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NATIVE PLANT SOCIETY

November 23, 2014

To: Murry Wilson.  
San Luis Obispo County Department of Planning and Building  
976 Osos St., Rm. 200, San Luis Obispo, CA 93408-2040

From; David Chipping, President,  
San Luis Obispo Chapter, California Native Plant Society  
1530 Bayview Heights Drive, Los Osos, CA 93402

RE: Comments on the RDEIR for the Phillips 66 Company Rail Spur Extension

The San Luis Obispo Chapter of the California Native Plant Society submits the following comments on the RDEIR for the Phillips 66 Company Rail Spur Extension. We are confining our comments to the impacts to botanic resources and their associated habitat. CNPS is also attaching our comments to the original DEIR for the record.

(1) Adequacy of Botanic Surveys

We appreciate that the RDEIR has addressed this issue that CNPS raised in comment to the original DEIR concerning the need for further surveys concerning Nipomo lupine as the prior surveys would have missed populations repressed by drought. We agree the mitigation of having more surveys made after rain, and topsoil banking to retain the seed bank from areas to be graded are positive steps. The original comments by CNPS also noted that dune larkspur populations may have been missed due to drought, and this species has not been addressed in the RDEIR.

CNPS-01

(2) Grazing as a tool in habitat restoration

On page 4.4-27 the RDEIR makes mention of the use of cattle to control invasive species. This was attempted earlier for veldt grass control on the Phillips land north of the refinery, but was not successful as cattle failed to graze out the persistent root systems of the veldt grass. Cattle also produced soil disturbance that enhanced grass seed germination, and severely damaged native shrubs through trampling. However we do recognize that soil disturbance would facilitate germination of Nipomo lupine at the same time as the grass.

CNPS-02

Further comments by CNPS concerning the dune access plant survey have not been readdressed and remain of concern. As a result the entire original submission by CNPS is attached to this letter to ensure incorporation into the record.

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(3) Recognition of the Dune Heather Alliance

As noted in our original comments, we consider the representation of the plant associations found at the site to be generally accurate both quantitatively and qualitatively. We noted that rare Dune-Heather + Black Sage + Coffee Berry Association was not recognized and should be protected (see below). Dune scrubs are, by the very nature of the current coastal dune systems, rare vegetation types, and rare associations should be protected wherever possible. CNPS reiterates its earlier comments on coastal dune scrub (see attached).

CNPS-03

(4) Need for long term habitat management and the Dune Habitat Restoration Program (DHRP.)

As noted in CNPS's original comments, the problem with one-time mitigation in the immediate vicinity of the railroad spur is that the area will be prone to weed invasion, which is an established problem along railroad right-of-ways. While the project is going to include a sand berm to mute the visual impacts of the spur from Highway 1 as potential mitigation (Mitigation AV-1a), and will plant with native plants, it is critical that replanted areas be managed over the long term as a condition of approval. This also applies to any replacement mitigation space set up to offset direct habitat losses from the railroad spur. This should be included in project mitigations. In addition, the source of dune sand and the disturbance associated with its removal are not addressed in the DEIR.

Plant salvage is listed as mitigation as part of the Dune Habitat Restoration Plan (BIO-5a). CNPS does not regard plant salvage and transplantation a trustworthy option, particularly if plants are drought stressed. Unless a plant salvage contractor has a record of success with each species, CNPS would recommend growing out from locally collected seed in a greenhouse, and supports BIO-5b which requires appropriately qualified management of a restoration project. The mitigation BIO-5e calls for seed bank salvage, which CNPS concurs is a sound practice. However the chances of picking up veldt grass seed is high, and therefore will require that mitigation BIO-5 elements a-h be implemented through an invasive species control program. As noted elsewhere in these comments, such a program should continue for a long period after the rail spur project is completed.

CNPS-04

CNPS is particularly concerned with possible conflicts between weed control (essentially veldt grass control) and impacts to the Nipomo lupine. Consultants have proposed that the North Pasture, immediately north of the refinery, be used as the site for the identified a 53 acre mitigation requirement (2 to 1 for 26 acres of impact). The North Pasture is worth protecting -- Kathleen Goddard Jones called this Dune Almond Valley and led extensive walks through the area to view what was at that time a pristine dune plant community. It also has a nice stand of *Delphinium blochmaniae*. The consultants propose a restoration plan that relies heavily on

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herbicide application (likely from ATV with chemical tanks) under the direction of a Restoration Manager. A conservation easement will be established over the area. However protection of the Nipomo lupine will require a continued oversight to make sure that veldt grass control can be achieved without impacting the lupine, but that sufficient disturbance is maintained to ensure lupine germination.

The expansion of the refinery will generate impacts to the Jack Lake population of Nipomo lupine. This population largely occurs within the ROW of the effluent line, and is subject to bulldozer tracking in the spring, which damages plants. Additional activity at the refinery will probably result in additional trips over the Jack Lake plant populations. CNPS understands that the bulldozer also creates the weed-free, intermediate disturbance favored by the plants. No biological clearance is given to these periodic bulldozer events. State Parks uses the track as its only access to the park in wet periods when high water closes Arroyo Grande Creek and the Oso Flaco causeway. This issue should be addressed in a management plan.

CNPS-04

CNPS therefore requests both the DHRP and a lupine-specific conservation plan address comprehensive management of both the major *Lupinus nipomensis* sub-population within the applicants property boundary. Management would include the Jack Lake subpopulation and the North Pasture subpopulation. The programmatic restoration area does not need to be expanded (as it is tied to a mitigation ratio of the rails). A plan would put in place traffic schedule restrictions to protect the Lupine during its crucial maturation window, a demographic census to monitor trends, and a targeted weed management strategy to address immediate threats to the Jack Lake population.

CNPS also suggests that restoration of Nipomo lupine involve discussions with the Land Conservancy of San Luis Obispo County. This organization has been doing weed management in the Jack Lake area for 20 years, using Unocal settlement funds. CNPS suggests that Phillips might continue this weed control program through funding and inclusion in the DHRP.

#### (5) Vertical Coastal Access Programmatic Assessment

CNPS is concerned that the plant surveys made during drought and the uncertainty as to the manner in which the coast will be accessed. There should be no intent that the botanic assessment made in the RDEIR to be the sole survey upon which subsequent and more detailed projects are designed. CNPS understands this assessment to have generated as a condition of approval for an earlier CEQA review of the proposed expansion of refinery capacity, and does not meet any CEQA needs as far as evaluation of a southern entrance to the SVRA is concerned. Adding this to the DEIR seems to be an unusual

CNPS-05

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move. The RDEIR states in executive summary that this is part of a "programmatic analysis" of coastal access across the refinery site. CNPS does not understand this to be any part of a Programmatic EIR, and so assumes the 'program' is the Coastal Program and its requirement for reviewing coastal access. CNPS requests that this issue be clarified in the Final EIR.

The botanical survey showed both of the alternative access routes supported several sensitive plant species, including California Rare Plant Rank (CRPR) listed plants. CNPS opposes any destruction of this diverse plant community and thus will not support any increase in open public access that adversely impacts the vegetation. In addition, the RDEIR correctly notes that disturbance promotes invasion by veldt grass into areas that are currently relatively free of the pest plant. If access is granted, it should be no wider than the existing track, and should not be open to wheeled vehicles or horses, except those servicing Phillips 66 facilities. As noted above, it is highly likely that the presence of CRPR listed plants were missed due to the drought conditions. This would include dune larkspur. CNPS considers that any further progress toward choosing a route for southern access to the SVRA should be evaluated through a dedicated EIR.

CNPS-05

This concludes the CNPS comments. We would request all communication in regard to this document be made to the Los Osos address given at the top of this letter.

Sincerely

David Chipping

Attached: CNPS Comments on the DEIR for the Phillips 66 Company Rail Spur  
Extension: January 23, 2014

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January 23, 2014

To: Murry Wilson.  
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From; David Chipping, President,  
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1530 Bayview Heights Drive, Los Osos, CA 93402

RE: Comments on the DEIR for the Phillips 66 Company Rail Spur Extension

The San Luis Obispo Chapter of the California Native Plant Society hereby comments on the DEIR for the Phillips 66 Company Rail Spur Extension. We are confining our comments to the impacts to botanic resources and their associated habitat.

(1) Adequacy of Botanic Surveys

Review of the botanic surveys by Arcadis suggests that they did accurately report what was observed. However the surveys were conducted during a period of drought in which annual plants would not be fully represented either in their full distribution or in vigor. Surveys in the fall of 2012 and Spring of 2013 were both too early for plant regeneration in the 2012-2013 rain year, and conducted after an almost complete absence of rain in the spring. John Chesnut has reported Nipomo lupine as present in all survey years at the equipment staging turnaround on the Coastal Access ROW Route A ( 35.036430°,-120.596412°). The failure to detect this population during the survey periods described in the botanical report indicates that optimum observing conditions for detection of Nipomo lupine were not available at the time of the Botanical survey. Dune larkspur (*Delphinium parryi* ssp. *Blochmaniae*) California Rare Plant Rank (CRPR) 1B.2, is present in the Coastal Access Survey area Route B -- in a well populated polygon centered on 35.037149°N -120.600300°W. The Botanical Report describes this taxon as Not Observed. The failure to detect this population indicates that drought conditions or phenotypically inappropriate scheduling affected the validity of the botanical survey. The taxon's leaves wither, and live plants are reduced to a perennial rootbase during dry seasons. Dune larkspur is most detectable about two weeks before the Nipomo lupine's (*Lupinus nipomensis*) early May bloom. Dune larkspur floral displays are highly variable and rain responsive, much like the Nipomo lupine. Failure to detect the dune larkspur population may indicate that the botanical survey suffered from an adverse spring drought.

We consider the representation of the plant associations found at the site to be generally accurate both quantitatively and qualitatively. However a rare Dune-Heather + Black

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Sage + Coffee Berry Association was not recognized and should be protected (see below).

(2) Delineation of Nipomo lupine habitat

CNPS is concerned that the locations in which Nipomo lupine was observed may be a minor subset of locations that would appear after a wet year. In addition, Nipomo lupine is a plant that thrives on disturbance, and therefore would be likely to appear in the construction zones associated with this project.

Nipomo lupine has a known history of appearing in dunes that have been subject to major excavation or disturbance. For example, the "PG&E substation population" developed after bulldozer work; a population developed on Highway One Right of Way after highway realignment construction at the Highway One bend; populations were seen to develop along the refinery fence line after firebreak discing; helicopter pad reconstruction is associated with the expansion of plants just north of the refinery parking lot; and the Jack Lake population occupies the bulldozer and buried pipeline trace. Seed banks of the taxon are activated by major construction. Mitigation conditions for expected construction-precipitated germination need to be clearly and specifically defined. Mitigation should anticipate the discovery of new occurrences of Nipomo lupine in the construction zone soil seed bank. Maintenance and enhancement of these resources should follow tested and well-defined protocols. Generic mitigation language and untested transplantation procedures constitutes an unnecessary risk to the species.

The topographic position of the proposed rail spur is along the axis of the floor of a parabolic dune. This dune valley is continuous with the Jack Lake Nipomo lupine population. It forms a portion of the same continuous topography and habitat currently occupied by a Nipomo lupine population. The botanical report presents no rationale, other than a questionable failure to detect this species, to separate and divide the occupied habitat from habitat under consideration for development. The lack of CNDDDB records for Nipomo lupine along the exact alignment of the railroad spur likely reflects long-term lack of access to the site, rather than some elusive unsuitability of the habitat.

As Nipomo lupine is known from the Phillips property in the undeveloped area east of the entrance road, and is also recorded west of the railroad tracks, it is reasonable to assume that it would have had a year-to-year shifting habitat over all of the current Phillips property. Thus the mitigation BIO-1, which mitigates for lupine habitat loss only if the lupine is found in a focused survey, is in itself insufficient, and the project should proceed with the assumption that the lupine would occupy that same habitat at some time in the near future. In addition, the timing of the project and the current drought would make any 2014 survey meaningless regarding annual plants. CNPS concurs that mitigation BIO-5, in defining a 300% increase in dune protection relative to the destruction from the project is trending in the right direction, but it would be difficult to combine all the microhabitat requirements of the mitigation-driving species into one area.

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In addition BIO-5 would only be meaningful if supported by an endowed or otherwise fiscally supported long term management plan to keep invasive plants from the site. This is especially pertinent to veldt grass (*Ehrharta calycina*), which, like the Nipomo lupine, is advantaged by sand disturbance.

With the assumption that a Nipomo lupine seed bank is present in the rail spur area, it is strongly recommended that topsoil is removed and stockpiled prior to construction. This would at least save a seed bank from being permanently buried under the rail spur.

### (3) Global rarity of Coastal Dune Scrub

In California, Coastal Dune Scrub occurs in dune complexes found in the southeastern quadrants of coastal bays, in a combination of sediment source and coastal configuration that has largely been destroyed in southern California and is found in only a handful of locations north of Point Conception. Dune endemics such as sand almond (*Prunus fasciculata* var. *punctata*, CRPR List 4.3), while locally abundant, are in a rare and diminishing habitat. The DEIR rightly points out that much of the dune scrub on the Phillips site has been degenerated by invasive plants, dominated by veldt grass. Past management on the refinery property lands, including cattle grazing, has contributed to an accelerated degeneration of habitat suitability for the sensitive plants addressed in the DEIR. If habitat loss because of this project is seen in the context of continued habitat mismanagement, then there is a cumulative impact issue to be considered under CEQA. CNPS supports the mitigation of BIO-5 and the creation and long term financial support of a Dune Habitat Restoration Plan.

### (4) Rare Plant Associations

The proposed rail spur crosses a plant association that is locally rare and quite unusual. This is the Dune-Heather + Black Sage + Coffee Berry Association. A portion of this association is on the Dune Lakes Hunting Club near Black Lake and exists in a small relict north of Black Lake Canyon. It is vanishingly rare in other portions of the greater Guadalupe-Nipomo Dunes. The association is marked by the presence of chaparral species such as Black Sage (*Salvia mellifera*), Coffee Berry (*Frangula californica*) and Elderberry (*Sambucus nigra*), all noted in the Botanical Report, and the Dune Scrub species mix. This association is under-explored and poorly recorded. For example, the showy scarlet bugler (*Penstemon centranthifolius*) appears in this association, but not commonly elsewhere in the dunes. A like-for-like mitigation should be implemented for this unique association. To accomplish like-for-like of this habitat, replacement, the association should be quantified and further surveyed using plot-based assessments. Off-site mitigation should be considered, as the association may represent a long-term and difficult to reconstitute seral stage.

### (5) Need for long term habitat management.

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The problem with one-time mitigation in the immediate vicinity of the railroad spur is that the area will be prone to weed invasion, which is an established problem along railroad right-of-ways. While the project is going to include a sand berm to mute the visual impacts of the spur from Highway 1 as potential mitigation (Mitigation AV-1a), and will plant with native plants, it is critical that replanted areas be managed over the long term as a condition of approval. This also applies to any replacement mitigation space set up to offset direct habitat losses from the railroad spur. This should be included in project mitigations. In addition, the source of dune sand and the disturbance associated with its removal are not addressed in the DEIR.

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### (6) Impacts to Oaks

CNPS considers the recommended mitigations to oaks to be sufficient.

### (7) Vertical Coastal Access Assessment

CNPS understands this assessment to have generated as a condition of approval for an earlier CEQA review of the proposed expansion of refinery capacity, and does not meet any CEQA needs as far as evaluation of a southern entrance to the SVRA is concerned. Adding this to the DEIR seems to be an unusual move. The DEIR states on p.9-1 that this is part of a "programmatic analysis" of coastal access across the refinery site. CNPS does not understand this to be any part of a Programmatic EIR, and so assumes the 'program' is the Coastal Program and its requirement for reviewing coastal access. CNPS requests that this issue be clarified in the Final EIR.

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