’t offer is mitigation that would have lasting significance for the community and for the unique and fragile dune environment (referenced in the draft EIR) that surrounds the project site. For that reason, **we suggest that mitigation for impacts be in the form of permanent land conservation, and specifically the conservation of approximately 630 acres** located within the Phillips 66 Santa Maria Refinery parcels, west of the Union Pacific Railroad, and east of the Oso Flaco Lake Natural Area (see attached map). This land has been called the “**Buffer Area**” by The Nature Conservancy (TNC) and other environmental and community groups.

CBD-1

Conservation of the Buffer Area is not a new idea. In its 1999 “Guadalupe-Nipomo Dunes Preserve Management Program” (Dunes Report), the California State Coastal Conservancy and TNC called for the in-perpetuity conservation of these lands. As that report stated, “In January, 1999, [then-owner] Tosco and State Parks OHV Division signed an agreement to set aside 630 acres of Tosco’s property in the Guadalupe-Nipomo Dunes (see Figure 1). The five-year agreement will prevent the 630-acre site from

CBD-2

being developed, in addition to maintaining the sensitive ecosystem that exists on the property within the Guadalupe-Nipomo Dunes.” The Dunes Report also states that although the Buffer Area is not currently part of the Guadalupe-Nipomo Dunes Preserve (because its protection was only temporary), it “could be added in the future” (Dunes Report, page 20).

Protecting the Buffer Area is also compelled by its unique conservation values as a component of the larger Guadalupe-Nipomo Dunes Complex. As stated in the Dunes Report:

*In a 1980s inventory of sensitive resources within California, the US Fish and Wildlife Service described the Guadalupe-Nipomo Dunes as “the most unique and fragile ecosystem in the State . . .” and ranked it first on the list of 49 habitat areas in need of protection statewide. At the same time, the U.S. Secretary of the Interior designated the Guadalupe-Nipomo Dunes as a National Natural Landmark for containing the largest, relatively undisturbed coastal dune tract in California. (Dunes Report, page 5).*

CBD-2  
(cont.)

In addition, when the US Fish and Wildlife Service (FWS) proposed to establish the Guadalupe-Nipomo Dunes National Wildlife Refuge (which succeeded in 2000), it included the Buffer Area in the boundaries, due to the area’s important role in supporting the larger dunes region and in conserving “the central California coastal dune and associated wetland habitats and assist in the recovery of native plants and animals that are federally listed as threatened or habitats.” FWS added that “[d]evelopment along the central coast has reduced the coastal dune scrub community to less than 10 percent of its historic distribution. Significant stands of this habitat are located within the proposed Refuge, and establishment of the Refuge would help protect this rare and relatively intact ecosystem.” (<https://ceqanet.opr.ca.gov/2000014006>)

The conservation of the Buffer Area would be consistent with precedent in adequately mitigating for impacts identified in land-use projects. In the nearby Diablo Canyon Power Plant, for example, land conservation has been approved to mitigate for impacts related to the construction of a training building (resulting in the in-perpetuity designation of the Pecho Coast Trail), the establishment of the dry cask storage site for spent nuclear fuel (resulting in the in-perpetuity designation of the Point Buchon Trail), and the replacement of the plant’s Steam Generator (resulting in the permanent conservation of 1200 acres at Point San Luis). Indeed, in the recently released draft EIR for the decommissioning of the Diablo Canyon Power Plant, SLO County identified the establishment of a public coastal trail as appropriate mitigation for that decommissioning project.

CBD-3

Thank you for your thoughtful work on the draft EIR for the Santa Maria Refinery’s Demolition and Remediation project. We hope you will use this opportunity to mitigate for the project’s many impacts through the conservation of the ecologically unique and significant 630-acre Buffer Area, which is supported by the community and the undersigned, and consistent with relevant, local precedent. Thank you for your consideration.

Sincerely,

Center for Biological Diversity  
Friends of Oso Flaco Lake  
Friends of Wild Cherry Canyon

Encl: Guadalupe-Nipomo Dunes Preserve Management Program (1999):  
Cover and Introduction Pages  
“Buffer Area” Description (Page 20)  
Area Map (Page 22 - two pages)



# Guadalupe-Nipomo Dunes Preserve

## Management Program

May, 1999

Prepared by:



---

Crawford  
Multari  
Clark &  
Mohr

---

# I. Introduction

## A. The Guadalupe-Nipomo Dunes

The Guadalupe-Nipomo Dunes are located in San Luis Obispo and Santa Barbara Counties along an eighteen mile stretch of coastline in central California. The dunes stretch from Point Sal in the south to Pismo Beach in the north.



The Guadalupe-Nipomo Dunes complex is actually a collection of three adjacent dune areas. From north to south, these areas are:

- ❑ The *Callender dunes*, which reside on the Nipomo Mesa and on the alluvial strip bounding the shore;
- ❑ The *Guadalupe dunes*, located on the Santa Maria River flood plain north of the river (on which the Guadalupe oil field and Mobil Coastal Preserve lie); and
- ❑ The *Mussel Rock dunes*, which are partly on the flood plain south of the Santa Maria River and partly on the high terrace extending southward to Point Sal and the adjoining mountain slope (see Figure 1).

In a 1980s inventory of sensitive resources within California, the US Fish and Wildlife Service described the Guadalupe-Nipomo Dunes as "...the most unique and fragile ecosystem in the State..." and ranked it first on a list of 49 habitat areas in need of protection statewide. At the same time, the U.S. Secretary of the Interior designated the Guadalupe-Nipomo Dunes as a National Natural Landmark for containing the largest, relatively undisturbed coastal dune tract in California, "where dune succession is exceptionally well displayed and the flora exhibits one

of the highest rates of endemism of any dunes in western North America". (Bayless, 1998). The California Department of Parks and Recreation has likewise stated that the Guadalupe-Nipomo Dunes are "...the most urgently needed landscape preservation project in the State of California."

Although human encroachment into the dunes is evident (including off-highway vehicle use and a significant release of diluent at the Guadalupe oil field), the Guadalupe-Nipomo Dunes remain one of the last, largely undisturbed dune ecosystems along the U.S. west coast. Often the victim of competing interests, undisturbed coastal dunes are becoming more and more rare in California. In spite of these pressures, the Guadalupe-Nipomo Dunes continue to support a rich diversity of plant and animal species, many of which are found only in this area. The richness of these resources is a testament to the size and relative remoteness of the dunes, and its location where northern and southern plant and animal species intermingle at the limits of their ranges. These unique qualities have combined to create one of the great natural wonders of California.

## B. The Guadalupe-Nipomo Dunes Preserve

Within the Guadalupe-Nipomo Dunes is a collection of properties or management units that have been set aside for protection of their natural resources as well as for certain human activities (including passive recreation and scientific study). These properties are known as the Guadalupe-Nipomo Dunes Preserve and include the following properties:

- The Mobil Coastal Preserve;
- The Rancho Guadalupe Dunes County Park;
- Black Lake; and
- The Pismo Dunes Natural Preserve.

A description of these properties, along with their ecological resources and permitted recreational activities, is provided in Chapter II of this Management Program. (See also Figure 1.)

Most of the properties comprising the Guadalupe-Nipomo Dunes Preserve are currently, or were historically, managed by The Nature Conservancy ("TNC"), a non-profit conservation organization. However, today -- and even more so in the future -- ownership and management is and will be provided by multiple entities, including the California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division ("State Parks OHV Division"); the California Department of Parks and Recreation (non-OHV Division); the County of Santa Barbara; the U.S. Fish and Wildlife Service; the Center for Natural Lands Management; and the Land Conservancy of San Luis Obispo County.

**Preserve:** Properties within the Guadalupe-Nipomo Dunes Preserve as shown on Figure 1.

**Dunes:** The entire dunes ecosystem, including properties within and surrounding the Preserve.

### C. Dune Lakes

Just north of Black Lake is an area known as Dune Lakes. The Dune Lakes area contains several fresh water coastal lakes, only a small number of which still exist in a natural state in California. North of the lakes is an area used for agricultural production. As noted earlier, these parcels were part of the 1996 transaction funded by the California State Coastal Conservancy and negotiated by The Nature Conservancy.

The Dune Lakes area is in private ownership and the public is not permitted to enter except by expressed permission of the owner. These parcels are considered protected as they are to remain in their existing state in perpetuity, as a result of the transfer of a conservation easement on the coastal lakes section to The Nature Conservancy and on the agricultural section to the Land Conservancy of San Luis Obispo County. Within the next year, The Nature Conservancy plans to transfer its conservation easement to The Land Conservancy.



Dune Lakes

### D. Tosco Property

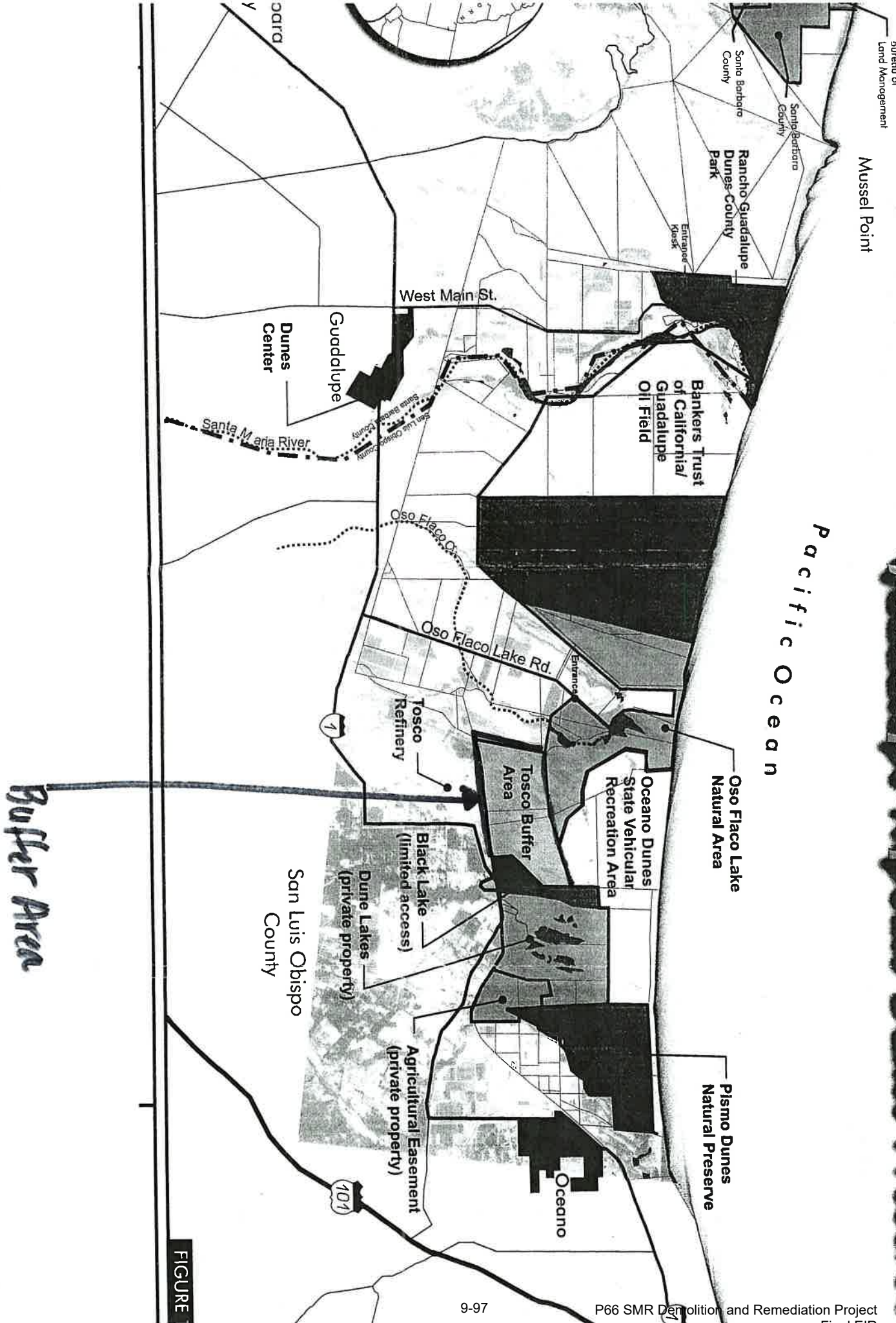
The Tosco Refining Company owns 1,780 acres adjacent to Highway 1 on the Nipomo Mesa. The refinery which occupies a portion of this site refines oil supplied from the Central Coast and from the San Joaquin Valley. The facility has been on this site for over 40 years and currently employs about 150 people.

In January, 1999, Tosco and State Parks OHV Division signed an agreement to set aside 630 acres of Tosco's property in the Guadalupe-Nipomo Dunes (see Figure 1). The five-year agreement will prevent the 630 acre site from being developed, in addition to maintaining the sensitive ecosystem that exists on the property within the Guadalupe-Nipomo Dunes.

Although these properties are not currently part of the Preserve, they could be added in the future pursuant to the participation of willing land owners. Indeed, it is hoped and anticipated that the Preserve will, in the long run, be defined by all properties in the Guadalupe-Nipomo Dunes that have been set aside in perpetuity for the protection of their natural resources and the compatible use by people, and where the owners of



# Guadalupe-Nipomo Dunes Preserve



FIGURE

Responses

Code	Response
CBD-1	<p>Letter from Center for Biological Diversity (signatory), Friends of Oso Flaco Lake and Friends of Wild Cherry Canyon.</p> <p>Several comment letters in addition to this letter from Center for Biological Diversity, Friends of Oso Flaco, and Friends of Wild Cherry Canyon state that the 630-acres located on Phillips 66 property west of the UPRR tracks should be permanently conserved and reference the agreement between the Applicant and the California Department of Parks and Recreation (CDPR or “State Parks”) regarding protection of the area.</p> <p>See Master Response to this comment in SURF-1, below</p> <p>Special status plant species and habitats could be impacted by Project soil remediation efforts. However, the Environmental Impact Report (EIR) provides for plant and habitat revegetation, restoration, creation, and conservation in perpetuity within the Phillips 66 property (for Nipomo Mesa lupine) and the Nipomo Dunes Complex (for California Rare Plant Rank (CRPR) 1-4 species) through the application of multiple mitigation measures, including the following<sup>1</sup>:</p> <ul style="list-style-type: none"> <li>• BIO.1-2: Prepare and Submit a Biological Resources Adaptive Management &amp; Monitoring Plan,</li> <li>• BIO.1-3: Habitat Restoration and Revegetation Plan,</li> <li>• BIO.2-1: Nipomo Mesa Lupine Surveys,</li> <li>• BIO.2-2: Nipomo Mesa Lupine Permitting and Avoidance,</li> <li>• BIO.2-3: Nipomo Mesa Lupine Habitat Mitigation and Creation,</li> <li>• BIO.3-3: CRPR 1-3 Plant Species Habitat Creation,</li> <li>• BIO.3-4: CRPR 4 Plant Species Habitat Creation, and</li> <li>• BIO.12-1: ESHA Protection Plan.</li> </ul> <p>In general, it is anticipated that much of the vegetated areas within the Project site would not require ground disturbance. These areas would remain intact unless soil remediation is required. The areas requiring soil remediation and the extent of the remediation would not be determined until after the Santa Maria Refinery (SMR) aboveground structures have been removed and soil</p>

<sup>1</sup> Mitigation measure BIO.2-3 requires that habitat creation for impacts to Nipomo Mesa Lupine occur within the larger Phillips 66 owned property (historical range for Nipomo Mesa Lupine), unless determined in feasible or not biologically viable by the California Department of Fish and Wildlife. Habitat creation would then be required to occur in Nipomo Dunes Complex. Mitigation measures BIO.3-3 and BIO.3-4 require that mitigation for impacts to plants species with a California Rare Plant Rank 1-4 occur in either a) on-site habitat creation or enhancement of impacted communities with similar species compositions to those present prior to remediation activities; b) off-site creation or enhancement of dune scrub communities; or c) participation in an established mitigation bank program.

**9.0 DEIR Comments and Responses**

Code	Response
	<p>characterization testing has been conducted. However, approximately 26.5 acres of vegetated areas within the Project site overlap with areas of potential disturbance, where there is evidence of historical debris and materials. As stated in Final EIR Section 4.4.5, “For this analysis, and pending further confirmation studies, it is assumed that these areas contain some degree of contamination, and a portion of these areas would require remedial action to remove impacted material. Therefore, under a ‘worst-case’ scenario, Project activities could potentially impact up to 26.5 acres of vegetation.” (See Final EIR Figure 4.4-13 for identification of potential areas of disturbance and Table 4.4.4 for identification of the vegetation alliances and land cover types which could be impacted). It is important to note that not all of the vegetation types that could be impacted require habitat creation as mitigation (e.g. eucalyptus groves, iceplant mats, ornamental plants, poison oak scrub, ruderal vegetation). These areas would be revegetated.</p> <p>The habitat creation area(s) has not yet been established, as the amount of impacted area would not be defined until the remediation activities are completed. Phillips 66, in coordination with the County and CDFW, would identify appropriate location(s) on the Phillips 66 owned property (which could include the 630-acre buffer or portions thereof) for Nipomo Mesa lupine and CRPR 1-4 species habitat creation and conservation. The area(s) would be based on the level of impacts, the size of the area(s) required, and the location’s habitat value. The habitat creation and conservation area(s) would be protected in perpetuity under a conservation easement or deed restriction.</p> <p>Given the worst-case potential impacts to special status plants and habitat (26.5 acres), there is no nexus to require that the 630-acre area be fully conserved. Mitigation ratios for habitat creation have been incorporated into the mitigation measures based on plants which could be impacted to allow for impacts to be fully mitigated (BIO.2-3, minimum 3:1 for Nipomo Mesa lupine; BIO.3-3, minimum 2:1 for CRPR 1-3 species; BIO.3-4, minimum 1:1 for CRPR 4 species; BIO.11-1 2:1 for Coastal Dune Scrub; and BIO.12-1 1:1 for ESHA).</p> <p>If a future use is proposed and additional conservation is needed in order to protect the area from that future use beyond the land use restrictions that are already in place, then those additional measures would occur and be imposed at that time. However, it is important to note that the land use restrictions (discussed below) limit the type of development and activities which could occur on the 630-acres.</p>

**Existing Land Use Restrictions**

The adjacent 630-acre portion of the Project site to the west of the UPRR tracks currently operates as a buffer between the Industrial use area of the SMR and the Oceano Dunes State Vehicular Recreation Area (ODSVRA) through the following existing measures:

- 1) The establishment of mapped Environmentally Sensitive Habitat Areas (ESHA) as a Combining Designation in the County’s Title 23 Coastal Zone Land Use Ordinance (CZLUO)
- 2) The land use categorization of Open Space, thereby limiting allowed uses; and
- 3) The Tosco agreement for buffer management, as required by Industrial Standard 4, Buffer Zones, in the San Luis Obispo County South County Coastal Area Plan.

Each of these is discussed further, below.

Environmentally Sensitive Habitat Areas

The property west of the UPRR tracks has a mapped Sensitive Resources Area (SRA) Combining Designation, documented in the CZLUO. Combining designations identify areas with characteristics that are either of public value or are hazardous to the public. The special location, terrain, man-made features, plants or animals of these areas create a need for more careful project review to protect those characteristics, or to protect public health, safety and welfare (County Framework for Planning, page 7-3). As it relates to the 630-acre buffer area, the SRA Combining Designations identified in the CZLUO is for mapped ESHA. Mapped ESHA is a type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats. In this case, there are a number of rare and sensitive plant species on the site, including Nipomo Mesa lupine, which are protected.

The CZLUO Section 23.07.170.1(e) provides standards for approval of a development project within ESHA, including requiring avoidance of any significant disruption or degradation. If that can’t be done, the project must be redesigned or relocated to avoid impacts, or reduce the impacts to less than significant. The section lists the following as allowable uses:

- i. Resource-dependent uses
- ii. Coastal accessways (access, easements and nature trails to improve support for resource protection)
- iii. Incidental services and utilities in wetlands
- iv. Habitat creation and enhancement, when required as replacement for impacts at recognized ratios, in-kind, and in the same biome

Code	Response
	<p>v. Restoration of damaged habitats, as recommended by a restoration plan</p> <p>In addition, Section 30240 of the Coastal Act requires ESHA to be protected, and only resource-dependent uses are allowed in those areas. Any development must be sited and designed to avoid impacts and compatible with the continuance of the habitat. Both the CZLUO and Coastal Act provisions pertaining to ESHA apply to the 630-acre buffer area.</p> <p><u>Open Space Land Use Designation</u> The land use designation for the 630-acre area is Open Space. The purpose and character of this designation are as follows:</p> <p><b>Purpose:</b></p> <ol style="list-style-type: none"> <li>a. To identify land areas having value as primitive or natural areas.</li> <li>b. To identify environmentally-fragile areas that are capable of supporting only passive recreational activities and non-structural uses.</li> <li>c. To identify areas in public ownership which are reserved for wilderness use or as a wildlife or nature preserve.</li> <li>d. To retain areas with fragile plant or animal communities (such as marshes and wetlands) in a natural or undisturbed state.</li> <li>e. To retain natural beauty and ecological diversity.</li> </ol> <p><b>Character:</b></p> <ol style="list-style-type: none"> <li>a. National forest, Bureau of Land Management or other public lands specifically reserved or proposed for watershed preservation, outdoor recreation wilderness or wildlife/nature preserves.</li> <li>b. Sites or portions of a site with natural features such as unique topography, vegetation or stream courses without a quality or extent sufficient to necessitate application of a Sensitive Resource Area (SRA) combining designation. May also include Environmentally Sensitive Habitat for animal or plant community.</li> </ol> <p>The purpose and character of a land use designation are used to evaluate development proposals for consistency with the County's Land Use Element/Local Coastal Program (LUE/LCP). Projects which further the land use designation purpose and character are encouraged, whereas those which do not further the purpose and character cannot be found consistent with the LUE/LCP. (San Luis Obispo County Coastal Allowable Use Table &amp; Definitions Framework For Planning Excerpts - Coastal Zone).</p>

Code	Response
	<p>If project development were proposed in the 630-acre area, it would be evaluated against the purpose and character of the Open Space land use designation.</p> <p><u>The Tosco Agreement</u>            To ensure security and habitat protection of this property, Phillips 66 (formerly Tosco) executed an agreement allowing State Parks to manage and maintain this acreage as a buffer zone between the ODSVRA and the industrial land use of the property east of the UPRR tracks. The “Tosco Agreement”, executed September 24, 1998, between Phillips 66 and State Parks to replace the original Unocal-State Parks agreement, “<i>grants to the State right ... to occupy and prevent further development</i>” of [the Buffer Zone]. The agreement states “<i>Such right, estate, and interest shall endure for a term of five (5) years .... and shall be automatically renewed for additional periods of one year, unless notice of non-renewal is given in writing, by TOSCO to STATE</i>”. As no notice of non-renewal has been entered since the agreement date, it continues to be in force and protection of the western “buffer area” continues.</p> <p>This Agreement is required by the South County Coastal Area Plan which is part of the County’s Local Coastal Plan (LCP). Under Industrial Standards for the Union Oil site, #4 describes the property west of the railroad as a buffer between the heavy industrial use and the ODSVRA and prohibits development in this area. Standard #4 reads as follows:</p> <p style="padding-left: 40px;">Buffer Zones. No facilities shall be located in the area west of the railroad, which shall serve as a protective, natural buffer separating the heavy industrial use from the recreational activities within the dunes. This buffer area shall be managed cooperatively between the property owners and the California Department of Parks and Recreation to encourage dune revegetation and stabilization within the buffer area. A buffer area shall be required to reduce impacts to the nearby residential areas. (LCP)</p> <p>The South County Coastal Area Plan Standards, under standards for Open Space, also references the Union Oil-State Parks agreement, as follows:</p> <p style="padding-left: 40px;">Limitation of Use. This area shall be maintained in its natural state to provide a buffer from the off-road vehicular area to the west and to afford protection to the refinery area to the east. Only authorized vehicles used for maintenance purposes are permitted, except for special off-road events which may be permitted if the lease between Union Oil and State Parks is renegotiated. (LCP)</p>

**9.0 DEIR Comments and Responses**

<b>Code</b>	<b>Response</b>
	<p>This standard speaks to keeping the area undeveloped and as a buffer. However, it includes a statement for “special off-road events” if the lease between Union Oil and State Parks is renegotiated. It is important to note that if the lease were renegotiated and a special off-road event proposed, that event would require a permit from the County and would be subject to the land use restrictions discussed above.</p>
CBD-2	<p>Please see response to comment CBD-1.</p>
CBD-3	<p>The comment is correct that land conservation and coastal access have been required by the California Coastal Commission for projects associated with the Diablo Canyon Power Plan (DCPP). While the installation of the nuclear power plant pre-dated the Coastal Act and was not subject to a Coastal Development Permit (CDP), three subsequent projects did require a CDP - the Simulator Training building, the Independent Spent Fuel Storage Installation for spent nuclear fuel, and the Steam Generator Replacement project.</p> <p>When the Coastal Commission reviewed these three applications, they required PG&amp;E to conserve land and create trails as mitigation for each development project since the Coastal Commission could find there was an appropriate “nexus” and “rough proportionality between the project impacts and the land conservation or coastal access required (see e.g. Nollan v. California Coastal Commission (1987) 483 U.S. 825; Dolan v. City of Tigard (1994) 512 U.S. 374).</p> <p>With regard to the DCPP decommissioning EIR, coastal access will be required as a permit condition for consideration by the decision makers given that Nuclear Regulatory Commission (NRC) regulations exclude the public from any access to the shoreline within the NRC boundary for the DCPP and the U.S. Coast Guard precludes access within 2,000 feet offshore from the DCPP site. The public cannot approach or utilize the coastline from either water or land in the area surrounding the facility, and PG&amp;E or its subsidiary own and control a 14-mile stretch of coastline on which the DCPP is located. over 10 miles of coastal shoreline property between Point San Luis and Coon Creek.</p> <p>The Phillips 66 SMR does not currently block public access to the shoreline, as the westernmost property boundary is a mile or more east of the mean high tide line. State Parks provides public access in the intervening coastal area between Phillips 66 and the shoreline. In addition, as stated in Response to Comment CCC-4, the Project would reduce site activity, employees and other growth-inducing factors to a fraction of the operational facility, and in the long term would eliminate most of the current environmental impacts associated with the operation of the SMR. Therefore, there is no nexus under CEQA to require additional coastal access. Coastal access or requiring the conservation of land can only be required if 1) there is also a reasonable nexus (i.e., that the project leads to an impact requiring mitigation); and 2)</p>

<b>Code</b>	<b>Response</b>
	any required mitigation is roughly proportional to the impact being mitigated. The Coastal Commission’s analyses of each DCP application ensured there was an appropriate “nexus” and “rough proportionality” between the mitigation measures and the impacts requiring the mitigation. The staff report for DCP decommissioning will do the same.



**9.2.2 Nature Conservancy**

[EXT]The Nature Conservancy Comment Letter - Santa Maria Refinery Demolition and Remediation Project Draft EIR

Megan Cleveland <megan.cleveland@TNC.ORG>

Mon 5/6/2024 2:48 PM

To:PL\_p66refinery <PL\_p66refinery@co.slo.ca.us>

Cc:Michael Bell <mbell@TNC.ORG>;Elizabeth Forsburg Pardi <eforsburg@TNC.ORG>

📎 1 attachments (76 KB)

TNC Comment Letter - Santa Maria Refinery DEIR 5.6.2024.pdf;

You don't often get email from megan.cleveland@tnc.org. [Learn why this is important](#)

**ATTENTION:** This email **DID NOT** originate from County Staff. Please proceed with caution when interacting with any embedded links or attachments.

Good Afternoon, Decommissioning Manager Strachan,

Please find attached a letter from The Nature Conservancy regarding the Draft Environmental Impact Report for the Santa Maria Refinery Demolition and Remediation Project. In the attached letter, we specifically advocate for the conservation of the "Buffer Area" as mitigation for potential impacts associated with the decommissioning of the refinery.

Please let us know if you have any questions.

Thank you,

Megan

**Megan Cleveland**

Policy Associate

[Megan.Cleveland@tnc.org](mailto:Megan.Cleveland@tnc.org)

c: (425) 802-8149



**The Nature Conservancy in  
California**

Mailing Address

830 S St.

Sacramento, CA 95811



We'd like to direct you to the Conservancy's [privacy policy](#), to explain our privacy practices with respect to your information. By continuing to interact with us, you agree that you have read and understand our privacy policy. **People & Nature Thrive When We Live Our Code.** Learn more at [nature.org/codeofconduct](https://www.nature.org/codeofconduct).



Sacramento Office  
830 S Street  
Sacramento, CA

tel [916] 449-2850  
fax [916] 448-3469  
nature.org  
nature.org/california

May 6, 2024

Susan Strachan  
Decommissioning Manager  
San Luis Obispo County  
Department of Planning and Building  
976 Osos Street, Room 300  
San Luis Obispo, CA 93408

**RE: Comments on the Draft EIR for the Santa Maria Refinery Demolition and Remediation Project**

Dear Ms. Strachan:

The Nature Conservancy (TNC) is writing to provide comments on the draft Environmental Impact Report (EIR) for the Santa Maria Refinery's Demolition and Remediation Project (Project). We recognize the significant time and effort that went into preparation of the draft EIR and appreciate the opportunity to provide comment.

TNC is a science-based organization that works worldwide to deliver conservation solutions that benefit both people and nature. Our mission is to conserve the lands and waters upon which all life depends, and TNC has applied deep technical expertise, tools, and resources in conservation science expressly to conserve biodiversity and increase climate resilience. We have protected over 1.5 million acres of rivers, forests, and lands in California to preserve habitats that are essential to nature and people. For decades, TNC has been working in San Luis Obispo County, and along the Central Coast more broadly, to achieve landscape-scale conservation to protect the area's biodiversity and avoid conversion of natural lands.

We appreciate the thorough analysis included in the draft EIR and the effort that went into preparing the document. While the draft EIR includes a detailed list of impacts related to the demolition and remediation of the project site, it lacks mitigation requirements that would provide long-term benefits for the community and the unique and fragile dune environment that surrounds the project site. We recommend that the final EIR for the Project include permanent land conservation for a "Buffer Area" of approximately 630 acres located within the Phillips 66 Santa Maria Refinery parcels. The recommended Buffer Area is located west of the Union Pacific Railroad and east of the Oso Flaco Lake

TNC-1

Natural Area. Protection of this Buffer Area will support conservation of the Guadalupe-Nipomo Dunes and the unique plant and animal species in this region.

TNC-1  
(cont.)

In the late 1980s, TNC and the State Coastal Conservancy established the Guadalupe-Nipomo Dunes Preserve, which is comprised of several properties that were historically owned and managed by TNC. The Guadalupe-Nipomo Dunes are one of the last, largely undisturbed dune ecosystems along the west coast of North America. This dune system includes freshwater lagoons and pristine beaches that create a variety of habitats for endangered species, such as snowy plovers and northern elephant seals, and contains a rich diversity of plant species, many of which are endemic to this region.

For decades, TNC has been advocating for the long-term conservation of the lands in the Buffer Area. In the Guadalupe-Nipomo Dunes Preserve Management Program that TNC produced in 1999 in collaboration with the State Coastal Conservancy, we called for the in-perpetuity conservation of these lands and suggested adding the Buffer Area to the larger Guadalupe-Nipomo Dunes Preserve at a future time. This Buffer Area serves an important role in supporting, protecting, and conserving the coastal dune and wetland habitats in the Guadalupe-Nipomo Dunes Preserve.

TNC-2

Thank you for the opportunity to provide comment on the draft EIR for the Santa Maria Refinery's Demolition and Remediation project. We appreciate the thoughtful work involved in preparing the draft EIR for this project. The Guadalupe-Nipomo Dunes Complex contains unique and fragile ecosystems and habitat areas that require protection. We urge you to use this opportunity to conserve this ecologically significant, 630-acre Buffer Area to help protect this landscape for the benefit of people and nature both now and in the future.

Sincerely,



Michael Bell  
Director of Protection  
The Nature Conservancy

Responses

Code	Response
TNC-1	<p>Several comment letters state that the 630-acres located on Phillips 66 property west of the UPRR tracks should be permanently conserved and reference the agreement between the Applicant and the California Department of Parks and Recreation (CDPR or “State Parks”) regarding protection of the area. Special status plant species and habitats could be impacted by Project soil remediation efforts. However, the Environmental Impact Report (EIR) provides for plant and habitat revegetation, restoration, creation, and conservation in perpetuity within the Phillips 66 property (for Nipomo Mesa lupine) and the Nipomo Dunes Complex (for California Rare Plant Rank (CRPR) 1-4 species) through the application of multiple mitigation measures, including the following<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>• BIO.1-2: Prepare and Submit a Biological Resources Adaptive Management &amp; Monitoring Plan,</li> <li>• BIO.1-3: Habitat Restoration and Revegetation Plan,</li> <li>• BIO.2-1: Nipomo Mesa Lupine Surveys,</li> <li>• BIO.2-2: Nipomo Mesa Lupine Permitting and Avoidance,</li> <li>• BIO.2-3: Nipomo Mesa Lupine Habitat Mitigation and Creation,</li> <li>• BIO.3-3: CRPR 1-3 Plant Species Habitat Creation,</li> <li>• BIO.3-4: CRPR 4 Plant Species Habitat Creation, and</li> <li>• BIO.12-1: ESHA Protection Plan.</li> </ul> <p>In general, it is anticipated that much of the vegetated areas within the Project site would not require ground disturbance. These areas would remain intact unless soil remediation is required. The areas requiring soil remediation and the extent of the remediation would not be determined until after the Santa Maria Refinery (SMR) aboveground structures have been removed and soil characterization testing has been conducted. However, approximately 26.5 acres of vegetated areas within the Project site overlap with areas of potential disturbance, where there is evidence of historical debris and materials. As stated in Final EIR Section 4.4.5, “For this analysis, and pending further confirmation studies, it is assumed that these areas contain some degree of contamination, and a portion of these areas would require remedial action to remove impacted material. Therefore, under a ‘worst-case’ scenario, Project activities could potentially impact up to 26.5 acres of vegetation.” (See Final EIR Figure 4.4-13 for identification of potential areas of disturbance and Table 4.4.4 for identification of the vegetation</p>

<sup>2</sup> Mitigation measure BIO.2-3 requires that habitat creation for impacts to Nipomo Mesa Lupine occur within the larger Phillips 66 owned property (historical range for Nipomo Mesa Lupine), unless determined in feasible or not biologically viable by the California Department of Fish and Wildlife. Habitat creation would then be required to occur in Nipomo Dunes Complex. Mitigation measures BIO.3-3 and BIO.3-4 require that mitigation for impacts to plants species with a California Rare Plant Rank 1-4 occur in either a) on-site habitat creation or enhancement of impacted communities with similar species compositions to those present prior to remediation activities; b) off-site creation or enhancement of dune scrub communities; or c) participation in an established mitigation bank program.

Code	Response
	<p>alliances and land cover types which could be impacted). It is important to note that not all of the vegetation types that could be impacted require habitat creation as mitigation (e.g. eucalyptus groves, iceplant mats, ornamental plants, poison oak scrub, ruderal vegetation). These areas would be revegetated.</p> <p>The habitat creation area(s) has not yet been established, as the amount of impacted area would not be defined until the remediation activities are completed. Phillips 66, in coordination with the County and CDFW, would identify appropriate location(s) on the Phillips 66 owned property (which could include the 630-acre buffer or portions thereof) for Nipomo Mesa lupine and CRPR 1-4 species habitat creation and conservation. The area(s) would be based on the level of impacts, the size of the area(s) required, and the location's habitat value. The habitat creation and conservation area(s) would be protected in perpetuity under a conservation easement or deed restriction.</p> <p>Given the worst-case potential impacts to special status plants and habitat (26.5 acres), there is no nexus to require that the 630-acre area be fully conserved. Mitigation ratios for habitat creation have been incorporated into the mitigation measures based on plants which could be impacted to allow for impacts to be fully mitigated (BIO.2-3, minimum 3:1 for Nipomo Mesa lupine; BIO.3-3, minimum 2:1 for CRPR 1-3 species; BIO.3-4, minimum 1:1 for CRPR 4 species; BIO.11-1 2:1 for Coastal Dune Scrub; and BIO.12-1 1:1 for ESHA).</p> <p>If a future use is proposed and additional conservation is needed in order to protect the area from that future use beyond the land use restrictions that are already in place, then those additional measures would occur and be imposed at that time. However, it is important to note that the land use restrictions (discussed below) limit the type of development and activities which could occur on the 630-acres.</p> <p><b>Existing Land Use Restrictions</b></p> <p>The adjacent 630-acre portion of the Project site to the west of the UPRR tracks currently operates as a buffer between the Industrial use area of the SMR and the Oceano Dunes State Vehicular Recreation Area (ODSVRA) through the following existing measures:</p> <ol style="list-style-type: none"> <li>1) The establishment of mapped Environmentally Sensitive Habitat Areas (ESHA) as a Combining Designation in the County's Title 23 Coastal Zone Land Use Ordinance (CZLUO)</li> <li>2) The land use categorization of Open Space, thereby limiting allowed uses; and</li> <li>3) The Tosco agreement for buffer management, as required by Industrial Standard 4, Buffer Zones, in the San Luis Obispo County South County Coastal Area Plan.</li> </ol>

Code	Response
	<p>Each of these is discussed further, below.</p> <p><u>Environmentally Sensitive Habitat Areas</u></p> <p>The property west of the UPRR tracks has a mapped Sensitive Resources Area (SRA) Combining Designation, documented in the CZLUO. Combining designations identify areas with characteristics that are either of public value or are hazardous to the public. The special location, terrain, man-made features, plants or animals of these areas create a need for more careful project review to protect those characteristics, or to protect public health, safety and welfare (County Framework for Planning, page 7-3). As it relates to the 630-acre buffer area, the SRA Combining Designations identified in the CZLUO is for mapped ESHA. Mapped ESHA is a type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats. In this case, there are a number of rare and sensitive plant species on the site, including Nipomo Mesa lupine, which are protected.</p> <p>The CZLUO Section 23.07.170.1(e) provides standards for approval of a development project within ESHA, including requiring avoidance of any significant disruption or degradation. If that can't be done, the project must be redesigned or relocated to avoid impacts, or reduce the impacts to less than significant. The section lists the following as allowable uses:</p> <ul style="list-style-type: none"> <li>i. Resource-dependent uses</li> <li>ii. Coastal accessways (access, easements and nature trails to improve support for resource protection)</li> <li>iii. Incidental services and utilities in wetlands</li> <li>iv. Habitat creation and enhancement, when required as replacement for impacts at recognized ratios, in-kind, and in the same biome</li> <li>v. Restoration of damaged habitats, as recommended by a restoration plan</li> </ul> <p>In addition, Section 30240 of the Coastal Act requires ESHA to be protected, and only resource-dependent uses are allowed in those areas. Any development must be sited and designed to avoid impacts and compatible with the continuance of the habitat. Both the CZLUO and Coastal Act provisions pertaining to ESHA apply to the 630-acre buffer area.</p> <p><u>Open Space Land Use Designation</u></p> <p>The land use designation for the 630-acre area is Open Space. The purpose and character of this designation are as follows:</p>

Code	Response
	<p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>a. To identify land areas having value as primitive or natural areas.</li> <li>b. To identify environmentally-fragile areas that are capable of supporting only passive recreational activities and non-structural uses.</li> <li>c. To identify areas in public ownership which are reserved for wilderness use or as a wildlife or nature preserve.</li> <li>d. To retain areas with fragile plant or animal communities (such as marshes and wetlands) in a natural or undisturbed state.</li> <li>e. To retain natural beauty and ecological diversity.</li> </ul> <p><b>Character:</b></p> <ul style="list-style-type: none"> <li>a. National forest, Bureau of Land Management or other public lands specifically reserved or proposed for watershed preservation, outdoor recreation wilderness or wildlife/nature preserves.</li> <li>b. Sites or portions of a site with natural features such as unique topography, vegetation or stream courses without a quality or extent sufficient to necessitate application of a Sensitive Resource Area combining designation. May also include Environmentally Sensitive Habitat for animal or plant community.</li> </ul> <p>The purpose and character of a land use designation are used to evaluate development proposals for consistency with the County’s Land Use Element/Local Coastal Program (LUE/LCP). Projects which further the land use designation purpose and character are encouraged, whereas those which do not further the purpose and character cannot be found consistent with the LUE/LCP. (San Luis Obispo County Coastal Allowable Use Table &amp; Definitions Framework For Planning Excerpts - Coastal Zone).</p> <p>If project development were proposed in the 630-acre area, it would be evaluated against the purpose and character of the Open Space land use designation.</p> <p><u>The Tosco Agreement</u>          To ensure security and habitat protection of this property, Phillips 66 (formerly Tosco) executed an agreement allowing State Parks to manage and maintain this acreage as a buffer zone between the ODSVRA and the industrial land use of the property east of the UPRR tracks. The “Tosco Agreement”, executed September 24, 1998, between Phillips 66 and State Parks to replace the original Unocal-State Parks agreement, “<i>grants to the State right ... to occupy and prevent further development</i>” of [the Buffer Zone]. The agreement states “<i>Such right, estate, and interest shall endure for a term of five (5) years .... and shall be automatically renewed for additional periods of one year, unless notice of non-renewal is given in writing, by TOSCO to STATE</i>”. As no notice of non-renewal has been entered</p>



Code	Response
	<p>since the agreement date, it continues to be in force and protection of the western “buffer area” continues.</p> <p>This Agreement is required by the South County Coastal Area Plan which is part of the County’s Local Coastal Plan (LCP). Under Industrial Standards for the Union Oil site, #4 describes the property west of the railroad as a buffer between the heavy industrial use and the ODSVRA and prohibits development in this area. Standard #4 reads as follows:</p> <p style="padding-left: 40px;">Buffer Zones. No facilities shall be located in the area west of the railroad, which shall serve as a protective, natural buffer separating the heavy industrial use from the recreational activities within the dunes. This buffer area shall be managed cooperatively between the property owners and the California Department of Parks and Recreation to encourage dune revegetation and stabilization within the buffer area. A buffer area shall be required to reduce impacts to the nearby residential areas. (LCP)</p> <p>The South County Coastal Area Plan Standards, under standards for Open Space, also references the Union Oil-State Parks agreement, as follows:</p> <p style="padding-left: 40px;">Limitation of Use. This area shall be maintained in its natural state to provide a buffer from the off-road vehicular area to the west and to afford protection to the refinery area to the east. Only authorized vehicles used for maintenance purposes are permitted, except for special off-road events which may be permitted if the lease between Union Oil and State Parks is renegotiated. (LCP)</p> <p>This standard speaks to keeping the area undeveloped and as a buffer. However, it includes a statement for “special off-road events” if the lease between Union Oil and State Parks is renegotiated. It is important to note that if the lease were renegotiated and a special off-road event proposed, that event would require a permit from the County and would be subject to the land use restrictions discussed above.</p> <p>The comment is correct that land conservation and coastal access have been required by the California Coastal Commission for projects associated with the Diablo Canyon Power Plan (DCPP). While the installation of the nuclear power plant pre-dated the Coastal Act and was not subject to a Coastal Development Permit (CDP), three subsequent projects did require a CDP - the Simulator Training building, the Independent Spent Fuel Storage Installation for spent nuclear fuel, and the Steam Generator Replacement project.</p> <p>When the Coastal Commission reviewed these three applications, they required PG&amp;E to conserve land and create trails as mitigation for each development project since the Coastal Commission could find there was an appropriate “nexus” and “rough proportionality between the project impacts and the land</p>

**9.0 DEIR Comments and Responses**

<b>Code</b>	<b>Response</b>
	<p>conservation or coastal access required (see e.g. Nollan v. California Coastal Commission (1987) 483 U.S. 825; Dolan v. City of Tigard (1994) 512 U.S. 374).</p> <p>With regard to the DCPD decommissioning EIR, coastal access will be required as a permit condition for consideration by the decision makers given that Nuclear Regulatory Commission (NRC) regulations exclude the public from any access to the shoreline within the NRC boundary for the DCPD and the U.S. Coast Guard precludes access within 2,000 feet offshore from the DCPD site. The public cannot approach or utilize the coastline from either water or land in the area surrounding the facility, and PG&amp;E or its subsidiary own and control a 14-mile stretch of coastline on which the DCPD is located. over 10 miles of coastal shoreline property between Point San Luis and Coon Creek.</p> <p>The Phillips 66 SMR does not currently block public access to the shoreline, as the westernmost property boundary is a mile or more east of the mean high tide line. State Parks provides public access in the intervening coastal area between Phillips 66 and the shoreline. In addition, as stated in Response to Comment CCC-4, the Project would reduce site activity, employees and other growth-inducing factors to a fraction of the operational facility, and in the long term would eliminate most of the current environmental impacts associated with the operation of the SMR. Therefore, there is no nexus under CEQA to require additional coastal access. Coastal access or requiring the conservation of land can only be required if 1) there is also a reasonable nexus (i.e., that the project leads to an impact requiring mitigation); and 2) any required mitigation is roughly proportional to the impact being mitigated. The Coastal Commission’s analyses of each DCPD application ensured there was an appropriate “nexus” and “rough proportionality” between the mitigation measures and the impacts requiring the mitigation. The staff report for DCPD decommissioning will do the same.</p>
TNC-2	Please see response to comment TNC-1.

**9.2.3 Reach Central Coast**

# [EXT]REACH Comments on C-DRC2022-00048 Phillips 66 SMR Demolition and Remediation Project (SMR Project)

Joshua Boswell <josh@reachcentralcoast.org>

Mon 5/6/2024 8:59 AM

To:PL\_p66refinery <PL\_p66refinery@co.slo.ca.us>

📎 1 attachments (88 KB)

REACH Comments on Phillips 66 EIR.pdf;

You don't often get email from josh@reachcentralcoast.org. [Learn why this is important](#)

**ATTENTION:** This email **DID NOT** originate from County Staff. Please proceed with caution when interacting with any embedded links or attachments.

Dear Ms. Strachan,

Please find attached REACH's comments on C-DRC2022-00048 Phillips 66 SMR Demolition and Remediation Project (SMR Project).

Thank you,  
Josh



**Joshua Boswell**

VP, Policy + Economic Development | REACH

P: 781.413.1941 E. [josh@reachcentralcoast.org](mailto:josh@reachcentralcoast.org)

[reachcentralcoast.org/grow-here](https://reachcentralcoast.org/grow-here)

[Sign up to receive REACH news](#)





Ideas + Action for a Thriving Central Coast

May 6, 2024

Susan Strachan  
San Luis Obispo County Department of Planning & Building  
976 Osos St., Rm 300  
San Luis Obispo, CA 93408

**Subject: REACH Comments on Phillips 66 Draft Environmental Impact Report**

Dear Ms. Strachan:

Thank you for the opportunity to provide comments on the Phillips 66 Santa Maria Refinery Demolition and Remediation Project Draft Environmental Impact Report (EIR).

By way of background, REACH is a nonprofit, economic impact organization with a mission to increase economic prosperity on the Central Coast of California through big thinking, bold action and regional collaboration. The north star of our work is collaboration with business, education, government and nonprofit partners to create 15,000 good paying jobs in the region by 2030 and establish the Central Coast as a place where current and future generations have the opportunity to thrive.

Supporting the region’s economic resilience through the energy transition — including as sites like the Phillips 66 Santa Maria refinery have closed down — has been a key pillar of our regional work. The REACH 2030 plan, our guiding blueprint for regional action, seeks to grow a number of high-wage industries on the Central Coast to counteract these challenges, including in aerospace, defense, precision manufacturing, and cleantech among others. Through development of the recent Comprehensive Economic Development Strategy (CEDS) for San Luis Obispo and Santa Barbara Counties, a key challenge identified by employers in these fields is the lack of available industrial and commercial sites, which has served as a key constraint on job growth in the region.

The Santa Maria Refinery site is a critical economic asset to the Central Coast. As one of the few and largest industrial zoned sites in the area, reuse of the site will help address a key economic pain point identified in the CEDS process that is constraining economic opportunity. There is already strong interest from potential future users in repurposing this site to retain its role as a long-standing economic and jobs center for the region.

Importantly, the site will retain vital economic assets that will help ensure it can remain an engine for jobs and economic activity. We appreciate that the draft EIR identifies important infrastructure and utilities that will remain that may be of value to future users, such as hardscapes, rail spurs, an electrical substation and powerline and telecommunication line, a wastewater outfall line, among various other pieces of infrastructure. This is critical to enable site readiness and reuse.

Thank you for the opportunity to provide comments on this important asset for our region.

Sincerely,

Melissa James  
President/CEO  
REACH

REACH  
1

## 9.0 DEIR Comments and Responses

---

### Responses

Code	Response
REACH-1	There are no CEQA-related issues in the comment and therefore no changes have been made to the FEIR based on the comment.

**9.2.4 Sierra Club**


## [EXT]Comments on Phillips 66 Refinery Demolition

susan ifsusan.com <susan@ifsusan.com>

Thu 4/18/2024 10:29 AM

To:PL\_p66refinery <PL\_p66refinery@co.slo.ca.us>

Cc:Mila Vujovich-LaBarre <milavu@hotmail.com>;Gianna Patchen <gipatchen@gmail.com>;sierraclub8\_gmail.com <sierraclub8@gmail.com>

 1 attachments (673 KB)

Phillips 66 Refinery comments 4-18-2024.pdf;

You don't often get email from susan@ifsusan.com. [Learn why this is important](#)

**ATTENTION:** This email **DID NOT** originate from County Staff. Please proceed with caution when interacting with any embedded links or attachments.

Dear Susan Strachen – Please find attached our comments on the Phillips 66 Refinery Demolition and Remediation Project DEIR. Please contact us if you have any questions.

Regards,  
Susan Harvey, Chair  
Conservation Committee  
Santa Lucia Chapter, Sierra Club

Susan Harvey  
805-239-0542

“Pay attention. Someday, you’ll be the last one who remembers.”  
Virginia Trimble, Astrophysicist





Susan Strachan  
San Luis Obispo County Department of Planning & Building  
976 Osos St., Rm 300  
San Luis Obispo, CA 93408

Sent Via Email: [p66refinery@co.slo.ca.us](mailto:p66refinery@co.slo.ca.us)

Re: Phillips 66 Santa Maria Refinery Demolition and Remediation Project Draft Environmental Impact Report

Dear Ms. Strachan,

The Santa Lucia Chapter of the Sierra Club represents the Club's 3,000 members and supporters in San Luis Obispo County. While we applaud the statement of the DEIR that "due to the restorative nature of the Project, the long-term impacts on biological resources would ultimately be beneficial," we note that the project has the potential to result in significant and unavoidable (Class 1) impacts to air quality and, in two project alternatives, to black abalone. Numerous Class 2 impacts to biological resources from the demolition of existing structures and remediation activities, could result in impacts to special-status species and their habitats. ("Direct impacts could include trampling, being exposed to predation, being collected, being entombed, and loss of habitat. Indirect impacts could include stress and loss of reproductive success among relocated individuals, excessive noise resulting in site or nest abandonment, increased human activity resulting in changes to wildlife movement and behaviors, increased dust that could impact the suitability of potential roosting habitat or pollinator activity, vehicle use of the area exacerbating road kills, or introduction of invasive plant species that could change future habitat conditions.")

SC-1

As is always the case with Class 2 impacts -- impacts that would be less than significant with mitigation -- much depends on the effective implementation of every proposed mitigation measure and monitoring plan, carried out over a long span of time and producing exactly the results hoped for. Such real-world outcomes seldom result from such mitigation plans. Another problem is evident in the DEIR's discussion of the presence of Nipomo Mesa lupine within and adjacent to the Project site, and the presence of suitable habitat in undocumented portions of the site. Demolition and remediation activities could have significant direct and indirect impacts to Nipomo Mesa lupine, and the multiple mitigation measures proposed acknowledge that "little is known about Nipomo Mesa lupine's breeding system.... If the ability for the plant to successfully outcross is diminished from demolition and remediation activities interrupting pollinator behavior, this could either reduce successful reproduction or further reduce genetic diversity."

This level of uncertainty and the general failure rate of biological resource mitigation measures point to the need for additional mitigations to ensure the biological integrity of the entire environmentally sensitive area the project will impact. In the spirit of the DEIR's aspirational goal that "mitigation measures would result in the net increase in sensitive dune scrub habitat and habitat for special-status

SC-2

plant and wildlife species,” we urge the County to require mitigation in addition to the proposed mediation measure BIO.1-3, Habitat Restoration and Revegetation Plan (HRRP).

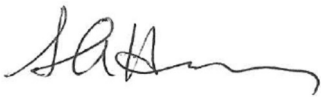
This additional mediation measure should require the conservation of the 630-acre “Tosco Buffer Area” adjacent to the active refinery site and the Oso Flaco Lake Natural Area, identified in 1999 in the Nature Conservancy’s “Guadalupe-Nipomo Dunes Preserve Management Program” as a key property worthy of protection to sustain the biodiversity of the dunes region and provide public access.

The Tosco Buffer Area is part of the larger dune complex that is the focus of remediation proposals in the DEIR. In 1999, then-owner Tosco signed a temporary agreement to set aside this property for conservation and to prevent future development. The agreement expired after five years, and the land now has no deed restrictions or conservation easements, leaving the diverse dune habitat and sensitive plant species at risk. Placing a conservation easement on this land would greatly enhance the restoration efforts contemplated in the DEIR and go a long way to ensuring their success.

SC-2  
(cont.)

Thank you for this opportunity to comment and your attention to this issue.

Kind regards,



Susan Harvey, Chair  
Conservation Committee

Santa Lucia Chapter of the Sierra Club  
P.O. Box 15755  
San Luis Obispo, CA 93406  
(805) 543-8717  
sierraclub8@gmail.com

Responses

Code	Response
SC-1	<p>The DEIR includes multiple mitigation measures developed in coordination with responsible agencies, including CDFW, and consultation with botanists familiar with the Nipomo Dunes Complex botanical species. While there are uncertainties associated with any mitigation measure, requirements for coordination with responsible agencies and experts help ensure the proposed mitigation measures are successful.</p>
SC-2	<p>Several comment letters state that the 630-acres located on Phillips 66 property west of the UPRR tracks should be permanently conserved and reference the agreement between the Applicant and the California Department of Parks and Recreation (CDPR or “State Parks”) regarding protection of the area.</p> <p>Special status plant species and habitats could be impacted by Project soil remediation efforts. However, the Environmental Impact Report (EIR) provides for plant and habitat revegetation, restoration, creation, and conservation in perpetuity within the Phillips 66 property (for Nipomo Mesa lupine) and the Nipomo Dunes Complex (for California Rare Plant Rank (CRPR) 1-4 species) through the application of multiple mitigation measures, including the following<sup>3</sup>:</p> <ul style="list-style-type: none"> <li>• BIO.1-2: Prepare and Submit a Biological Resources Adaptive Management &amp; Monitoring Plan,</li> <li>• BIO.1-3: Habitat Restoration and Revegetation Plan,</li> <li>• BIO.2-1: Nipomo Mesa Lupine Surveys,</li> <li>• BIO.2-2: Nipomo Mesa Lupine Permitting and Avoidance,</li> <li>• BIO.2-3: Nipomo Mesa Lupine Habitat Mitigation and Creation,</li> <li>• BIO.3-3: CRPR 1-3 Plant Species Habitat Creation,</li> <li>• BIO.3-4: CRPR 4 Plant Species Habitat Creation, and</li> <li>• BIO.12-1: ESHA Protection Plan.</li> </ul> <p>In general, it is anticipated that much of the vegetated areas within the Project site would not require ground disturbance. These areas would remain intact unless soil remediation is required. The areas requiring soil remediation and the extent of the remediation would not be determined until after the Santa Maria Refinery (SMR) aboveground structures have been removed and soil</p>

<sup>3</sup> Mitigation measure BIO.2-3 requires that habitat creation for impacts to Nipomo Mesa Lupine occur within the larger Phillips 66 owned property (historical range for Nipomo Mesa Lupine), unless determined in feasible or not biologically viable by the California Department of Fish and Wildlife. Habitat creation would then be required to occur in Nipomo Dunes Complex. Mitigation measures BIO.3-3 and BIO.3-4 require that mitigation for impacts to plants species with a California Rare Plant Rank 1-4 occur in either a) on-site habitat creation or enhancement of impacted communities with similar species compositions to those present prior to remediation activities; b) off-site creation or enhancement of dune scrub communities; or c) participation in an established mitigation bank program.

Code	Response
	<p>characterization testing has been conducted. However, approximately 26.5 acres of vegetated areas within the Project site overlap with areas of potential disturbance, where there is evidence of historical debris and materials. As stated in Final EIR Section 4.4.5, “For this analysis, and pending further confirmation studies, it is assumed that these areas contain some degree of contamination, and a portion of these areas would require remedial action to remove impacted material. Therefore, under a ‘worst-case’ scenario, Project activities could potentially impact up to 26.5 acres of vegetation.” (See Final EIR Figure 4.4-13 for identification of potential areas of disturbance and Table 4.4.4 for identification of the vegetation alliances and land cover types which could be impacted). It is important to note that not all of the vegetation types that could be impacted require habitat creation as mitigation (e.g. eucalyptus groves, iceplant mats, ornamental plants, poison oak scrub, ruderal vegetation). These areas would be revegetated.</p> <p>The habitat creation area(s) has not yet been established, as the amount of impacted area would not be defined until the remediation activities are completed. Phillips 66, in coordination with the County and CDFW, would identify appropriate location(s) on the Phillips 66 owned property (which could include the 630-acre buffer or portions thereof) for Nipomo Mesa lupine and CRPR 1-4 species habitat creation and conservation. The area(s) would be based on the level of impacts, the size of the area(s) required, and the location’s habitat value. The habitat creation and conservation area(s) would be protected in perpetuity under a conservation easement or deed restriction.</p> <p>Given the worst-case potential impacts to special status plants and habitat (26.5 acres), there is no nexus to require that the 630-acre area be fully conserved. Mitigation ratios for habitat creation have been incorporated into the mitigation measures based on plants which could be impacted to allow for impacts to be fully mitigated (BIO.2-3, minimum 3:1 for Nipomo Mesa lupine; BIO.3-3, minimum 2:1 for CRPR 1-3 species; BIO.3-4, minimum 1:1 for CRPR 4 species; BIO.11-1 2:1 for Coastal Dune Scrub; and BIO.12-1 1:1 for ESHA).</p> <p>If a future use is proposed and additional conservation is needed in order to protect the area from that future use beyond the land use restrictions that are already in place, then those additional measures would occur and be imposed at that time. However, it is important to note that the land use restrictions (discussed below) limit the type of development and activities which could occur on the 630-acres.</p>

**Existing Land Use Restrictions**

The adjacent 630-acre portion of the Project site to the west of the UPRR tracks currently operates as a buffer between the Industrial use area of the SMR and the Oceano Dunes State Vehicular Recreation Area (ODSVRA) through the following existing measures:

- 1) The establishment of mapped Environmentally Sensitive Habitat Areas (ESHA) as a Combining Designation in the County’s Title 23 Coastal Zone Land Use Ordinance (CZLUO)
- 2) The land use categorization of Open Space, thereby limiting allowed uses; and
- 3) The Tosco agreement for buffer management, as required by Industrial Standard 4, Buffer Zones, in the San Luis Obispo County South County Coastal Area Plan.

Each of these is discussed further, below.

Environmentally Sensitive Habitat Areas

The property west of the UPRR tracks has a mapped Sensitive Resources Area (SRA) Combining Designation, documented in the CZLUO. Combining designations identify areas with characteristics that are either of public value or are hazardous to the public. The special location, terrain, man-made features, plants or animals of these areas create a need for more careful project review to protect those characteristics, or to protect public health, safety and welfare (County Framework for Planning, page 7-3). As it relates to the 630-acre buffer area, the SRA Combining Designations identified in the CZLUO is for mapped ESHA. Mapped ESHA is a type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats. In this case, there are a number of rare and sensitive plant species on the site, including Nipomo Mesa lupine, which are protected.

The CZLUO Section 23.07.170.1(e) provides standards for approval of a development project within ESHA, including requiring avoidance of any significant disruption or degradation. If that can’t be done, the project must be redesigned or relocated to avoid impacts, or reduce the impacts to less than significant. The section lists the following as allowable uses:

- i. Resource-dependent uses
- ii. Coastal accessways (access, easements and nature trails to improve support for resource protection)
- iii. Incidental services and utilities in wetlands
- iv. Habitat creation and enhancement, when required as replacement for impacts at recognized ratios, in-kind, and in the same biome

Code	Response
	<p>v. Restoration of damaged habitats, as recommended by a restoration plan</p> <p>In addition, Section 30240 of the Coastal Act requires ESHA to be protected, and only resource-dependent uses are allowed in those areas. Any development must be sited and designed to avoid impacts and compatible with the continuance of the habitat. Both the CZLUO and Coastal Act provisions pertaining to ESHA apply to the 630-acre buffer area.</p> <p><u>Open Space Land Use Designation</u> The land use designation for the 630-acre area is Open Space. The purpose and character of this designation are as follows:</p> <p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>a. To identify land areas having value as primitive or natural areas.</li> <li>b. To identify environmentally-fragile areas that are capable of supporting only passive recreational activities and non-structural uses.</li> <li>c. To identify areas in public ownership which are reserved for wilderness use or as a wildlife or nature preserve.</li> <li>d. To retain areas with fragile plant or animal communities (such as marshes and wetlands) in a natural or undisturbed state.</li> <li>e. To retain natural beauty and ecological diversity.</li> </ul> <p><b>Character:</b></p> <ul style="list-style-type: none"> <li>a. National forest, Bureau of Land Management or other public lands specifically reserved or proposed for watershed preservation, outdoor recreation wilderness or wildlife/nature preserves.</li> <li>b. Sites or portions of a site with natural features such as unique topography, vegetation or stream courses without a quality or extent sufficient to necessitate application of a Sensitive Resource Area combining designation. May also include Environmentally Sensitive Habitat for animal or plant community.</li> </ul> <p>The purpose and character of a land use designation are used to evaluate development proposals for consistency with the County's Land Use Element/Local Coastal Program (LUE/LCP). Projects which further the land use designation purpose and character are encouraged, whereas those which do not further the purpose and character cannot be found consistent with the LUE/LCP. (San Luis Obispo County Coastal Allowable Use Table &amp; Definitions Framework For Planning Excerpts - Coastal Zone).</p>

9.0 DEIR Comments and Responses

Code	Response
	<p>If project development were proposed in the 630-acre area, it would be evaluated against the purpose and character of the Open Space land use designation.</p> <p><u>The Tosco Agreement</u>            To ensure security and habitat protection of this property, Phillips 66 (formerly Tosco) executed an agreement allowing State Parks to manage and maintain this acreage as a buffer zone between the ODSVRA and the industrial land use of the property east of the UPRR tracks. The “Tosco Agreement”, executed September 24, 1998, between Phillips 66 and State Parks to replace the original Unocal-State Parks agreement, “<i>grants to the State right ... to occupy and prevent further development</i>” of [the Buffer Zone]. The agreement states “<i>Such right, estate, and interest shall endure for a term of five (5) years .... and shall be automatically renewed for additional periods of one year, unless notice of non-renewal is given in writing, by TOSCO to STATE</i>”. As no notice of non-renewal has been entered since the agreement date, it continues to be in force and protection of the western “buffer area” continues.</p> <p>This Agreement is required by the South County Coastal Area Plan which is part of the County’s Local Coastal Plan (LCP). Under Industrial Standards for the Union Oil site, #4 describes the property west of the railroad as a buffer between the heavy industrial use and the ODSVRA and prohibits development in this area. Standard #4 reads as follows:</p> <p style="padding-left: 40px;">Buffer Zones. No facilities shall be located in the area west of the railroad, which shall serve as a protective, natural buffer separating the heavy industrial use from the recreational activities within the dunes. This buffer area shall be managed cooperatively between the property owners and the California Department of Parks and Recreation to encourage dune revegetation and stabilization within the buffer area. A buffer area shall be required to reduce impacts to the nearby residential areas. (LCP)</p> <p>The South County Coastal Area Plan Standards, under standards for Open Space, also references the Union Oil-State Parks agreement, as follows:</p> <p style="padding-left: 40px;">Limitation of Use. This area shall be maintained in its natural state to provide a buffer from the off-road vehicular area to the west and to afford protection to the refinery area to the east. Only authorized vehicles used for maintenance purposes are permitted, except for special off-road events which may be permitted if the lease between Union Oil and State Parks is renegotiated. (LCP)</p>

<b>Code</b>	<b>Response</b>
	<p>This standard speaks to keeping the area undeveloped and as a buffer. However, it includes a statement for “special off-road events” if the lease between Union Oil and State Parks is renegotiated. It is important to note that if the lease were renegotiated and a special off-road event proposed, that event would require a permit from the County and would be subject to the land use restrictions discussed above.</p>




**9.2.5 Surfrider**

## [EXT]Santa Maria Refinery mitigation

San Luis Obispo knowyourh2o <knowyourh2o@slo.surfrider.org>

Tue 5/7/2024 4:51 PM

To:PL\_p66refinery <PL\_p66refinery@co.slo.ca.us>

 1 attachments (51 KB)

Surfrider Foundation, Santa Maria Refinery Mitigation.pdf;

You don't often get email from knowyourh2o@slo.surfrider.org. [Learn why this is important](#)

**ATTENTION:** This email **DID NOT** originate from County Staff. Please proceed with caution when interacting with any embedded links or attachments.

Good day

Please find Surfrider SLO's comments attached.

--

Brad Snook

Know Your H2O Program Coordinator

Surfrider Foundation, San Luis Obispo chapter

(805) 440-9489



May 6, 2024

Susan Strachan  
Decommissioning Manager  
San Luis Obispo County  
Department of Planning and Building  
976 Osos Street, Room 300  
San Luis Obispo, CA 93408  
Subject: Comments on the Draft EIR for the Santa Maria Refinery

Demolition and Remediation Project: Conservation of the 630-acre "Buffer Area" as Mitigation for Impacts

Dear Ms. Strachan:

Thank you for this opportunity to comment on the draft Environmental Impact Report (EIR) for the Santa Maria Refinery's Demolition and Remediation Project. Surfrider Foundation supports protections of unique coastal dunes and habitat. We write in support of Friends of Oso Flaco's letter with the same intent. In their letter, they state:

"The draft EIR includes a detailed list of impacts related to the demolition and remediation of the project site. But what it doesn't offer is mitigation that would have lasting significance for the community and for the unique and fragile dune environment (referenced in the draft EIR) that surrounds the project site. For that reason, we suggest that mitigation for impacts be in the form of permanent land conservation, and specifically the conservation of approximately 630 acres located within the Phillips 66 Santa Maria Refinery parcels, west of the Union Pacific Railroad, and east of the Oso Flaco Lake Natural Area. This land has been called the "Buffer Area" by The Nature Conservancy (TNC) and other environmental and community groups."

Surf-1

Thank you,

Brad Snook

Program Coordinator, Know Your H2O

Surfrider Foundation, San Luis Obispo Chapter

Responses

Code	Response
Surf-1	<p>Several comment letters state that the 630-acres located on Phillips 66 property west of the UPRR tracks should be permanently conserved and reference the agreement between the Applicant and the California Department of Parks and Recreation (CDPR or “State Parks”) regarding protection of the area.</p> <p>Special status plant species and habitats could be impacted by Project soil remediation efforts. However, the Environmental Impact Report (EIR) provides for plant and habitat revegetation, restoration, creation, and conservation in perpetuity within the Phillips 66 property (for Nipomo Mesa lupine) and the Nipomo Dunes Complex (for California Rare Plant Rank (CRPR) 1-4 species) through the application of multiple mitigation measures, including the following <sup>4</sup>:</p> <ul style="list-style-type: none"> <li>• BIO.1-2: Prepare and Submit a Biological Resources Adaptive Management &amp; Monitoring Plan,</li> <li>• BIO.1-3: Habitat Restoration and Revegetation Plan,</li> <li>• BIO.2-1: Nipomo Mesa Lupine Surveys,</li> <li>• BIO.2-2: Nipomo Mesa Lupine Permitting and Avoidance,</li> <li>• BIO.2-3: Nipomo Mesa Lupine Habitat Mitigation and Creation,</li> <li>• BIO.3-3: CRPR 1-3 Plant Species Habitat Creation,</li> <li>• BIO.3-4: CRPR 4 Plant Species Habitat Creation, and</li> <li>• BIO.12-1: ESHA Protection Plan.</li> </ul> <p>In general, it is anticipated that much of the vegetated areas within the Project site would not require ground disturbance. These areas would remain intact unless soil remediation is required. The areas requiring soil remediation and the extent of the remediation would not be determined until after the Santa Maria Refinery (SMR) aboveground structures have been removed and soil characterization testing has been conducted. However, approximately 26.5 acres of vegetated areas within the Project site overlap with areas of potential disturbance, where there is evidence of historical debris and materials. As stated in Final EIR Section 4.4.5, “For this analysis, and pending further confirmation studies, it is assumed that these areas contain some degree of contamination, and a portion of these areas would require remedial action to</p>

<sup>4</sup> Mitigation measure BIO.2-3 requires that habitat creation for impacts to Nipomo Mesa Lupine occur within the larger Phillips 66 owned property (historical range for Nipomo Mesa Lupine), unless determined in feasible or not biologically viable by the California Department of Fish and Wildlife. Habitat creation would then be required to occur in Nipomo Dunes Complex. Mitigation measures BIO.3-3 and BIO.3-4 require that mitigation for impacts to plants species with a California Rare Plant Rank 1-4 occur in either a) on-site habitat creation or enhancement of impacted communities with similar species compositions to those present prior to remediation activities; b) off-site creation or enhancement of dune scrub communities; or c) participation in an established mitigation bank program.

Code	Response
	<p>remove impacted material. Therefore, under a ‘worst-case’ scenario, Project activities could potentially impact up to 26.5 acres of vegetation.” (See Final EIR Figure 4.4-13 for identification of potential areas of disturbance and Table 4.4.4 for identification of the vegetation alliances and land cover types which could be impacted). It is important to note that not all of the vegetation types that could be impacted require habitat creation as mitigation (e.g. eucalyptus groves, iceplant mats, ornamental plants, poison oak scrub, ruderal vegetation). These areas would be revegetated.</p> <p>The habitat creation area(s) has not yet been established, as the amount of impacted area would not be defined until the remediation activities are completed. Phillips 66, in coordination with the County and CDFW, would identify appropriate location(s) on the Phillips 66 owned property (which could include the 630-acre buffer or portions thereof) for Nipomo Mesa lupine and CRPR 1-4 species habitat creation and conservation. The area(s) would be based on the level of impacts, the size of the area(s) required, and the location’s habitat value. The habitat creation and conservation area(s) would be protected in perpetuity under a conservation easement or deed restriction.</p> <p>Given the worst-case potential impacts to special status plants and habitat (26.5 acres), there is no nexus to require that the 630-acre area be fully conserved. Mitigation ratios for habitat creation have been incorporated into the mitigation measures based on plants which could be impacted to allow for impacts to be fully mitigated (BIO.2-3, minimum 3:1 for Nipomo Mesa lupine; BIO.3-3, minimum 2:1 for CRPR 1-3 species; BIO.3-4, minimum 1:1 for CRPR 4 species; BIO.11-1 2:1 for Coastal Dune Scrub; and BIO.12-1 1:1 for ESHA).</p> <p>If a future use is proposed and additional conservation is needed in order to protect the area from that future use beyond the land use restrictions that are already in place, then those additional measures would occur and be imposed at that time. However, it is important to note that the land use restrictions (discussed below) limit the type of development and activities which could occur on the 630-acres.</p> <p><b>Existing Land Use Restrictions</b>  The adjacent 630-acre portion of the Project site to the west of the UPRR tracks currently operates as a buffer between the Industrial use area of the SMR and the Oceano Dunes State Vehicular Recreation Area (ODSVRA) through the following existing measures:</p>

Code	Response
	<p>1) The establishment of mapped Environmentally Sensitive Habitat Areas (ESHA) as a Combining Designation in the County’s Title 23 Coastal Zone Land Use Ordinance (CZLUO)</p> <p>2) The land use categorization of Open Space, thereby limiting allowed uses; and</p> <p>3) The Tosco agreement for buffer management, as required by Industrial Standard 4, Buffer Zones, in the San Luis Obispo County South County Coastal Area Plan.</p> <p>Each of these is discussed further, below.</p> <p><u>Environmentally Sensitive Habitat Areas</u></p> <p>The property west of the UPRR tracks has a mapped Sensitive Resources Area (SRA) Combining Designation, documented in the CZLUO. Combining designations identify areas with characteristics that are either of public value or are hazardous to the public. The special location, terrain, man-made features, plants or animals of these areas create a need for more careful project review to protect those characteristics, or to protect public health, safety and welfare (County Framework for Planning, page 7-3). As it relates to the 630-acre buffer area, the SRA Combining Designations identified in the CZLUO is for mapped ESHA. Mapped ESHA is a type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats. In this case, there are a number of rare and sensitive plant species on the site, including Nipomo Mesa lupine, which are protected.</p> <p>The CZLUO Section 23.07.170.1(e) provides standards for approval of a development project within ESHA, including requiring avoidance of any significant disruption or degradation. If that can’t be done, the project must be redesigned or relocated to avoid impacts, or reduce the impacts to less than significant. The section lists the following as allowable uses:</p> <ul style="list-style-type: none"> <li>i. Resource-dependent uses</li> <li>ii. Coastal accessways (access, easements and nature trails to improve support for resource protection)</li> <li>iii. Incidental services and utilities in wetlands</li> <li>iv. Habitat creation and enhancement, when required as replacement for impacts at recognized ratios, in-kind, and in the same biome</li> <li>v. Restoration of damaged habitats, as recommended by a restoration plan</li> </ul> <p>In addition, Section 30240 of the Coastal Act requires ESHA to be protected, and only resource-dependent uses are allowed in those areas. Any</p>

Code	Response
	<p>development must be sited and designed to avoid impacts and compatible with the continuance of the habitat. Both the CZLUO and Coastal Act provisions pertaining to ESHA apply to the 630-acre buffer area.</p> <p><u>Open Space Land Use Designation</u> The land use designation for the 630-acre area is Open Space. The purpose and character of this designation are as follows:</p> <p><b>Purpose:</b></p> <ol style="list-style-type: none"> <li>a. To identify land areas having value as primitive or natural areas.</li> <li>b. To identify environmentally-fragile areas that are capable of supporting only passive recreational activities and non-structural uses.</li> <li>c. To identify areas in public ownership which are reserved for wilderness use or as a wildlife or nature preserve.</li> <li>d. To retain areas with fragile plant or animal communities (such as marshes and wetlands) in a natural or undisturbed state.</li> <li>e. To retain natural beauty and ecological diversity.</li> </ol> <p><b>Character:</b></p> <ol style="list-style-type: none"> <li>a. National forest, Bureau of Land Management or other public lands specifically reserved or proposed for watershed preservation, outdoor recreation wilderness or wildlife/nature preserves.</li> <li>b. Sites or portions of a site with natural features such as unique topography, vegetation or stream courses without a quality or extent sufficient to necessitate application of a Sensitive Resource Area combining designation. May also include Environmentally Sensitive Habitat for animal or plant community.</li> </ol> <p>The purpose and character of a land use designation are used to evaluate development proposals for consistency with the County’s Land Use Element/Local Coastal Program (LUE/LCP). Projects which further the land use designation purpose and character are encouraged, whereas those which do not further the purpose and character cannot be found consistent with the LUE/LCP. (San Luis Obispo County Coastal Allowable Use Table &amp; Definitions Framework For Planning Excerpts - Coastal Zone).</p> <p>If project development were proposed in the 630-acre area, it would be evaluated against the purpose and character of the Open Space land use designation.</p> <p><u>The Tosco Agreement</u> To ensure security and habitat protection of this property, Phillips 66 (formerly Tosco) executed an agreement allowing State Parks to manage and maintain this acreage as a buffer zone between the ODSVRA and the</p>

Code	Response
	<p>industrial land use of the property east of the UPRR tracks. The “Tosco Agreement”, executed September 24, 1998, between Phillips 66 and State Parks to replace the original Unocal-State Parks agreement, “<i>grants to the State right ... to occupy and prevent further development</i>” of [the Buffer Zone]. The agreement states “<i>Such right, estate, and interest shall endure for a term of five (5) years .... and shall be automatically renewed for additional periods of one year, unless notice of non-renewal is given in writing, by TOSCO to STATE</i>”. As no notice of non-renewal has been entered since the agreement date, it continues to be in force and protection of the western “buffer area” continues.</p> <p>This Agreement is required by the South County Coastal Area Plan which is part of the County’s Local Coastal Plan (LCP). Under Industrial Standards for the Union Oil site, #4 describes the property west of the railroad as a buffer between the heavy industrial use and the ODSVRA and prohibits development in this area. Standard #4 reads as follows:</p> <p style="padding-left: 40px;">Buffer Zones. No facilities shall be located in the area west of the railroad, which shall serve as a protective, natural buffer separating the heavy industrial use from the recreational activities within the dunes. This buffer area shall be managed cooperatively between the property owners and the California Department of Parks and Recreation to encourage dune revegetation and stabilization within the buffer area. A buffer area shall be required to reduce impacts to the nearby residential areas. (LCP)</p> <p>The South County Coastal Area Plan Standards, under standards for Open Space, also references the Union Oil-State Parks agreement, as follows:</p> <p style="padding-left: 40px;">Limitation of Use. This area shall be maintained in its natural state to provide a buffer from the off-road vehicular area to the west and to afford protection to the refinery area to the east. Only authorized vehicles used for maintenance purposes are permitted, except for special off-road events which may be permitted if the lease between Union Oil and State Parks is renegotiated. (LCP)</p> <p>This standard speaks to keeping the area undeveloped and as a buffer. However, it includes a statement for “special off-road events” if the lease between Union Oil and State Parks is renegotiated. It is important to note that if the lease were renegotiated and a special off-road event proposed, that event would require a permit from the County and would be subject to the land use restrictions discussed above.</p> <p>The comment is correct that land conservation and coastal access have been required by the California Coastal Commission for projects associated with</p>



**9.0 DEIR Comments and Responses**

<b>Code</b>	<b>Response</b>
	<p>the Diablo Canyon Power Plan (DCPP). While the installation of the nuclear power plant pre-dated the Coastal Act and was not subject to a Coastal Development Permit (CDP), three subsequent projects did require a CDP - the Simulator Training building, the Independent Spent Fuel Storage Installation for spent nuclear fuel, and the Steam Generator Replacement project.</p> <p>When the Coastal Commission reviewed these three applications, they required PG&amp;E to conserve land and create trails as mitigation for each development project since the Coastal Commission could find there was an appropriate “nexus” and “rough proportionality between the project impacts and the land conservation or coastal access required (see e.g. Nollan v. California Coastal Commission (1987) 483 U.S. 825; Dolan v. City of Tigard (1994) 512 U.S. 374).</p> <p>With regard to the DCPP decommissioning EIR, coastal access will be required as a permit condition for consideration by the decision makers given that Nuclear Regulatory Commission (NRC) regulations exclude the public from any access to the shoreline within the NRC boundary for the DCPP and the U.S. Coast Guard precludes access within 2,000 feet offshore from the DCPP site. The public cannot approach or utilize the coastline from either water or land in the area surrounding the facility, and PG&amp;E or its subsidiary own and control a 14-mile stretch of coastline on which the DCPP is located. over 10 miles of coastal shoreline property between Point San Luis and Coon Creek.</p> <p>The Phillips 66 SMR does not currently block public access to the shoreline, as the westernmost property boundary is a mile or more east of the mean high tide line. State Parks provides public access in the intervening coastal area between Phillips 66 and the shoreline. In addition, as stated in Response to Comment CCC-4, the Project would reduce site activity, employees and other growth-inducing factors to a fraction of the operational facility, and in the long term would eliminate most of the current environmental impacts associated with the operation of the SMR. Therefore, there is no nexus under CEQA to require additional coastal access. Coastal access or requiring the conservation of land can only be required if 1) there is also a reasonable nexus (i.e., that the project leads to an impact requiring mitigation); and 2) any required mitigation is roughly proportional to the impact being mitigated. The Coastal Commission’s analyses of each DCPP application ensured there was an appropriate “nexus” and “rough proportionality” between the mitigation measures and the impacts requiring the mitigation. The staff report for DCPP decommissioning will do the same.</p>

### 9.3 Individuals

Comments letters received from individuals are listed below, along with the respective responses to the comments immediately following.

**9.3.1 Commissioner Wyatt**

# [EXT]DEIR comment C-DRC2022-00048 Phillips 66 SMR Demolition and Remediation Project

AR Wyatt <a.reneewyatt@gmail.com>

Mon 5/6/2024 2:46 PM

To:PL\_p66refinery <PL\_p66refinery@co.slo.ca.us>;Susan Strachan <sstrachan@co.slo.ca.us>

Some people who received this message don't often get email from a.reneewyatt@gmail.com. [Learn why this is important](#)

**ATTENTION:** This email **DID NOT** originate from County Staff. Please proceed with caution when interacting with any embedded links or attachments.

Susan: Thanks for the work on the Phillips 66 Demolition & Remediation DEIR and the Planning Commission study session April 25th. These comments stem from discussion at the hearing, however, it seems that having written comment into the record and noted for the purposes of formal inclusion into the EIR makes sense.

- 1. Public access to the Coast & Connectivity:** There is public access to the coastal public areas included in the project proposal and DEIR discussion through the offering of a public access easement across the project site to the State Parks recreational area to the west of the project. The Union Pacific railroad tracks bisect the access easement, however. As we discussed and have seen on numerous other projects, gaining permission for the public to cross the Union Pacific owned railroad tracks at grade is not favored by Union Pacific, and given the expense of tunneling under tracks or bridging over them, actual public access isn't highly likely. As such, public access, as proposed, is more theoretical than practical. If we were after coastal recreational public access as a beneficial project component, it would seem that other access enhancement options should be explored, including the possibility to connect other local trails listed in the DEIR, including those at Oso Flaco and the Anza. Recommendation: final EIR explore alternative trail and coastal access options, so the public can consider options for coastal access and trail connectivity that this project may open up opportunity for. Such analysis may create actual public access rather than the theoretical access of the single easement proposed and considered.
- 2. Environmentally Superior Option and Standard of Soil Remediation:** Housing and Recreation are high priorities of the County of San Luis Obispo and economic drivers, at least equal to Industrial activities. There seems to be an inherent assumption that project site will remain in Industrial use. This may be the case, although zoning changes are not out of the ordinary either, as we see zone change requests granted at least a handful of times yearly. Additionally, we recently observed a majority of Supervisors approve a housing project with 19 Class I environmental impacts in this general project area, stating that housing is desperately needed. The Dana Reserve project area, East on Willow Road, had originally been planned for commercial and light industrial uses, so the higher level of residential development deviated from older plans and involved zone changes to the County's General Plan. It seems that similar circumstances could come into play at the Phillips project site. Of relevance also, the water wells at the project site have rights and historical pump rates, at more than 1,100 acre feet per year, a substantial water right that could provide for residential needs in excess of 10,000 homes per year, if not utilized for industrial uses. In a warming and changing environment, where water sources will be essential to a thriving County, these rights are substantial and the project site underlying water table deserving of high level of protection. Recommendation: more thorough analysis and comparison of impacts between soil remediation to the industrial level only and to a higher (residential/recreational) level mandating more offsite materials removal. Soil

Wyatt-1

Wyatt-2

remediation that meets residential and recreational standards and provides a higher level of protection for underground water supply should be considered more thoroughly in the EIR analysis for comparative purposes. It may be the case that the environmentally preferred option is soil remediation only to the industrial standard, as DEIR concludes, in order to minimize potential issues associated with increased contaminated materials removal. A more extensive comparative analysis may indicate a project, even if not the environmentally superior project, allowing future potential for housing and recreation as land uses, may be preferable. A more direct comparative section around these environmental impact trade offs between industrial level and residential/recreational level remediation would more clearly inform that discussion ahead.

Thank you again for your work and for the opportunity to comment on the DEIR and join in on the discussion. -a

Anne R. Wyatt

Responses

Code	Response
Wyatt-1	<p>The Project would result in reduced activity at the site during construction, and further reduction after aboveground demolition and the majority of remediation is completed. Although this is a Project under the Coastal Act, the demolition and remediation Project results in fewer jobs and reduced pressure for public access, rather than increasing access need. The Project is not currently impeding access to the shoreline. Therefore, access is not an impact under CEQA and there is no nexus for further study or mitigation to reduce impacts. The Project’s land use consistency requirements with Coastal Access in Title 23 are therefore addressed in the Staff Report analysis and the proposed Conditions of Approval for the Planning Commission to consider.</p> <p>As discussed in detail in the response to Comment CCC-4, the County is proposing a Condition of Approval for Planning Commission consideration that revises the current Offer to Dedicate (OTD) to: 1) Run with the land in perpetuity; and 2) Be recorded as a Trail Corridor, at a width of 50 feet to ensure that access for all trail users are considered (i.e., pedestrian, bicycle, equestrian and emergency services) and that sensitive resources can be avoided in the design and routing, consistent with the County Parks and Recreation Element. The final trail corridor and easement that would be accepted may be 10 feet or 20 feet in width, depending on identified users and design and routing requirements. Regardless of whether the State or a future developer of the Project site implements the access by developing plans and constructing a public trail, the previously offered 10-foot corridor is insufficient for trail design planning to cross the UPRR, avoid sensitive areas, and consider all potential users, including pedestrian, bicycle, equestrian and/or emergency vehicle access.</p> <p>Requiring the Applicant to provide trail enhancement or connectivity to other existing trails, particularly off site, is less feasibly achieved than imposing requirements on property that the Applicant owns. The County has no established “trail fund” program where in-lieu fees could be paid to an entity for trail connection purchase or construction.</p> <p>The County Parks Department, however, will require, as a condition of approval, a new offer of dedication for a trail easement along the Phillips 66 Willow Road (Highway 1) property frontage, for the Juan Batista De Anza National Historic Trail. This trail when complete, will extend from Sonora, Mexico to San Francisco. In San Luis Obispo County, the trail is proposed to extend along Highway 1 north to Price Canyon turning inland until it reaches the Cuesta Grade, then following the Salinas River to Paso Robles, turning northwest and entering Monterey County near San Antonio Dam. (Parks and Recreation Element 2006).</p>

**9.0 DEIR Comments and Responses**

<b>Code</b>	<b>Response</b>
Wyatt-2	<p>Generally speaking, soil quality is regulated by the State Department of Toxic Substances Control (DTSC), the State Water Board through Regional Water Quality Control Boards (RWQCB), and the County through its Certified Unified Program Agency program (CUPA). The County’s CUPA program, however, does not regulate soil quality directly; the program regulates (1) aboveground storage tanks that contain hazardous material; (2) accidental releases of hazardous material; (3) the handling, transport and disposal of hazardous waste; and (4) underground storage tanks. The RWQCB regulates soil quality based on potential impacts to water quality.</p> <p>The DTSC on the other hand, regulates soil quality based on human health risk assessments, among other things and only for a set listing of hazardous materials, defined by either Resource Conservation and Recovery Act (RCRA), found in 40 CFR, or California Health &amp; Safety Code (HSC) and 22 CCR. The individual generating the waste must determine if the waste generated meets the criteria of hazardous waste as defined in 22 CCR.</p> <p>The State Water Board, through the nine Regional Water Quality Control Boards, protects water quality and allocates surface water rights to implement California’s 1969 Porter-Cologne Water Quality Control Act. Each RWQCB is responsible for implementing statewide water quality policies and regulations. They set standards, issue waste discharge permits, determine compliance with permit requirements, and enforce compliance with water quality regulations in their specific regions.</p> <p>The DTSC regulates more than 100,000 entities such as recycling and manufacturing facilities, and transporters to prevent the release of hazardous waste, clean up contamination, and ensure hazardous waste is handled safely by:</p> <ul style="list-style-type: none"> <li>• Conducting inspections and taking enforcement actions to ensure compliance,</li> <li>• Providing emergency response support for hazardous materials-related emergencies throughout California,</li> <li>• Making decisions on permit applications for 99 permitted facilities, including 73 operating facilities and 26 post closure facilities, and</li> <li>• Ensuring companies provide financial assurance for future closure or cleanup activities.</li> </ul> <p>DTSC authority is defined only for materials defined as hazardous waste under RCRA, found in 40 CFR, or it is subject to HSC and 22 CCR. Generally, the land owner defines whether they have the listed hazardous material and then coordinates with DTSC for cleanup requirements. At this time, Phillips 66 indicates they do not have any contaminants that are on the hazardous waste listings, under 40 CFR or CA HSC and 22 CCR.</p>

Code	Response
	<p>The purpose of CEQA is to analyze and evaluate a project’s potentially significant environmental impacts, to inform the public and decision-makers about those impacts and, as appropriate, to require those impacts to be mitigated and/or to require the agency to adopt a statement of overriding considerations. CEQA however, does not dictate what the project is or the goals and objectives of the applicant regarding the project. An agency can impose reasonable conditions of approval in order to mitigate environmental impacts or to comply with adopted development standards or to be consistent with adopted General Plan policies.</p> <p>Here, the commenter is requesting that the EIR evaluate the impacts associated with further soil remediation of the property in order to meet residential and recreational standards and a higher level of protection for underground water quality. In other words, the commenter wants the EIR to evaluate a project that is not being proposed and/or a project alternative that is inconsistent with the Project’s goals and would cause great environmental impacts.</p> <p>The Project does not propose any residential or recreational development. The Project proposes to demolish existing facilities. The Project site is zoned Industrial; this application does not propose a change to the land use or a new, more intensive land use. There are no development standards or County General Plan policies that would mandate a rezoning of the Property through this application. There are no County regulations or General Plan policies that would regulate or determine what condition the soil must meet for this Project or any alternatives analyzed by the EIR. Again, the EIR must analyze the effects of the proposed Project’s alternatives to an extent that clearly demonstrates: 1) if the alternative meets the Project goals; and 2) if the alternative would have greater environmental impacts than the Project. The Central Coast Regional Water Quality Control Board (Central Coast Water Board) is the regulating agency for water quality which includes oversight on soil contamination with potential to affect groundwater. The Department of Toxic Substances Control (DTSC) regulates hazardous materials defined by listings in 40 CFR or HSC and 22 CCR, including soil contamination, lead and asbestos abatement. The Central Coast Water Board is already monitoring various areas of the site and will be very involved in the site remediation. Central Coast Water Board staff has indicated to the County that they cannot compel an applicant to clean to a higher standard than the level required by the applicable land use requirements. Again, rezoning the is not part of this application and there are no General Plan policies, regulations, or standards that the County could legally “point to” which would warrant requiring the Applicant to further remediate soil in order to facilitate a different land use.</p> <p>The Central Coast Water Board’s comments on the DEIR help to clarify the site remediation requirements in the FEIR. Comment CCRWQCB-5 notes</p>



9.0 DEIR Comments and Responses

Code	Response
	<p>that some of the contaminants that may be encountered on the site have San Francisco Bay Regional Water Quality Control Board Environmental Screening Levels (SFB RWQCB ESLs) for soil concentrations that can leach to groundwater. This means that if those contaminants are found, the level of soil cleanup is increased to ensure that the identified contaminant does not remain in concentrations that will affect groundwater. Thus, the Applicant is already required to remediate to a level that ensures protection of the groundwater, and the process will include sampling of the wells.</p> <p>Comment CCRWQCB-9 notes that there is a distinction between soil remediation and groundwater cleanup standards. The soil remediation follows U.S. EPA Regional Screening Levels or SFB RWQCB ESLs. The groundwater cleanup follows the standards and protocols in Resolution #92-49, which requires cleanup to background levels unless background levels of water quality cannot be restored, and an alternative cleanup level is approved. Any such alternative cleanup level must meet strict standards to protect groundwater. The FEIR has been revised to include this information.</p> <p>CEQA does not require that the alternative higher standard of remediation applicable to Residential land use be evaluated in detail when it is evident that there would be more grading, truck trips, greater air quality impacts, and a longer duration for this Project. The higher level of cleanup beyond standards required by the State, based on land use, would result in higher cost to the Applicant, a longer cleanup duration, and greater site disturbance. This alternative does not meet the Project Goals of cost-effectiveness and minimizing ground disturbance, nor is it environmentally superior to the Project. When an agency imposes a condition of approval on the project, Fifth Amendment Constitutional principles are implicated. Specifically, through case law, an agency may impose conditions on development so long as the conditions are reasonable and there exists a sufficient nexus between the conditions imposed and the projected burden of the proposed development. <i>Nollan v. California Coastal Commission</i>, (1987) 483 U.S. 825. Further, agencies must prove that such conditions have a “rough proportionality” to the development’s impact. <i>Dolan v. City of Tigard</i>, (1994)512 U.S. 374. To understand these principals, a short discussion of each case is warranted:</p> <p>In <i>Nollan</i>, a property owner wanted to build a house within the Coastal Zone. The Coastal Commission imposed a condition on the permit, requiring dedication of a lateral access easement along the property owner’s private beach. The rational for the condition was to assist the public in viewing the beach and in overcoming a perceived “psychological barrier” to using the beach. <i>Id.</i> at 435. The <i>Nollan</i> court determined that there was no nexus between the identified impact of the project (obstruction of ocean view by the new house) and the easement condition (physical access across the beach).</p>

Code	Response
	<p>Similarly, in <i>Bowman v. California Coastal Commission</i>, (2014) 230 Cal. App. 4th 1146, the Court of Appeal found no nexus between a request for a permit to rehabilitate a house and a condition imposed by the Coastal Commission for the property owner to dedicate to the public a lateral easement for public access along the shoreline of his property. Specifically, the Court stated: “We agree with appellants that under Nollan and Dolan, the easement lacks an “essential nexus” between the exaction and the construction. The work occurs within the existing “footprint” of the property.”</p> <p>In Dolan, a property owner applied for a permit to further develop his property. His plans were to increase the size of his plumbing store (by about double) and pave his 39-car parking lot. The permit was approved by the City of Tigard with the condition that the property owner dedicate a portion of his property within the 100-year flood plain for improvement of a drainage facility and dedicate a 15-foot strip of land adjacent to the flood plain for a pedestrian/bicycle path. The city made numerous findings to support the nexus requirement. The Supreme Court held that even though a nexus between the project and the conditions existed, the degree of the takings was not roughly proportional to the development’s impact. The City of Tigard asked for too much in relation to the impact that the development presented.</p> <p>There is no “essential nexus” between the Project and the suggestion to impose a higher standard of cleanup than that required by the State. Again, the Project is simply a demolition of facilities, and although those facilities are located above the soil, the Project does not seek to rezone the property nor does the Project propose to re-use the Property in any way. Further, while the scope and extent of requiring further soil remediation for a different land use is speculative, such a requirement would be disproportionate since the Project does not impose any “impacts” to soil quality to justify that requirement. Again, the Project is demolition of the existing facilities. To require the Applicant to further remediate the soil based on hypothetical future zoning would run afoul of these constitutional principles.</p> <p>The Applicant/property owner has been actively marketing the property for sale. In the event a purchase offer is made, the owner is required to disclose all site conditions affecting redevelopment, including potential for encountering underground debris such as pipe and concrete, the remediation area locations and final testing results. In the event a new owner proposes a land use other than Industrial, that prospective owner would need to submit an application for a General Plan Amendment (GPA), which requires authorization by the County Board of Supervisors to proceed. The subsequent GPA, land use application and environmental review would address all requirements and impacts for that proposed change in land use on that site, including a potential need to conduct additional testing, debris removal, and</p>

## 9.0 DEIR Comments and Responses

---

<b>Code</b>	<b>Response</b>
	remediation, if necessary, based on the standards established for the use that is proposed.

**9.3.2 Jeff Edwards**


## [EXT]Comments on DEIR

Jeff Edwards <jhedwardscompany@gmail.com>

Mon 5/6/2024 6:50 AM

To:PL\_p66refinery <PL\_p66refinery@co.slo.ca.us>

Cc:Susan Strachan <sstrachan@co.slo.ca.us>

 2 attachments (5 MB)

Phillips 66 Phillips 66 Santa Maria Refinery Demolition and Remediation\_jhe comments for May 6^J 2024.pdf; P66 Union Oil Agreement & Grant of Development Rights.pdf;

**ATTENTION:** This email **DID NOT** originate from County Staff. Please proceed with caution when interacting with any embedded links or attachments.

Good morning,

Please find the attached comment letter regarding the P66 DEIR. Please confirm receipt and let me know if you have any questions.

Thanks,

Jeff

Julie Tacker  
Administrative Assistant

J.H. Edwards Company  
P.O. Box 6070  
Los Osos, CA 93412  
805.235.0873 - Jeff  
805.235.8262 - Julie  
805.528.3569 - Office

**J. H. EDWARDS COMPANY**  
A REAL PROPERTY CONCERN  
*Specializing in Water Neutral Development*

May 6, 2024

San Luis Obispo County Department of Planning & Building  
976 Osos St., Rm 300  
San Luis Obispo, CA 93408

Attention: Susan Strachan

RE: Phillips 66 Santa Maria Refinery Demolition and Remediation Project Draft Environmental Impact Report (DEIR) State Clearinghouse #2023050020 and Development Plan/Coastal Development Permit (DP/CDP) #C-DRC2022-00048/ED23-054).

Please consider the following comments in connection with the above-referenced project. Fundamentally, the proposed project includes the demolition and remediation of the former oil refinery on approximately 218 acres. As a practicing land use professional in San Luis Obispo County for over forty years, I wish to express my support for the project as proposed. The DEIR is detailed, and I concur with the recognized Environmentally Superior Alternative, as the proposed project.

## **Background**

In 2013 Phillips 66 received approval for an increase in throughput by ten percent (10%). This allowed the Santa Maria Refinery to substantially increase its processing of crude oil. Final approval of the project was received from the Board of Supervisors on February 26, 2013. Condition No. 17 (shown below) relates to the provision of vertical public access to the ocean and was required as a condition of approval. Subsequently, Phillips 66 formerly withdrew the project, however the condition and its requirements remains in effect.

### ***Coastal Access***

17. **Prior to issuance of the Notice to Proceed authorizing an increase in Refinery throughput**, the applicant shall comply with Section 23.04.420 – Coastal Access Required. Construction of improvements associated with vertical public access (if required) shall occur within 10 years of the effective date of this permit (including any required Coastal Development Permit to authorize such construction) or at the time of any subsequent use permit approved at the project site, whichever occurs first. The approximate location of the vertical access required by this condition of approval shall be located within or immediately adjacent to the existing maintenance road as shown in Exhibit D – Project Graphic (Coastal Access Location Map 1 and 2).

**J. H. EDWARDS COMPANY**  
A REAL PROPERTY CONCERN  
*Specializing in Water Neutral Development*

JE-1

On April 1, 2015, an Offer to Dedicate (OTD) for vertical coastal access for the public was recorded in satisfaction of the above referenced condition. Pursuant to the condition, Phillips 66 was required to design, permit and construct a 10-foot-wide public access by February 2023, as shown below. Considering the refinery is closing, it would appear incongruous for Phillips 66 to be required to permit and build the previously contemplated improvements. An element of developing public access relates to the acceptance of the outstanding OTD, ostensibly by a public agency, such as California State Parks. However, at this time it is unclear who will own the subject property in the future. The Offer to Dedicate is an appurtenance and as such will "run with the land" and remain in effect until March 31, 2036. However, the DEIR recommends the OTD be modified to extend the possible acceptance into perpetuity, and I agree with this approach. Likewise, in further consideration of removing applicant responsibility for the access development, this commenter suggests the 10-foot wide OTD be enlarged to 60 feet. The practical basis for such a request is discussed later as Proposed Modification of Condition No. 17.

Additional details of the roughly 1.5 mile long, 10-foot wide OTD and the horizontal alignment in Exhibit C-1 are provided below:

<b>TOMMY GONG</b> San Luis Obispo County - Clerk/Recorder Recorded at the request of <b>FIS.MULIPAY CREDIT/DEBIT</b>		9C 4/12/2015 11:35 AM								
DOC#: 2015014726	Title: 1	Pages: 54								
<table border="0"> <tr> <td>Fees</td> <td>170.00</td> </tr> <tr> <td>Taxes</td> <td>0.00</td> </tr> <tr> <td>Others</td> <td>0.00</td> </tr> <tr> <td><b>PAID</b></td> <td><b>\$170.00</b></td> </tr> </table>			Fees	170.00	Taxes	0.00	Others	0.00	<b>PAID</b>	<b>\$170.00</b>
Fees	170.00									
Taxes	0.00									
Others	0.00									
<b>PAID</b>	<b>\$170.00</b>									
RECORDING REQUESTED BY: County of San Luis Obispo AND WHEN RECORDED MAIL TO: Clerk of the Board of Supervisors County of San Luis Obispo County Government Center San Luis Obispo, California 93408										

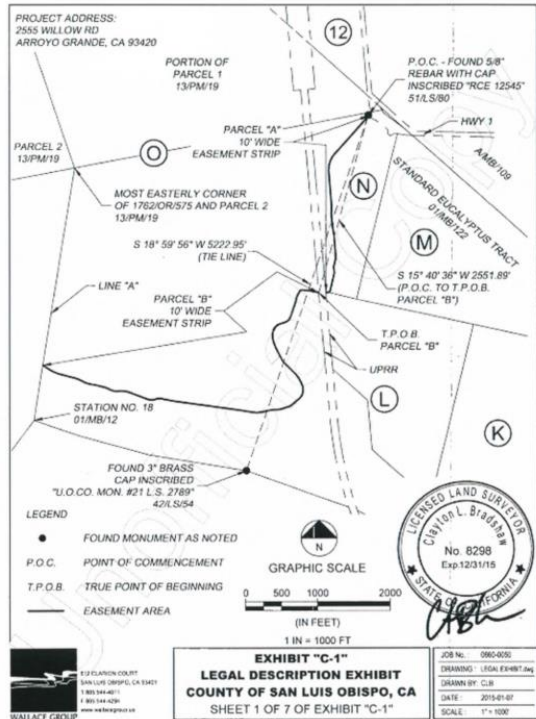
**IRREVOCABLE OFFER TO DEDICATE VERTICAL PUBLIC ACCESS EASEMENT AND DECLARATION OF RESTRICTIONS**

THIS IRREVOCABLE OFFER TO DEDICATE VERTICAL PUBLIC ACCESS EASEMENT AND DECLARATION OF RESTRICTIONS (hereinafter referred to as the "Offer") is made this 1<sup>st</sup> day of April, 2015, by PHILLIPS 66 COMPANY, a Delaware corporation, (hereinafter referred to as "Grantor").

WITNESSETH:

WHEREAS, Grantor is the legal owner of a fee interest of certain real property (hereinafter referred to as the "Property") located in the unincorporated area of the County of San Luis Obispo (hereinafter referred to as the "County") described in Exhibit A attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, all of the Property is located within the coastal zone as defined in Public Resources Code section 30103; and





JE-1  
(cont.)

**Need for Easement (oblique view of OTD alignment into the ODSVRA)**

JE-2

In the event the State of California does not acquire the land underlying the OTD, they may need a sufficiently sized alignment to accomplish a southern access to the ODSVRA if that opportunity presents.





ODSVRA Land Ownership & Management / Condor Environmental Alternative Access Study 2006

Since 1980, the State of California Department of Parks and Recreation has controlled the approximately 626-acre Phillips 66 land holding west of the Union Pacific Railroad tracks as shown above. The “AGREEMENT AND GRANT OF DEVELOPMENT RIGHTS” was executed by Union Oil Company of California, then owner of the Santa Maria Refinery. Please see a copy of the agreement attached.

Moreover, the 1982 Coastal Development Permit for the ODSVRA contemplated Pier Avenue being temporary in nature with prospects for a permanent southern entrance, presumably south of Arroyo Grande Creek. The primary impediment facing State Parks in establishing a southern entrance and staging area is the absence of available land. Given the existing OTD, coupled with a modified condition of approval as suggested, could address the land acquisition issue. A 60-foot wide OTD is necessary to co-locate a single multi-purpose vertical accessway to minimize ground disturbance and to comply with California Public Utilities

Commission rules against public at-grade crossings. While the proposed components may be more long-term in nature, following portions of the site cleanup, the question of access is very much in the fore. In other words, the entrance to the ODSVRA at Phillips 66 can be achieved in the near-term through adequately sizing the vertical access now with the possibility of State Parks accepting the OTD.

JE-2  
(cont.)

### **Nexus and Rough Proportionality**

It would appear reasonable to modify the recorded OTD considering the totality of circumstances. Concerning the nexus to establish a further condition regarding public access because the demolition and remediation project triggers an analysis with respect to CZLUO 23.04.420. In this case, while Phillips 66 would be expanding the land dedication, it would simultaneously be relieved of any current or future obligation relative to the development of the accessway.

JE-3

The original OTD requirement was part of the throughput project. The condition established the width at the **minimum** distance as provided in the CZLUO. The timing of the expanded OTD also coincides with what may be a final judicial resolution regarding prior Coastal Commission efforts to close the ODSVRA. There is a clear public purpose and benefit from requiring a modified OTD irrespective of the outcome of the ODSVRA at this time.

JE-4

Lastly, regarding rough proportionality, at the requested width of 60 feet for approximately one and one-half miles, the dedication equates to 9 additional acres as compared to the 10' OTD acres and as a percentage of the entire Phillips 66 land holding of approximately 1640 acres, it represents approximately five tenths of one percent (.05).

JE-5

### **Proposed Modification of Condition No. 17**

JE-6

1. Expand the existing ten-foot (10') wide vertical access easement to sixty-foot (60') wide from State Hwy 1 / Willow Road to the westerly edge of the Phillips 66 property.
2. Eliminate any obligation on the part of Phillips 66 Company to plan, permit and construct improvements over the easement at any time.
3. Modify the 21-year duration of the OTD to be in perpetuity.
4. Phillips 66 would only be required to record an amendment to the OTD to effectuate the above provisions including a new metes and bounds legal description.

**J. H. EDWARDS COMPANY**  
A REAL PROPERTY CONCERN  
*Specializing in Water Neutral Development*

5. A 10-foot wide OTD is inadequate to provide sufficient space to construct an under-track structure or rail bridge to conform to public rail crossing provisions per Union Pacific Railroad Public.

JE-6  
(cont.)

At some point, California State Parks or other entity may be able to accept the OTD and it would be their responsibility to plan, permit, construct, operate, and maintain the new vertical coastal public access to the ODSVRA. Likewise, whomever accepts the OTD, they would be responsible for working with Union Pacific Railroad and the California Public Utilities Commission to design a railroad crossing that conforms to the Union Pacific Railroad Public Projects Manual dated July 30, 2021.

JE-7

Respectfully,

*Jeff Edwards*  
Jeff Edwards

Attachment-AGREEMENT AND GREANT OF DEVELOPMENT RIGHTS

1740

Pismo Dunes  
AGREEMENT AND GRANT OF DEVELOPMENT RIGHTS

RES 3317  
265.1300100, 11

This Agreement, made and entered into this 8<sup>th</sup> day of April 1980, by and between UNION OIL COMPANY OF CALIFORNIA, a California Corporation, hereinafter called "COMPANY", and the STATE OF CALIFORNIA, acting by and through the DEPARTMENT OF GENERAL SERVICES with the approval of the DEPARTMENT OF PARKS AND RECREATION, hereinafter called "STATE";

WHEREAS, STATE PUBLIC WORKS BOARD proposes to purchase certain property from the UNION OIL COMPANY as an addition to Pismo Dunes State Vehicular Recreation Area as shown on attached Acquisition Plan identified as Drawing No. 15651 marked Exhibit "A";

WHEREAS, in addition to this purchased property COMPANY proposes to grant to STATE the right, estate, and interest to occupy and use and to prevent the further development during the term hereof of an adjacent parcel of land for specific Buffer Zone purposes in connection with the operation and maintenance of lands within Pismo Dunes State Vehicular Recreation Area;

WHEREAS, COMPANY shall retain ownership of other real property contiguous and adjacent to the Buffer Zone and conduct various industrial uses and operations on said other real property next to the Buffer Zone.

WHEREAS, it is in the interest of the parties hereto to enter into this Agreement for the purposes and on the conditions hereinafter referred to;

NOW, THEREFORE, the parties hereto hereby mutually agree as follows:

15651

1740

COMPANY hereby grants to the STATE the right, estate, and interest to occupy and use and to prevent the development during the term hereof, except as herein provided of that certain parcel of land (said parcel) as delineated in red on the attached Exhibit "A", which exhibit by this reference is made a part hereof such right, estate, and interest shall endure for a term of five (5) years beginning on May 1, 1980 and ending on April 30, 1985 and such term shall be automatically renewed at the end of such five year term, and at the end of any subsequent five year term, for an additional period of five years, unless notice of non-renewal is given in writing, by COMPANY to STATE. In the event of such notice the right, estate, and interest of STATE under this agreement shall terminate two (2) years after the end of the five year term within which such notice was served on STATE. Such right, estate, and interest is subject to the following terms and conditions:

1. STATE shall use, operate, and maintain said parcel only as a part of the State Park System for the purpose of providing a buffer zone, between other property of the STATE and other property owned by COMPANY adjacent to said parcel, and for uses and operations consistent with providing a buffer zone which shall include security patrol or emergency access, preservation of scenic values, natural interpretation through guided tours, preservation, maintenance, preventive maintenance, or rehabilitation of existing land conditions such as dunes, dune foliage, wetland, flora and fauna habitats, and such other uses as are consistent with the Buffer Zone concept described herein.

2. STATE shall not allow entry upon or occupancy of said parcel by the general public or by anyone for uses other than as described herein, or any use, except as provided for herein, which requires access to said parcel by anyone other than State Park System personnel, other relevant employees or agents, or contractors of the STATE without express written consent of COMPANY.

3. The STATE shall install and maintain boundary markers, and appropriate warning markers along the boundary between the State Park System and said parcel and prohibit access except as herein provided to the buffer area within said parcel. STATE shall maintain and place warning markers on COMPANY's existing fence and any fence subsequently installed within said parcel along said western edge of the railroad right of way. COMPANY and STATE shall have the right to use COMPANY's existing gate for access to said parcel at all times. Except as herein provided STATE shall not be required to expend funds for development within said parcel.

4. COMPANY may use and occupy that portion of said parcel indicated in blue and labelled "Company Use Area" on Exhibit A for uses necessary and beneficial to COMPANY's other real property in the area and operations thereof and not inconsistent with the Buffer Zone concept and the provisions of this Agreement; provided, however, that COMPANY may not further develop or expand operations on said parcel except to maintain, repair, replace, or reconstruct existing facilities or to construct such other new facilities as are approved in writing by the STATE as consistent with the Buffer Zone concept in the reasonable opinion of the STATE. COMPANY and STATE hereby agree that uses in the Company Use Area which are not inconsistent with the Buffer Zone concept include, but are not limited to the following:

- storage of non-operating equipment and non-hazardous materials such as pipes, construction materials, pumps, product containers, and such protective shelters as may be required.
- inspection, access, maintenance and security patrols; and
- use of Company Use Area on a short-term basis as a staging or prefabrication area during construction of improvements or repairs to facilities on COMPANY's other real property in the area.

COMPANY and STATE agree that the following uses in the Company Use Area would be inconsistent with the Buffer Zone concept: employee or contractor parking, temporary office or trailer facilities, additional permanent structures, including climate controlled storage facilities, warehouses which require utility service or other operational equipment.

COMPANY shall maintain existing pipelines and other existing facilities and operations in said parcel and shall have reasonable rights of access, use, and maintenance of such pipelines and facilities.

Notwithstanding any description herein of non-permitted uses in the Company Use Area or Buffer Zone to the contrary, COMPANY shall retain the right to develop its subsurface rights in drill sites located at mutually agreeable sites within the Buffer Zone, to install, operate and maintain the equipment and facilities required to develop the subsurface resources and to have necessary access to pipelines and other required facilities in the Buffer Zone to support such drill sites.

5. STATE shall not be responsible for the protection, care, maintenance, or control of any property or equipment stored in or placed by or for COMPANY within said parcel, anything herein to the contrary notwithstanding.

6. COMPANY and its employees, agents and contractors, subject to the limitation on development, and disturbance of STATE improvements as herein provided, shall at all times retain the right to enter said parcel to observe, inspect, test, study, and otherwise monitor conditions on the entire parcel for purposes of determining STATE'S adherence to the terms of this Agreement, the condition of the parcel, possible effect of changing conditions of said parcel on COMPANY'S other real property and operations in the area, and such other purposes as are consistent with this Agreement. Except for the uses described herein as reserved to COMPANY, STATE'S occupancy of the parcel shall be exclusive, and COMPANY shall not assign or delegate or otherwise transfer its retained rights hereunder except as they may be transferred with said parcel or said other real property.

7. The right, estate, or interest of STATE under this Agreement shall be terminable on 30 days written notice to STATE by COMPANY in the event STATE after 90 days written notice specifying a breach of this Agreement does not cure or diligently carry out work to cure any breach of the restriction, covenants, or obligations upon STATE under this Agreement, or on written notice in the event any condemnation proceedings are initiated by the STATE, or on written notice in the event any other Agency with eminent domain powers establishes a more necessary public use than the STATE.



8. COMPANY does not warrant or represent the appropriateness of said parcel for the use as a buffer zone for Pismo Dunes State Vehicular Recreation Area and by execution of this Agreement does not establish, alter, waive or modify, or expand the responsibilities, liabilities or obligations of COMPANY with regard to conduct of activities on its adjoining real property which is being used for operation of an oil refinery, coke plant, and similar activities.

9. COMPANY and STATE agree to provide each other with current information, schedule and description of all personnel, equipment and material using or occupying during the term of this Agreement, said parcel two weeks prior to such occupation or use; and in circumstances requiring prompt action, as conditions permit, so that COMPANY and STATE may coordinate such use and prevent or minimize any inference, risk, or damage.

10. STATE hereby covenants and agrees, to extent it may legally do so and subject to availability of funds, to indemnify COMPANY against liability, losses, damages, or costs which COMPANY may suffer as a result of claims, demands, or judgments against it resulting from a negligent act or omission by STATE except such as arise out of the concurrent or sole negligence of COMPANY or by reason of the use of said parcel by COMPANY as herein provided.

11. It is understood and agreed that this Agreement and the right, estate, and interest herein given may be terminated by STATE by giving one hundred eighty (180) days written notice to COMPANY.

12. Any notice, demand, or request required or authorized by this Agreement to be given or made to or upon STATE shall be deemed properly given or made if delivered by certified mail, postage prepaid to: State of California, Department of Parks and Recreation, P.O. Box 2390, Sacramento, CA 95811.

The notice, demand, or request required or authorized by this Agreement to be made to or upon COMPANY shall be deemed properly given or made if delivered by certified mail postage prepaid to the Union Oil Company of California, P.O. Box 7600, Los Angeles, CA 90051, Attention: Vice President, Refining and Supply, 76/w (and a copy to Manager, Santa Maria Refinery, Union Oil Company of California, Route 1, Box 7600, Arroyo Grande, CA 93420).

The designation of the person to or upon whom any notice, demand, or request is to be given or made, or the address of any such person may be changed at any time by notice given in the same manner as provided in this article for other notices. Nothing herein shall preclude the giving of notice by personal service.

13. All obligations of STATE under this Agreement are subject to availability of funds appropriated therefor. Failure of STATE to meet its obligations hereunder because of non-availability of funds shall constitute a breach of this agreement for purposes of paragraph 7.

14. Anything herein to the contrary notwithstanding, COMPANY shall not damage or disturb any boundary marker, fence, warning marker, or any other STATE improvement to said parcel, permitted by this Agreement. After the end

of the term hereof or the sooner termination thereof, STATE may, at the STATE'S option, remove any boundary marker, fence, warning marker, or any other STATE improvement to said property. All such material and improvements shall be the property of the STATE.

15. If the COMPANY'S right to terminate the right, estate, and interest granted to STATE under this Agreement is exercised effective before the end of the twelfth year under this Agreement, COMPANY agrees to pay STATE one-half of the COMPANY necessarily incurred actual costs to install the fence, required to be installed by Property Acquisition Agreement dated April 8, 1980 between COMPANY and STATE, over and above the estimated salvage value, if any, of said fence.

16. STATE agrees not to unreasonably withhold approval of a license or permit issued to the property owner adjoining Black Lake to permit such owner to enter the portion of said parcel immediately adjacent to Black Lake to do erosion control work to control sand dune movement which is otherwise consistent with the terms and conditions of this Agreement.

17. Except as expressly provided herein there is no intent by COMPANY to dedicate said parcel to public use or waive any of its rights regarding said parcel.

STATE OF CALIFORNIA  
DEPARTMENT OF GENERAL SERVICES

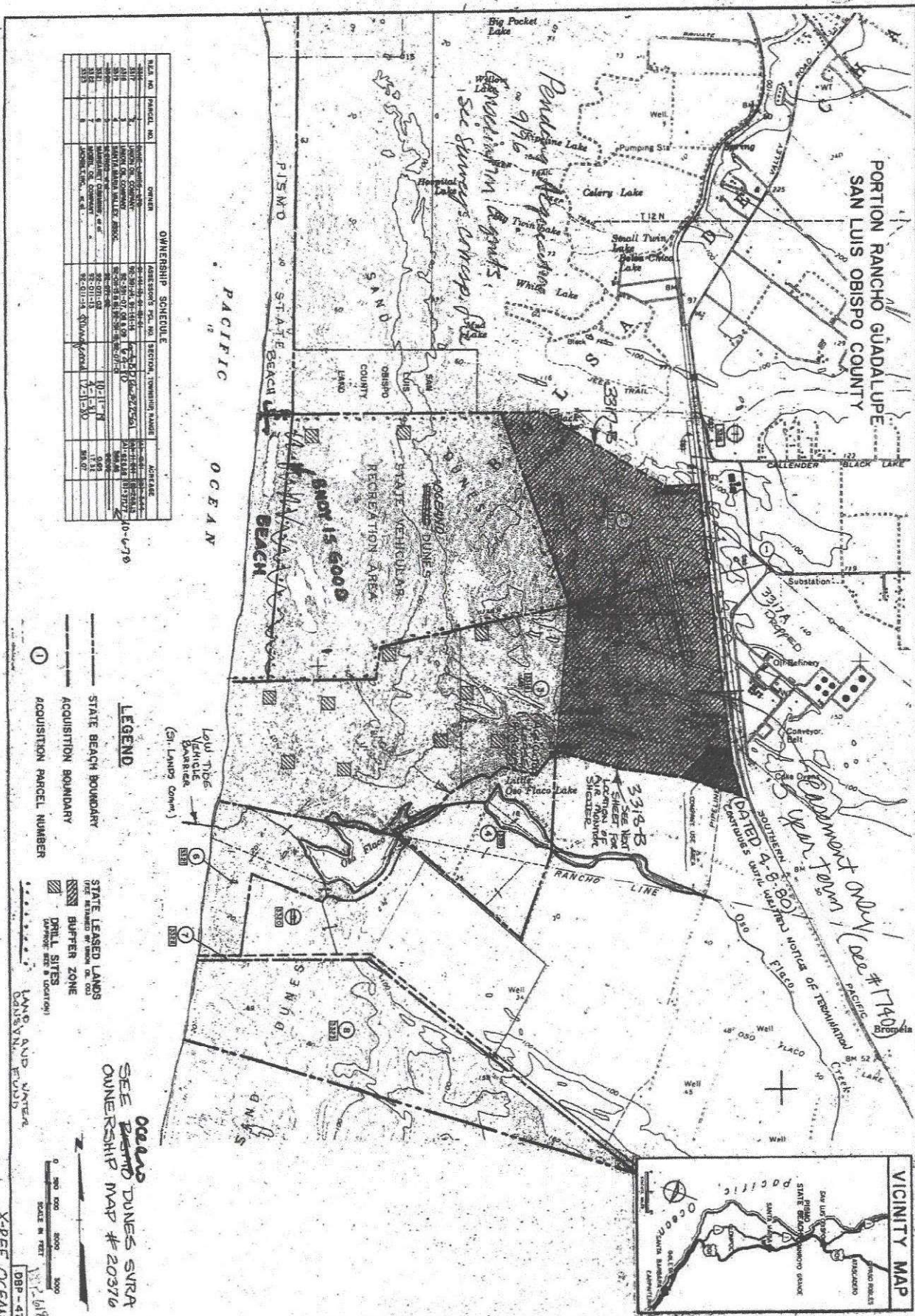
BY: *Edward R. Puth*  
Chief Land Agent DATE

DEPARTMENT OF PARKS AND RECREATION

BY: *Jack Harmon* APR 28 1980  
Director DATE  
N-8953C Deputy Director

UNION OIL COMPANY OF CALIFORNIA

BY: *Don Whelan*  
VICE PRESIDENT  
Date April 8, 1980



TRACT NO.	PARCEL NO.	OWNER	ACQUISITION SCHEDULE
1	1	STATE OF CALIFORNIA	10-78
2	2	STATE OF CALIFORNIA	10-78
3	3	STATE OF CALIFORNIA	10-78
4	4	STATE OF CALIFORNIA	10-78
5	5	STATE OF CALIFORNIA	10-78
6	6	STATE OF CALIFORNIA	10-78
7	7	STATE OF CALIFORNIA	10-78
8	8	STATE OF CALIFORNIA	10-78
9	9	STATE OF CALIFORNIA	10-78
10	10	STATE OF CALIFORNIA	10-78
11	11	STATE OF CALIFORNIA	10-78
12	12	STATE OF CALIFORNIA	10-78
13	13	STATE OF CALIFORNIA	10-78
14	14	STATE OF CALIFORNIA	10-78
15	15	STATE OF CALIFORNIA	10-78
16	16	STATE OF CALIFORNIA	10-78
17	17	STATE OF CALIFORNIA	10-78
18	18	STATE OF CALIFORNIA	10-78
19	19	STATE OF CALIFORNIA	10-78
20	20	STATE OF CALIFORNIA	10-78
21	21	STATE OF CALIFORNIA	10-78
22	22	STATE OF CALIFORNIA	10-78
23	23	STATE OF CALIFORNIA	10-78
24	24	STATE OF CALIFORNIA	10-78
25	25	STATE OF CALIFORNIA	10-78
26	26	STATE OF CALIFORNIA	10-78
27	27	STATE OF CALIFORNIA	10-78
28	28	STATE OF CALIFORNIA	10-78
29	29	STATE OF CALIFORNIA	10-78
30	30	STATE OF CALIFORNIA	10-78
31	31	STATE OF CALIFORNIA	10-78
32	32	STATE OF CALIFORNIA	10-78
33	33	STATE OF CALIFORNIA	10-78
34	34	STATE OF CALIFORNIA	10-78
35	35	STATE OF CALIFORNIA	10-78
36	36	STATE OF CALIFORNIA	10-78
37	37	STATE OF CALIFORNIA	10-78
38	38	STATE OF CALIFORNIA	10-78
39	39	STATE OF CALIFORNIA	10-78
40	40	STATE OF CALIFORNIA	10-78
41	41	STATE OF CALIFORNIA	10-78
42	42	STATE OF CALIFORNIA	10-78
43	43	STATE OF CALIFORNIA	10-78
44	44	STATE OF CALIFORNIA	10-78
45	45	STATE OF CALIFORNIA	10-78
46	46	STATE OF CALIFORNIA	10-78
47	47	STATE OF CALIFORNIA	10-78
48	48	STATE OF CALIFORNIA	10-78
49	49	STATE OF CALIFORNIA	10-78
50	50	STATE OF CALIFORNIA	10-78
51	51	STATE OF CALIFORNIA	10-78
52	52	STATE OF CALIFORNIA	10-78
53	53	STATE OF CALIFORNIA	10-78
54	54	STATE OF CALIFORNIA	10-78
55	55	STATE OF CALIFORNIA	10-78
56	56	STATE OF CALIFORNIA	10-78
57	57	STATE OF CALIFORNIA	10-78
58	58	STATE OF CALIFORNIA	10-78
59	59	STATE OF CALIFORNIA	10-78
60	60	STATE OF CALIFORNIA	10-78
61	61	STATE OF CALIFORNIA	10-78
62	62	STATE OF CALIFORNIA	10-78
63	63	STATE OF CALIFORNIA	10-78
64	64	STATE OF CALIFORNIA	10-78
65	65	STATE OF CALIFORNIA	10-78
66	66	STATE OF CALIFORNIA	10-78
67	67	STATE OF CALIFORNIA	10-78
68	68	STATE OF CALIFORNIA	10-78
69	69	STATE OF CALIFORNIA	10-78
70	70	STATE OF CALIFORNIA	10-78
71	71	STATE OF CALIFORNIA	10-78
72	72	STATE OF CALIFORNIA	10-78
73	73	STATE OF CALIFORNIA	10-78
74	74	STATE OF CALIFORNIA	10-78
75	75	STATE OF CALIFORNIA	10-78
76	76	STATE OF CALIFORNIA	10-78
77	77	STATE OF CALIFORNIA	10-78
78	78	STATE OF CALIFORNIA	10-78
79	79	STATE OF CALIFORNIA	10-78
80	80	STATE OF CALIFORNIA	10-78
81	81	STATE OF CALIFORNIA	10-78
82	82	STATE OF CALIFORNIA	10-78
83	83	STATE OF CALIFORNIA	10-78
84	84	STATE OF CALIFORNIA	10-78
85	85	STATE OF CALIFORNIA	10-78
86	86	STATE OF CALIFORNIA	10-78
87	87	STATE OF CALIFORNIA	10-78
88	88	STATE OF CALIFORNIA	10-78
89	89	STATE OF CALIFORNIA	10-78
90	90	STATE OF CALIFORNIA	10-78
91	91	STATE OF CALIFORNIA	10-78
92	92	STATE OF CALIFORNIA	10-78
93	93	STATE OF CALIFORNIA	10-78
94	94	STATE OF CALIFORNIA	10-78
95	95	STATE OF CALIFORNIA	10-78
96	96	STATE OF CALIFORNIA	10-78
97	97	STATE OF CALIFORNIA	10-78
98	98	STATE OF CALIFORNIA	10-78
99	99	STATE OF CALIFORNIA	10-78
100	100	STATE OF CALIFORNIA	10-78

X-REF OCEANO DUNES DBP-478

**PISMO STATE BEACH  
DUNES STATE VEHICULAR RECREATION AREA  
ACQUISITION PLAN**

SERVICES AGENCY OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

REVISED PCL. # 8 D BOUNDARY  
REVISED ACQ. BOUNDARY PCL. 1 & 5  
DELETED PCL. 1  
DELETED PCL. 2 & 3 (AS SHOWN ON 200 & 300 AS AT THE TIME OF THE REVISED PCL. 1)

DATE 12-77  
DATE 2-78  
DATE 9-78  
DATE 10-78

DESIGNER  
DRAWN  
Jan. 1977  
CHECKED

SCALE IN FEET  
0 500 1000 2000 3000

15651

STATE OF CALIFORNIA - THE RESOURCES AGENCY  
 DEPARTMENT OF PARKS AND RECREATION  
**TRANSFER OF JURISDICTION CONTROL SHEET**

**To:** Real Estate Services  
 650 Howe Avenue  
 Sacramento, CA 95825

**Date:** 8/27/81

Attention: Jerry Heminger

**From:** Department of Parks and Recreation Acquisition Division, Property Acquisition and Ownership  
 Records, Roland P. Foos, (916) 322-7507

**PART I TO BE COMPLETED BY AREA/REGION AND FORWARDED TO ACQUISITION DIVISION**

PARK OR PROJECT 240264 Pismo Dunes SBRA DBP 478  
 PARCELS 3318A (626.58 acres) Union Oil Company #788,425  
 PUBLIC WORKS BOARD SETTLEMENT DATE 4-28-80 ACQUISITION PLAN NUMBER 15651

**INVESTIGATION RECOMMENDATION**

Transfer on Acquisition Area acquired in fee, 1010 - 383.42 = 626.58

Disposition of Improvements/Cleanup \_\_\_\_\_

Interim Management

Instructions to R.E.S. \_\_\_\_\_

Lease back (G.S. to Control)

Special Conditions 3318B (371.77 acres leased by Parks concessions)

RECOMMENDATION OF AREA MANAGER COMMENTS		RECOMMENDATION OF REGIONAL DIRECTOR COMMENTS	
SIGNATURE OF AREA MANAGER	DATE	APPROVED FOR REGIONAL DIRECTOR	DATE
		▶	

**PART 2 TO BE COMPLETED BY HEADQUARTERS ACQUISITION DIVISION AND FORWARDED TO REAL ESTATE SERVICES**  
 RECOMMENDATIONS APPROVED BY ACQUISITION DIVISION. PLEASE PROCEED AS DIRECTED

Per telephone conversation 8/2//81 with Wes Cater, Area Manager and John Baggett,  
 Central Coast Region request early transfer of parcel

APPROVED Roland P. Foos Land Agent TITLE \_\_\_\_\_ DATE 8/27/81

OPR 163 (Rev. 11/80)  
**SEP 02 1981**

STATE OF CALIFORNIA - THE RESOURCES AGENCY  
 DEPARTMENT OF PARKS AND RECREATION  
 TRANSFER OF JURISDICTION CONTROL SHEET

To: Richard E. Felty  
Central Coast Region (2)

Date: 3-9-81

From: Department of Parks and Recreation Acq. Div. Property Acquisition and Ownership Records  
 Roland P. Foos, 916, 322-7507

PART 1 TO BE COMPLETED BY AREA/REGION AND FORWARDED TO ACQUISITION DIVISION

PARK OR PROJECT Pismo Dunes SVRA DBP 478  
 PARCELS 3319 (366.86 acres) Santa Maria Valley Assn.  
 PUBLIC WORKS BOARD SETTLEMENT DATE 8-29-78 ACQUISITION PLAN NUMBER 15651

INVESTIGATION RECOMMENDATION

Transfer on Acquisition

Disposition of Improvements/Cleanup \_\_\_\_\_

Interim Management

Instructions to R.E.S. \_\_\_\_\_

Lease back (G.S. to Control)

Special Conditions partial lease back required for area being farmed

RECOMMENDATION OF AREA MANAGER COMMENTS		RECOMMENDATION OF REGIONAL DIRECTOR COMMENTS	
<u>portion of this property is leased private firm by Gen Services for farming.</u>		<u>Transfer Portion of G.S. held portion being leased.</u>	
SIGNATURE OF AREA MANAGER <u>[Signature]</u>	DATE <u>3-16-81</u>	APPROVED FOR REGIONAL DIRECTOR <u>[Signature]</u>	DATE <u>3/20/81</u>

PART 2 TO BE COMPLETED BY HEADQUARTERS ACQUISITION DIVISION AND FORWARDED TO REAL ESTATE SERVICES

RECOMMENDATIONS APPROVED BY ACQUISITION DIVISION. PLEASE PROCEED AS DIRECTED  
 COMMENTS \_\_\_\_\_

APPROVED Roland P. Foos Land Agent TITLE Land Agent DATE 3/21/81

DEPARTMENT OF PARKS AND RECREATION  
TRANSFER OF JURISDICTION CONTROL SHEET

To: Richard E. Felty  
Regional Director  
Central Coast Region  
2211 Garden Rd.  
Monterey, CA 93940

Date: 1-16-81

From: Department of Parks and Recreation Acq. Div. Roland Foos ((916) 322-7507)

PART 1 TO BE COMPLETED BY AREA/REGION AND FORWARDED TO ACQUISITION DIVISION

PARK OR PROJECT Pismo Dunes SVRA DBP 478

PARCELS 3322 - Mobil Oil Co.

PUBLIC WORKS BOARD SETTLEMENT DATE 11-25-80 ACQUISITION PLAN NUMBER 15651

INVESTIGATION RECOMMENDATION

Transfer on Acquisition

Disposition of Improvements/Cleanup \_\_\_\_\_

Interim Management

Instructions to R.E.S. \_\_\_\_\_

Lease back (G.S. to Control)

Special Conditions \_\_\_\_\_

RECOMMENDATION OF AREA MANAGER  
COMMENTS  
accept

RECOMMENDATION OF REGIONAL DIRECTOR  
COMMENTS  
Accept

SIGNATURE OF AREA MANAGER  
[Signature]  
DATE  
1-22-81

APPROVED FOR REGIONAL DIRECTOR  
[Signature]  
DATE  
2/2/81

PART 2 TO BE COMPLETED BY HEADQUARTERS ACQUISITION DIVISION AND FORWARDED TO REAL ESTATE SERVICES  
RECOMMENDATIONS APPROVED BY ACQUISITION DIVISION. PLEASE PROCEED AS DIRECTED

APPROVED Roland P. Foos, Land Agent DATE 2-17-81

DP-163 (Rev. 11/80)

Responses

Code	Response
JE-1	<p>The width of the Offer to Dedicate (OTD) is not a CEQA issue and is therefore not addressed in detail in the FEIR. However, in addition to extending the OTD in perpetuity as a condition of approval for decision makers to consider with findings and conditions, the Applicant will be required to record the OTD as a Trail Corridor, at a width of 50 feet), within which the trail route would be located. This will ensure that the final access route for all trail users is considered (i.e., pedestrian, bicycle, equestrian and emergency services) and that sensitive resources can be avoided within the OTD area in the design, routing, and construction. The final easement, if and when the trail is constructed, would be narrower in width, depending on identified users and design requirements.</p>
JE-2	<p>As discussed in detail in the response to Comment CCC-4 and JE-1, the County is proposing a condition of approval for decision makers to consider with findings and conditions that revises the current OTD to: 1) Run with the land in perpetuity; and 2) Be recorded as a Trail Corridor, at a width (i.e., 50 feet) that allows for adequate design planning, routing, construction, and sensitive resource avoidance, consistent with the County Parks and Recreation Element. The final trail easement, if and when the trail is constructed, would be narrower in width, depending on identified users and design requirements.</p> <p>In 1998, Phillips 66 executed an updated Agreement with the State Parks that replaced the 1980 agreement. The State manages the property west of the UPRR right-of-way as a buffer to the Park with specified limits on uses and access, and Phillips 66 also retains certain rights on their property.</p> <p>Until State Parks adopts the 2020 ODSVRA Draft Plan, acquires this property and the right of access from Willow Road, there is no “plan” approved for creating a new entrance to the Oceano Dunes at this site. The County must apply standards and conditions that are consistent with the County’s adopted General Plan, Planning Area and land use standards. Should the State acquire the property and the access right of way, the State must then update the ODSVRA General Plan and create the planning guidelines and environmental mitigations that would enable that change. At that point, the State can make their access whatever width is necessary for the intended purpose and would not need an easement on their own property. In the event that the State does not acquire the Project site property and another buyer purchases and submits an industrial development application to the County, the OTD allows a public vertical access trail to be constructed consistent with impacts of that proposed industrial development and applicable adopted plans and policies, in coordination with the State. A public trail would not typically include a new public road vehicle access, although vehicle access for trail and outfall maintenance and emergency access could be accommodated.</p>



Code	Response
JE-3	<p>See responses to comments JE-1 and JE-2 above. The County has determined that there is an insufficient nexus under the SMR Demolition and Remediation Project, to require construction of a coastal access trail. However, conditions of approval for decision maker consideration to modify the duration of the existing OTD to extend it in perpetuity and the modify the width from 10 to 50 feet for to ensure access for all trail users is considered, and that sensitive resources can be avoided in the design, routing, and construction of the future trail. The final trail easement, if and when the trail is constructed, would be narrower in width, depending on identified users and design requirements.</p>
JE-4	<p>See response to comment JE-2, JE-2, and JE-3 above.</p>
JE-5	<p>See response to comment JE-2, JE-2, and JE-3 above.</p>
JE-6	<p>The specific language of the OTD changes proposed in the County staff resources can be avoided in the design, routing, and construction of the future trail. The final trail easement, if and when the trail is constructed, would be narrower in width, depending on identified users and design requirements. Reports are in the process of being developed in parallel to this FEIR preparation. The OTD issues and changes are not considered to be a part of the CEQA analysis and are therefore not addressed in the FEIR.</p>
JE-7	<p>The UPRR crossing is a substantial issue that would have to be addressed when a coastal trail is to be constructed. However, this issue is not considered a part of the CEQA and is therefore not addressed in the FEIR.</p>