STATE OF CALIFORNIA—NATURAL RESOURCES AGENCY EDMUND G. BROWN, JR., *GOVERNOR*

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February 3, 2016

San Luis Obispo County Planning Commission
Department of Planning and Building
976 Osos St., Room 200
San Luis Obispo, Ca 93408-2040

Re: Final Environmental Impact Report and San Luis Obispo County Department of Planning and Building Staff Report for the Phillips 66 Santa Maria Refinery Rail Spur Extension Project

Dear Planning Commissioners:

Staff of the California Coastal Commission is writing to provide support for the San Luis Obispo County Department of Planning and Building's staff report and recommendation of denial of the Phillips 66 Santa Maria Refinery Rail Spur Extension Project's coastal development permit application. We agree, based on our review of the proposed project, the Final EIR, and the County Planning Department's staff report, that the project is inconsistent with a number of the San Luis Obispo County Local Coastal Program's (LCP) key policies and standards – including those providing protection for areas of dune vegetation (Coastal Plan Policy 36) and environmentally sensitive habitats (Coastal Plan Policies 1 and 29).

Because this project is a "major energy facility," as defined in California Coastal Commission Administrative Regulations Section 13012(a)[1], Coastal Act Section 30603(a)(5)[2] provides that any action taken on this coastal development permit application by San Luis Obispo County - either approval or denial - is appealable to the Coastal Commission. If appealed to the Coastal Commission, the standard of review upon which approval or denial of this project's coastal development permit will be based will be the LCP and the public access and recreation policies

[1] Section 13012(a) states that: "'Major energy facilities' mean facilities that cost more than one hundred thousand dollars…"
[2] Section 30603 states that: "(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of development: …(5) Any development which constitutes a major public works project or a major energy facility."

of the Coastal Act. Our staff therefore appreciates the County's close coordination with us throughout its evaluation of this project. We believe that any review of this project by the Commission on appeal will be facilitated by the County staff's thorough analysis and attention to detail.

We would also like to convey our support of the Final EIR. In particular, we support the modifications made to Section 4.4 of the Draft EIR - the biological resources section - that are now reflected in the Final EIR. These changes include a re-analysis of the vegetation communities and habitat present within the EIR's Biological Study Area and proposed project disturbance footprint using the accepted guidelines for classifying vegetation in California. This additional work has resulted in the reclassification of vegetation communities in a substantial portion of the project area and acknowledgement of the sensitivity and rarity of some of these communities – including approximately 20 acres within the proposed project's disturbance footprint. As indicated in the Coastal Commission staff's November 24, 2014, comment letter on the Revised Draft EIR (enclosed with this letter), because the characterization and classification of dune vegetation communities on the project site was not initially carried out in the appropriate manner, the Revised Draft EIR did not use the best available information and thus mistakenly concluded that these dune vegetation communities were neither sensitive nor rare. We appreciate the correction of this error provided in the Final EIR.

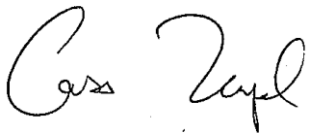
While the comments provided to County staff in our November 24, 2014, letter were based on a review of the information provided in the Revised Draft EIR, those comments have been subsequently corroborated though a field evaluation of the project site. As discussed in the letter we provided to County staff on June 4, 2015 (included as Exhibit D to the County Planning Department staff report), this field evaluation was carried out by two Coastal Commission staff ecologists on May 27, 2015 - with participation from Phillips 66 and San Luis Obispo County staff and environmental consultants. The results of this evaluation support the finding that a substantial area of sensitive dune vegetation is present within the proposed project footprint and that this habitat is an environmentally sensitive habitat area (ESHA) based on its rarity and susceptibility to disturbance or degradation.

The presence of ESHA within the project footprint was discussed with Phillips 66 representatives and consultants and County staff and consultants during the field evaluation and is bolstered by the additional discussion, analysis using the accepted guidelines for classifying vegetation in California, and survey data on the vegetation communities in the project area that is included in the Final EIR. Thus, we agree that the best available information and analysis supports the conclusion that the proposed project disturbance footprint includes dune vegetation and approximately 20 acres of ESHA, as that term is defined in the San Luis Obispo County Coastal Zone Land Use Ordinance and the Coastal Act.

In summary, based on the unavoidable adverse impacts to ESHA and dune vegetation that would result from the project, as well as the other LCP policy inconsistencies described in the County Planning Department's staff report and Final EIR, we strongly agree with and support your staff's recommendation that the project's coastal development permit application be denied.

Thank you for your consideration of these comments.

Sincerely,



CASSIDY TEUFEL
Senior Environmental Scientist
Energy, Ocean Resources and Federal Consistency Division

Cc: James Bergman, Director
Bill Robeson, Deputy Director, Permitting
Ryan Hostetter, Senior Planner

Attachment:

California Coastal Commission letter to San Luis Obispo County Department of Planning and Building, Re: Revised Draft Environmental Impact Report for the Phillips 66 Santa Maria Refinery Rail Spur Extension Project, November 24, 2014.

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November 24, 2014

Murry Wilson
Department of Planning and Building
976 Osos Street, Room 200
San Luis Obispo, CA 93408-2040

Re: **Revised Draft Environmental Impact Report for the Phillips 66 Santa Maria Refinery Rail Spur Extension Project**

Dear Mr. Wilson:

Thank you for considering the following input from Coastal Commission staff (Commission) on the revised draft Environmental Impact Report (EIR) for the proposed Phillips 66 Santa Maria Refinery Rail Spur Extension and Coastal Access Projects.

Phillips' proposed Rail Spur Extension Project is located within San Luis Obispo County's certified Local Coastal Program (LCP) jurisdiction and therefore requires a coastal development permit (CDP) from County. The County's decision on this project (approval or denial) is appealable to the Commission under Coastal Act section 30603(a) at least because the project is located between the first public road and the sea, is not the principally permitted use on this parcel, and is a "major energy facility" as defined in the Commission's regulations.[1]
In addition, the Coastal Access Project will also require a CDP from the County. Because this project would be located between the sea and the first public road paralleling the sea, a County approval of the project is also subject to appeal to the Commission, pursuant to Coastal Act Section 30603(a). Therefore, if either or both projects are appealed, the Commission will use the information contained in the EIR in its evaluation of the appealed project's conformity with the San Luis Obispo County LCP. Our comments and requests for additional information are as follows:

Coastal Commission Appeal Jurisdiction

1. Please include information about the Commission's appeal jurisdiction in Section 1.2 (Agency Use of the Document for the Rail Spur Project) of the EIR.

[1] Coastal Act Section 30107 defines "energy facility" as "any public or private processing, producing, generating, storing, transmitting, or recovering facility for electricity, natural gas, petroleum, coal, or other source of energy. 14 Cal. Admin. Code Section 13012(a) defines, in relevant part, "major energy facilities" as those energy facilities "that cost more than one hundred thousand dollars ($100,000)…"

Project Descriptions

Rail Spur Extension Project

2. Public Service Capacity: Please describe and quantify any proposed demand increases to municipal water and sewer resources that would result from the proposed project. In addition, please describe the existing excess capacity that is available to meet these demand increases, and whether applying such capacity to this project would adequately meet requirements for reserving capacity for Coastal Act and LCP priority uses.
3. Disturbance Area: Please specify how much of the proposed 48.9 acre disturbance area would be within the existing footprint of the refinery facility and coke storage area.
4. Existing Uses: Please describe the existing operations at the refinery facility and coke storage area, including the activities that are carried out at these sites as well as the equipment that is used and the vehicle and train traffic generated by this use.
5. Proposed Operations: Please describe any and all increased activities, operations, or traffic that would result from the proposed project.

Coastal Access Project

6. Accessway Design: Please provide a detailed description of the proposed design of the accessway and the factors that contributed to the selection of this design. Please include a description of the materials to be used, the dimensions of the accessway, and any ancillary facilities that would also be developed to support its use (i.e. parking areas, restrooms, emergency services, etc.).
7. Construction and Maintenance: Please provide a detailed description of the proposed method of constructing and installing the accessway, including any excavation, grading, or landform alteration that would be carried out. Please also describe the proposed maintenance activities that would be carried out to ensure that the acccessway is open and available for safe operation. Please also describe how often sand and vegetation removal activities would be carried out from within and adjacent to the accessway footprint.

Biological Resources

Regarding the presence and classification of dune habitat areas within the proposed Rail Spur Extension project's disturbance and development footprints, the discussion on page 4.4-4 states, "Under the current classification system, the Dune-Heather Alliance (and observed associations) would not be considered sensitive as dune-heather is a common plant species and has no sensitivity ranking." However, this assertion relies on the assumption that stands of dune vegetation that support *Ericameria ericoides* (mock heather) without *Lupinus chamissonis* (silver dune lupine) should be classified as distinct from those that support both of these dominant shrub species together. Based on Commission staff's review of the Manual of California Vegetation (Second Edition), and consultation with the California Department of Fish and Wildlife Vegetation Specialist, Dr. Todd Keeler-Wolf, the current guidelines for classifying vegetation in California do not support this assumption. In fact, these guidelines specify that stands of dune vegetation that support these species <u>either together or separately</u> should be classified as part of the *Lupinus chamissonis-Ericameria ericoides* Alliance, a vegetation alliance recognized both globally and statewide as rare and highly imperiled. Specifically, the membership rules in the Manual of California Vegetation (Second Edition), for the *Lupinus chamissonis- Ericameria ericoides* Alliance state that *Lupinus chamissonis* and/or *Ericameria ericoides* are conspicuous.

In addition, the characteristic species paragraph for this Alliance states that "*Ericameria ericoides* and *Lupinus chamissonis* occur characteristically together or alone in the shrub canopy…" [emphasis added].

8. We therefore recommend you correct the classification of dune vegetation within the proposed project site to reflect the California Department of Fish and Wildlife vegetation classification guidelines and amend the corresponding analysis of project impacts to sensitive biological resources to reflect the recognized rarity and imperiled status of dune vegetation within the proposed project footprint.
9. Please provide the biological survey reports developed by SWCA as an appendix to the EIR. These reports are described on page 4.4-22: "The survey area reviewed by SWCA is referred to herein as the Biological Study Area (BSA) and accounts for a 100-foot buffer beyond the applicant's proposed limits of disturbance near the rail spur and the proposed Emergency Vehicle Access road (EVA) to the southeast."
10. Mitigation Measure BIO-1 on page 4.4-27 notes that a focused survey for Nipomo mesa lupine shall be carried out prior to initiation of project activities during a "normal rainfall season." Please provide the criteria that would be used to define when a normal rainfall season is occurring. Please also clarify how discovery of this sensitive plant species during a focused survey would affect the designation of sensitive habitat.

Agricultural Resources

11. Please review internal citations to sections, figures, and appendices and correct as needed. Review by Commission staff suggests that a number of these internal references are not accurate. For example, the discussion in Section 4.2 includes references to the "Policy Consistency Analysis" in Appendix E. However, Appendix E is a document titled, "Preliminary Fire Protection Plan." Additionally, discussion also in Section 4.2 refers to the land use designations depicted in Figure 4.8-1. However, it appears that this discussion should instead refer to Figure 4.8-2, as it is the figure providing the relevant information.
12. Based on the information provided in Section 4.2.1.2 and Figure 4.8-2, the south-eastern corner of the project site is within the Agriculture land use category and currently supports ongoing agriculture activities. In addition, Figure 4.8-2 appears to indicate that a portion of this agriculture area is within the proposed project footprint. Please specify how much of this area is within the proposed project development and disturbance footprints and provide a discussion of the specific activities proposed for these areas.
13. Please provide additional support for the conclusion in Section 4.2 that the proposed conversion of agricultural land of local significance, loss of land currently used for agricultural activities, and land within the Agriculture land use category would not result in significant impacts to agricultural resources. For any proposed conversion of agricultural land, please provide a conversion analysis based on Coastal Act Sections 30241, 30241.5, and 30242.
14. Part of LCP Agriculture Policy 1 requires that non-prime lands suitable for agriculture be maintained in or available for agricultural production unless certain requirements are met. These requirements include the finding that "continued or renewed agricultural use is not feasible." As indicated in Figure 4.8-2 and the discussion in Section 4.2.1.2, a portion of the proposed project footprint appears to be within the Agriculture land use category.

Referring to portions of the project site that do not currently support industrial uses, both the discussion on page 4.2-34 and in Appendix G note that existing constraints would make "future agricultural use of this area unlikely..." However, information provided in Sections 4.2 and 4.8 indicates that this area currently supports agricultural activity. No analysis appears to have been provided demonstrating that continuation of this activity would be infeasible. Please provide such an analysis in the DEIR or acknowledge the proposed project's apparent inconsistency with LCP Agriculture Policy 1.

15. The discussion in Appendix G appears inconsistent with the discussion on page 4.2-34. Specifically, the discussion on page 4.2-34 notes that "Due to the Rail Spur Project's location on an Industrial-zoned parcel and the presence of multiple site conditions and regulatory constraints that would make future agricultural use of this area unlikely, conversion of these farmlands to industrial use consistent with existing land uses and zoning is considered a less than significant impact on agricultural resources." However, Figure 4.8-2 and the discussion in Section 4.2.1.2 appear to demonstrate that an area within the proposed project disturbance and development footprint (the south-east corner) is within the Agriculture land use category. Consistent with this land use designation, this area is described as currently supporting agricultural uses. This information suggests that contrary to the assertion on page 4.2-34, "conversion of farmland to industrial use" on at least a portion of the project parcel would not be "consistent with existing land uses and zoning." Please clarify this apparent discrepancy in the DEIR's analysis of the project's potential impacts to agricultural resources.

Project Alternatives

16. *Train Size and Frequency Alternatives:* Based on information provided in Section 2.3.1 of the project description, the size, configuration and location of the proposed rail spur is influenced primarily by the length of supply trains that would visit the refinery facility and the frequency and duration of these visits. This information suggests that a rail spur with a smaller overall footprint would be needed for shorter and/or less frequent trains. Please revise the evaluation of the three trains per week alternative (Section 5.1.4.1) to include a discussion of how this reduced delivery schedule would affect the size and design of the proposed rail spur. In addition, please also evaluate alternative crude oil supply train size/length alternatives (for example, supply trains with 20, 40, or 60 tanker cars instead of the proposed 80 car trains) and discuss how these shorter trains would affect the design and footprint of the proposed rail spur as well as the adverse impacts identified in the revised draft EIR
17. *Pipeline Transport Alternative:* Several significant rail transport projects are currently being planned or permitted in California, including several that propose to supply crude oil directly to the statewide pipeline network for transport to refineries. For example, the Plains All American Pipeline and the Alon rail terminals in Bakersfield are expected to come online in late 2014/early 2015 with a joint offloading capacity of 220,000 barrels of crude per day and are planned to supply refineries throughout the state by pipeline. Please evaluate the feasibility and impacts associated with pipeline transport of crude to the Santa Maria Refinery from existing and pending rail terminals.

Thank you for your consideration of the comments included above. If you have any questions, please feel free to call me (415) 904-5502.

Sincerely,

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