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November 2, 2022

Governor's Office of Planning & Research

NOV 2 2022

STATE CLEARING HOUSE

Ms. Cynthia Herzog
California State Lands Commission
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**Subject: Rincon Phase 2 Decommissioning Project, Notice of Preparation,
SCH No. 2022100043; City of Mussel Shoals, Ventura County**

Dear Ms. Herzog:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the California State Lands Commission (CSLC) for the Rincon Phase 2 Decommissioning Project (Project). 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.

CDFW's Role

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust for the people of the state [Fish & Game Code, §§ 711.7, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, [§ 15386, subdivision (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). CDFW is directed to provide biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect state fish and wildlife resources. CDFW is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marine Life Management Act.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & Game Code, § 1600 *et seq.*). To the extent implementation of the Project as proposed may result in "take" of any species protected under the California Endangered Species Act (CESA; Fish & Game Code, § 2050 *et seq.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & Game Code, §1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

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Project Description and Summary

Objective: The CSLC proposes to continue decommissioning and remediation activities on Rincon Island and the state-owned Onshore Facility. Improvements to the State Coastal Commission (SCC) beach parcel and decommissioning of onshore pipelines are also included within the Project. Excavation and removal of petroleum hydrocarbon contaminated soils at Rincon Island and the Onshore facility would be replaced with clean, native soils. Erosion control would be added to the SCC parcel and activities to improve public access to the parcel would be implemented. Methodologies for pipeline decommissioning were provided but are based on certain assumptions. If these assumptions prove incorrect it is unclear what alternative methodologies would be implemented and what their potential impacts would be. Several alternatives were mentioned within the NOP but were not discussed at length.

Rincon Island Decommissioning

The proposed Project includes retention of Rincon Island and the causeway, and removal of Rincon Island surface structures, well bay concrete deck, pavement and contaminated soil (which would then be backfilled with clean soil). In addition, the onshore pipeline connections would be decommissioned, contaminated soil at the Onshore Facility would be remediated, and erosion protection, public access, and native revegetation improvements would be made on the SCC Parcel (described in detail below).

Onshore Facility Decommissioning

Decommissioning of the 6.01-acre onshore facility would include remediation of the parcel for future Public-Trust consistent use. As proposed within the NOP remediation includes the removal of 2.80 acres (~9,360 cubic yards) of recycled asphalt aggregate base material and 0.48 acres (~7,500 cubic yards) of soil. These materials have been contaminated by petroleum hydrocarbons during the operation of the oil and gas facility. The asphalt material goes to a depth of 2.5 feet while the soil would be excavated to a depth of around 12 feet below ground surface. Excavation would be performed using hydraulic excavators, front-end loaders, and track mounted dozers. Contaminated soil would be placed onto trucks and transported offsite to an appropriate recycling facility. Soil samples would be collected in a grid pattern from the excavation area and chemically analyzed for presence of petroleum hydrocarbons.

Groundwater dewatering wells would be installed around the area of excavation and contaminated groundwater would be processed through a series of equipment (e.g. settling tanks, bag filters, and granular activated carbon vessels). Processing of contaminated groundwater through these means is meant to ensure the water meets the requirements to discharge into Ventura County's operated wastewater system. Once this process is complete the dewatering wells are to be removed. When excavation and dewatering is completed, the area would be backfilled with clean soil. Backfill would be graded as such to match the surrounding grade and establish a positive drainage from the disturbed areas. Finally, the disturbed areas would be hydroseeded with a native seed mix.

Under all proposed alternative plans except for the "No Project" alternative, the Onshore Facility will be remediated for future use. Bioremediation or capping of contaminated areas may be alternative methods of remediation other than excavation.

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Onshore Pipeline Decommissioning

As proposed within the NOP the existing gas and oil pipelines which run under Ocean Avenue and continue northeast under the 101 freeway and the Union Pacific Railroad tracks would be decommissioned. Decommissioning activities would terminate at the concrete vault located just northeast of the railroad tracks. Both pipelines are 6 inches in diameter and encased within 30-inch diameter steel pipe casings. The pipelines would be flushed (pigging and flushing) using foam “pigs” and a cleaning solution that would be pushed through the pipelines. Wastewater would either be collected directly into vacuum trucks or stored in temporary storage tanks to later be transported offsite. Wastewater would be tested by a state-certified laboratory to identify total petroleum hydrocarbon levels (TPH). TPH levels should be less than 15 parts per million. However, this method is proposed off the assumption that pipeline conditions are sufficient to support these activities. It is unclear what methodology would be used as an alternative if the pipelines lack the integrity and strength to support the pigging and flushing method.

Segments of the pipelines spanning under the 101 freeway and Union Pacific railroad tracks would be excavated and removed. Excavation would occur at the northern end of the casing where it meets the wall of the concrete vault and at the southwest end at Ocean Avenue. The pipelines will be removed from their casing and cut into pieces which will be transported to a disposal facility in trucks. This methodology is based on the assumption that casings will be accessible from Ocean Avenue and near the concrete fault. The pipelines are also assumed not to be grouted into the casing so that they may be removed. If these assumptions are incorrect, it is unclear what the alternative methods of removal will be implemented. The remaining pipeline segments spanning under Ocean Avenue in the southwest orientation would be temporarily welded shut. Cement slurry will be pumped into the pipeline and casing and steel plates will be welded onto the pipeline and casing ends.

After decommissioning activities have concluded the excavated sites would be backfilled and compacted using native soils. Disturbed pavement would be repaired, and the site would be restored to the original condition. Under all proposed alternative plans except for the “No Project” alternative, the onshore pipelines will be decommissioned.

State Coastal Commission (SCC) Parcel Improvements

As proposed within the NOP the SCC parcel will include erosion prevention along the shoreline and the associated upland berm. Appropriate cobble would be placed along portions of the shoreline which lack erosion control. Additionally, the vegetated upland berm would be excavated. It is estimated that 3,800 cubic yards of soil would be removed from the berm. In place of the soil removed cobbles would be placed and the area would be backfilled with ~3.5 feet of original native soil. The excess native soil would be used to the extent feasible, but the Project may dispose of ~2,500 cubic yards of excess soil. The profile of cobble placed in the back berm and along the shoreline would mimic the natural grade. Around 4,300 tons of cobble would be required for this portion of the Project and would be transported onsite. Dump trucks and two excavators would be utilized. Following cobble placement and backfilling appropriate plants would be placed on the 0.33-acre upland berm and a seed mix would be used for hydroseeding the area. Existing walking paths would be improved, a stairway would be installed, a bench would be placed onsite, and educational signage would be erected. Finally, a concrete box structure on the eastern extent of the shoreline would be removed to the extent feasible and backfilled using native materials.

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Under all proposed alternative plans except for the “No Project” alternative, the SCC parcel will be improved upon. However, Project activities may vary. As a possible alternative, no additional cobble or riprap would be added to the area while other proposed improvements (e.g., signage, pathway improvements, etc.) would still be installed. Alternatively, riprap would only be installed on the unarmored beach sections without excavating the bluff. The other site improvements and revegetation plans would still be executed.

Project Alternatives

The NOP includes three Project Alternatives, as described below. The NOP states that additional alternatives may be analyzed in the DEIR, such as those identified in the 2022 Feasibility Study or during the scoping period. Additionally, a No Project Alternative will also be analyzed in the DEIR.

- a) Reefing Alternative. The causeway, wharf, abutment and protective revetment would be removed in their entirety with pilings removed to 5 feet below the seafloor.
- b) Partial Causeway Removal Alternative. The Island wharf, abutment and protective revetment would remain untouched, but a length of the causeway would be removed, along with associated pilings to 5 feet below the seafloor. The remaining causeway would be reconfigured to provide a stable and safe “pier” structure.
- c) Abutment and Revetment Retention Alternative. The Island wharf and the abutment and protective revetment at the landward end of the causeway would remain untouched, but the causeway would be completely removed, along with associated pilings to 5 feet below the seafloor.
- d) Other Alternatives. Alternatives identified in the Feasibility Study include 1) reuse of the Island (leaving the well bay conductors intact); 2) complete removal of the causeway, wharf, revetment, and abutment; and 3) complete removal of Rincon Island down to the seafloor (in addition to removal of all the other in-water structures).
- e) No Project Alternative. Circumstance under which the Project does not proceed.

Location: Project activities will occur in three separate Project areas. Rincon Island is approximately 3,000 feet offshore of Punta Gorda and the community of Mussel Shoals. The Island is accessible via a causeway that spans over the water from its associated landing. Just east of the causeway landing is the small land parcel owned by the SCC. The Onshore facility owned by the State is 1.3 miles east of Rincon Island. All Project sites are within Ventura County and surrounding land uses consist of residential, open space, and public use.

Comments and Recommendations

CDFW offers the comments and recommendations below to assist the CSLC in adequately identifying, avoiding, and/or mitigating the Project’s significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

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COMMENTS AND RECOMMENDATIONS

Terrestrial Specific Comments

1) Sensitive Shorebird Species. According to the NOP several special status shorebird species may forage on the Project site(s) including: Endangered Species Act (ESA-) listed and California Special Concern Species (CSC) western snowy plover (*Charadrius nivosus nivosus*); ESA-listed California least tern (*Sterna antillarum brownie*); CSC ashy storm petrel (*Oceanodroma homochroa*); and CSC black storm petrel (*Oceanodroma melania*). The Project could lead to the loss of foraging habitat for sensitive shorebird species in the area. Likewise, increased noise, vibration, light, and human activity may alter the behavior of these species or force them to move to other locations where the habitat is less suitable for their survival.

- a) Protection Status. Western snowy plover and California least tern are federal ESA-listed species. A species is considered endangered, rare, or threatened if it is a species of animal or plant that is presumed to be endangered, rare, or threatened as it is listed under ESA [CEQA Guidelines, § 15380(c)(2)]. CSC species do not have legal protective status under CESA but are of concern for CDFW. Further, migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the MBTA).
- b) Survey & Analysis. CDFW recommends the Project retains a qualified biologist to perform surveys for shorebirds. Surveys should be conducted wherever shorebirds may directly or indirectly impacted. The DEIR should discuss potential impacts to shorebirds, both direct and indirect, through habitat modifications which may occur due to Project activities. The DEIR should discuss potential loss of foraging and nesting habitat for special status shorebirds and shorebirds included under the MBTA. Impacts due to increased noise, vibration, light and human activity should also be addressed for each project site.

3) Nesting birds. Project activities include excavation, grading, backfilling, use of heavy machinery and vehicles. These activities can potentially alter habitat and make suitable nesting habitat unavailable to nesting birds due to increased noise, vibration, light, dust, and human activity. Moreover, Project activities occurring during the breeding season of nesting birds could result in the incidental loss of fertile eggs, or nestlings, or otherwise lead to nest abandonment in trees and shrubs directly within and adjacent to the Project's boundaries.

- a) Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the MBTA).
- b) CDFW recommends that measures be taken, primarily, to avoid Project impacts to nesting birds. Proposed Project activities including (but not limited to) staging and disturbances to native and nonnative vegetation, structures, and substrates should occur outside of the avian breeding season which generally runs from February 15 through August 31 (as early as January 1 for some raptors) to avoid take of birds or

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their eggs. If avoidance of the avian breeding season is not feasible, CDFW recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300 feet of the disturbance area (within 500 feet for raptors). Project personnel, including all contractors working on-site, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

4) Rare Plants. According to the NOP the Project has potential to impact several rare plant species including Mile's milk-vetch (*Astragalus didymocarpus* var. *milesianus*), southern tarplant (*Centromadia parryi* ssp. *australis*), Ojai fritillary (*Fritillaria ojaiensis*), mesa horkelia (*Horrokelia cuneata* var. *puberula*), chaparral nolina (*Nolina cismontane*), and Nuttall's scrub oak (*Quercus dumosa*).

a) Protection Status. Mile's milk-vetch (*Astragalus didymocarpus* var. *milesianus*), outhern tarplant (*Centromadia parryi* ssp. *australis*), mesa horkelia (*Horrokelia cuneata* var. *puberula*), chaparral nolina (*Nolina cismontane*), and Nuttall's scrub oak (*Quercus dumosa*) have a California Rare Plant Rank (CRPR) of 1B.1. Ojai fritillary (*Fritillaria ojaiensis*) has a CRPR of 1B.2. Plants with a CRPR of 1B are rare throughout their range, and a majority are endemic to California (CNPS 2022a). All plants with the 1B ranking meet the definitions of CESA. Impacts to these species or their habitat must be analyzed during preparation of environmental documents relating to CEQA, as they meet the definition of Rare or Endangered under CEQA Guidelines §15125; (c) and/or §15380. As to CESA, take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). Potential impacts on rare plants should be analyzed, disclosed, and mitigated in the Project's PEIR. CDFW considers adverse impacts to a species protected by CESA to be significant without mitigation under CEQA.

b) Survey and Analysis. Although these species are only considered to have low probability of occurrence on the Project sites CDFW recommends that CSLC retain a qualified botanist to perform focused botanical surveys for rare plants. Surveys should be conducted within the Project site and in all areas subject to Project-related ground-disturbing activities including staging, mobilization, excavation, and vegetation clearing. The survey should identify all individuals and populations and plant communities supporting those rare plants that could be impacted. Surveys should be performed at appropriate times of the year when plants are evident and identifiable (CDFWa 2018). If rare plants are to be impacted the Project should provide disclosure of those impacts and provide appropriate measures to avoid, minimize, and/or mitigate impacts.

5) Crotch Bumblebee. Within the NOP it states that Crotch bumblebee (*Bombus crotchii*) has a low probability of occurrence, however it is possible that suitable habitat may occur near the vault structure northeast of the railroad tracks. Suitable Crotch bumblebee habitat includes areas of grasslands and coastal sage scrub that contain requisite habitat elements, such as small mammal burrows. Project ground-disturbing activities and vegetation removal may cause

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death or injury of adults, eggs, and larva, burrow collapse, nest abandonment, and reduced nest success.

- a) Protection Status. A petition to list the Crotch bumble bee as an endangered species under CESA is currently pending before the California Fish and Game Commission (Commission) (Cal. Reg. Notice Register 2018, No. 45-Z, pp. 1986–1987 [November 9, 2018]). The Commission designated the Crotch bumble bee as a candidate species under CESA in June 2019 (Cal. Reg. Notice Register 2019, No. 26-Z, pp. 954–955 [June 28, 2019]). The Commission’s decision to designate the Crotch bumble bee as a candidate species is the subject of a pending legal challenge (Almond Alliance of California v. Fish and Game Commission [2022] 79 Cal. App. 5th 337, pet. for review pending, S275412). On September 30th, 2022, candidacy was reinstated for the four bumble bee species petitioned for listing—franklin’s, crotch, western, and suckley cuckoo.
- b) Survey and Analysis. CDFW recommends surveys be performed by a qualified entomologist familiar with the species behavior and life history to determine the presence/absence of Crotch’s bumble bee. Surveys should be conducted during flying season when the species is most likely to be detected above ground, between March 1 to September 1 (Thorp et al. 1983). Survey results, including negative findings, should be submitted to CDFW prior to implementing Project-related ground-disturbing activities. If present a survey report should be provided and include a survey map showing the survey path, field conditions, maps with nest locations, and a description of the physical and biological conditions of nest sites.

6) San Diego Desert Woodrat. Within the NOP it states that San Diego woodrat (*Neotoma lepida intermedia*) has a low probability of occurrence, however it is possible that suitable habitat may occur near the vault structure northeast of the railroad tracks. A review of the CNDDB revealed that a recorded observation of San Diego woodrat in close proximity to this area (CDFWb 2022). Suitable habitat is found in areas of coastal sage scrub including mixed chamise chaparral and sagebrush vegetation. Project ground-disturbing activities and vegetation removal may cause death or injury of adults, nest abandonment, and reduced nest success.

- a) Protection Status. San Diego desert woodrat is a Species of Special Concern (SSC). Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). CEQA provides protection not only for State and federally listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. SSC meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15065). Take of SSC could require a mandatory finding of significance by the County (CEQA Guidelines, § 15065).
- b) Survey and Analysis. CDFW recommends surveys be performed by a qualified biologist familiar with the species behavior and life history to disclose potential impacts to San Diego desert woodrat. A qualified biologist should conduct surveys in areas of appropriate habitat within proposed disturbance zones and within 200 feet of the disturbance zones. If necessary, the DEIR should include appropriate avoidance,

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minimization, and mitigation measures to reduce impacts to San Diego desert woodrat.

7) Bats. Numerous bat species are known to roost in trees and structures throughout Ventura County (Remington and Cooper 2014). Bats use trees and man-made structures for daytime and nighttime roosts. Accordingly, CDFW recommends the DEIR provide measures where the Project avoids potential impacts to bats.

- a) Protection Status. Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment (Fish & G. Code, § 4150; Cal. Code of Regs., § 251.1). Project construction and activities, including (but not limited to) ground disturbance, vegetation removal, and any activities leading to increased noise levels may have direct and/or indirect impacts on bats and roosts.
- b) Survey and Analysis. CDFW recommends a project-level biological resources survey to provide a thorough discussion and adequate disclosure of potential impacts to bats and roosts from Project construction and activities including (but not limited to) ground-disturbing activities (e.g., mobilizing, staging, drilling, and excavating) and vegetation removal. If necessary, to reduce impacts to less than significant, a project-level environmental document should provide bat-specific avoidance and/or mitigation measures [CEQA Guidelines, § 15126.4(a)(1)].

8) Lake and Streambed Alteration (LSA) Agreements. Los Sauces creek transects the Onshore Facility owned by the State. As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream or use material from a streambed. For any such activities, the Project applicant (or "entity") must provide written notification to CDFW pursuant to Fish and Game Code Section 1600 *et seq.* CDFW's issuance of a Lake and Streambed Alteration (LSA) Agreement for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the environmental document of the local jurisdiction (Lead Agency) for the Project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the environmental document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement. Please visit CDFW's Lake and Streambed Alteration Program webpage for information about LSA Notification (CDFWc 2022).

- a) The Project area support aquatic, riparian, and wetland habitats; a preliminary delineation of the streams and their associated riparian habitats should be included in the environmental document. The delineation should be conducted pursuant to the U.S. Fish and Wildlife Service (USFWS) wetland definition adopted by CDFW (Cowardin et al. 1970). Be advised that some wetland and riparian habitats subject to CDFW's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers' Section 404 permit and Regional Water Quality Control Board Section 401 Certification.
- b) In Project areas which may support ephemeral or episodic streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of these resources and help maintain natural sedimentation processes. Therefore,

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CDFW recommends effective setbacks be established to maintain appropriately sized vegetated buffer areas adjoining ephemeral drainages. The environmental document should provide a justification for the effectiveness of the chosen distance for the setback.

- c) If impacts on streams and associated vegetation are unavoidable, CDFW recommends the DEIR provide compensatory mitigation for impacts on streams and potential loss of associated riparian vegetation. CSLC could provide an on- or off-site mitigation. The DEIR should discuss the suitability of selected location(s) for mitigating impacts to streams and associated vegetation.
- d) As part of the LSA Notification process, CDFW requests a hydrological evaluation of the 100, 50, 25, 10, 5, and 2-year storm event to provide information on how water and sediment is conveyed through the Project site. Additionally, the hydrological evaluation should evaluate streams under existing and post-Project conditions and erosion/scour potential post-Project.

9) Wetlands Resources. CDFW, as described in Fish and Game Code section 703(a), is guided by the Fish and Game Commission's policies. [The Wetlands Resources policy](#) of the Fish and Game Commission "...seek[s] to provide for the protection, preservation, restoration, enhancement and expansion of wetland habitat in California. Further, it is the policy of the Fish and Game Commission to strongly discourage development in or conversion of wetlands. It opposes, consistent with its legal authority, any development or conversion that would result in a reduction of wetland acreage or wetland habitat values. To that end, the Commission opposes wetland development proposals unless, at a minimum, project mitigation assures there will be 'no net loss' of either wetland habitat values or acreage. The Commission strongly prefers mitigation which would achieve expansion of wetland acreage and enhancement of wetland habitat values."

- a) The Wetlands Resources policy provides a framework for maintaining wetland resources and establishes mitigation guidance. CDFW encourages avoidance of wetland resources as a primary mitigation measure and discourages the development or type conversion of wetlands to uplands. CDFW encourages activities that would avoid the reduction of wetland acreage, function, or habitat values. Once avoidance and minimization measures have been exhausted, the Project must include mitigation measures to assure a "no net loss" of either wetland habitat values, or acreage, for unavoidable impacts to wetland resources. Conversions include, but are not limited to, conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or removal of materials from the streambed. All wetlands and watercourses, whether ephemeral, intermittent, or perennial, should be retained and provided with substantial setbacks, which preserve the riparian and aquatic values and functions for the benefit to on-site and off-site wildlife populations. CDFW recommends mitigation measures to compensate for unavoidable impacts be included in the DEIR and these measures should compensate for the loss of function and value.
- b) The Fish and Game Commission's Water policy guides CDFW on the quantity and quality of the waters of this state that should be apportioned and maintained respectively so as to produce and sustain maximum numbers of fish and wildlife; to provide maximum protection and enhancement of fish and wildlife and their habitat; encourage

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and support programs to maintain or restore a high quality of the waters of this state; prevent the degradation thereof caused by pollution and contamination; and, endeavor to keep as much water as possible open and accessible to the public for the use and enjoyment of fish and wildlife. CDFW recommends avoidance of water practices and structures that use excessive amounts of water, and minimization of impacts that negatively affect water quality, to the extent feasible (Fish & Game Code, § 5650).

10) Ventura County Local Coastal Program. The Project site is within the [Ventura County Local Coastal Program](#) planning area (CVRMA 2022). CDFW recommends the DEIR provide a discussion of the Project's impacts on biological resources and beneficial uses within the Ventura County Local Coastal Program planning areas.

11) Alternative Methodologies. If assumptions made for the decommissioning and removal of the onshore pipelines are incorrect and the methodologies presented within the NOP are not feasible the DEIR should discuss alternative methods and potential impacts to special status wildlife, rare plants and communities, habitat, and hydrology if applicable. Likewise, the DEIR should explore potential impacts for all remediation alternatives associated with the SCC Parcel and the State-owned Onshore Facility.

12) Plantings and Hydroseed. Native plantings and hydroseed will be applied to the disturbed vegetated areas at the SCC Parcel and the Onshore Facility. Planting selections should be based on species composition of the surrounding vegetation communities and scientifically justifiable. The CSLC should survey other in-kind habitat in the surrounding area, or at sites within close proximity that can function as a proxy, to determine species composition and ratios. Likewise, when hydroseeding CDFW recommends using seed packs that are as similar to the surrounding vegetation genetically and compositionally.

13) Landscaping. Habitat loss and invasive plants are a leading cause of native biodiversity loss. CDFW recommends that the DEIR stipulate that no invasive plant material be used. Furthermore, we recommend using native, locally appropriate plant species for landscaping on the Project site. A list of invasive/exotic plants that should be avoided as well as suggestions for suitable landscape plants can be found [here](#) (CAL IPC 2022).

Marine Specific Comments

1) Description of Project Alternatives. The DEIR should include details on the type of equipment, location of staging areas (on land and vessel anchorage/mooring locations), timing of operations, and specify the amount and type of material to be removed and/or installed for all the Project Alternatives. Impacts to marine habitat and species, as outlined below, should be analyzed for each of the different Project Alternatives.

2) Eelgrass, Surfgrass, and Kelp Habitat. Marine habitat characterization surveys conducted in 2020 describe colonization of the Island's rock and protective revetment by encrusting and attached biota, including giant kelp (*Macrocystis pyrifera*). A near continuous band of macroalgae around the Island supports a diversity of marine life (UCSB 2021). The Feasibility Study states that further study is required to determine if eelgrass or surfgrass beds are present in the Project Area. Impacts to marine habitats that have colonized the in-water structures from full and/or partial removal of the causeway, wharf, abutment, protective revetment and the Island itself should be analyzed in the DEIR.

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- a) Protection Status. Native eelgrass beds (*Zostera sp.*), surfgrass (*Phyllospadix sp.*), and canopy kelp (e.g., giant kelp) are important components of the marine ecosystem and are recognized by state and federal statutes as both highly valuable and sensitive habitats. These marine habitats provide primary production and nutrients to the ecosystem along with spawning, foraging, and nursery habitat for fish and other species. Pursuant to the federal Magnuson-Stevens Fishery Conservation and Management Act, eelgrass, surfgrass, and canopy kelp are considered Habitat Areas of Particular Concern for various species within the Pacific Coast Groundfish and Pacific Coast Salmon Fishery Management Plans. Additionally, the importance of eelgrass protection and restoration, as well as the ecological benefits of eelgrass, is identified in the California Public Resources Code (PRC §35630).
- b) Survey & Analysis. A thorough survey of marine habitats, including characterization of eelgrass, surfgrass, kelp, hard substrate, and rocky reef habitat, will be necessary to determine the extent of Project impacts. The DEIR should include a map of marine habitats (e.g., eelgrass, surfgrass, kelp, hard substrate, rocky reef habitat) and an analysis of impacts to those habitats and associated species for the different Project Alternatives. Eelgrass surveys should be conducted in accordance with the National Marine Fisheries Service (NMFS) California Eelgrass Mitigation Policy (CEMP, NMFS 2014). If surveys indicate that eelgrass, surfgrass, kelp, or rocky reef habitat will be impacted by Project activities, then a Minimization, Mitigation and Monitoring Plan (MMMP) should be developed and provided to CDFW and other appropriate regulatory agencies for review prior to the start of Project activities. Mitigation ratios in the MMMP must be high enough to ensure “no net loss” of marine vegetation.

3) Marine Invertebrates. Sensitive marine invertebrates in the Project vicinity may include but are not limited to abalone (*Haliotis sp.*) and habitat-forming invertebrates, such as gorgonians, sponges, and cup corals. Eighteen species of invertebrates on the Island were identified during diver surveys in 2020 (UCSB 2020). While abalone were not observed during surveys in 2020, they have the potential to occur in the Project area. Invertebrate species and their habitats are vulnerable to burial and sedimentation impacts.

- a) Protection Status. Black and white abalone are listed as Endangered under the Federal ESA.
- b) Survey and Analysis. A thorough survey of marine invertebrate species and potential habitat should be conducted by a qualified biologist using the best available methods to determine impacts from Project activities. If Project activities will result in impacts to (or removal of) sensitive species habitat (such as removal of revetment that has been colonized by invertebrates), the applicant should consult with CDFW and other regulatory agencies to minimize and mitigate those impacts. The DEIR should also include measures to avoid impacts to sensitive benthic habitats and species from vessel operations (e.g., anchoring or staging vessels).

4) Marine Fisheries. Many important commercial and recreational fish species use the Project area for shelter, spawning, foraging, and resting. The UCSB Marine Characterization survey observed 28 fish species, including 19 recreational fisheries species and 7 commercial fisheries species that are all associated with nearshore rocky reef habitat. These surveys observed a greater diversity and abundance of fish at Rincon Island than at the adjacent natural reefs

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(UCSB 2020). Important invertebrate fisheries species, including California spiny lobster (*Panulirus interruptus*), were also observed during surveys of the Island. Potential impacts to marine fisheries from Project activities include, but are not limited to, loss of habitat, temporary degradation of water quality, sedimentation, and noise disturbance. The DEIR should identify impacts to commercially and recreationally important fish and invertebrate species and include mitigation measures to avoid or reduce impacts for each of the Project Alternatives. If lobster and/or their habitat is identified, impacts to the species and/or their habitat should be avoided and/or minimized. A list and description of marine species and State Fishery Management Plans can be found on CDFW's website (<https://wildlife.ca.gov/Conservation/Marine/Data-Management-Research>).

5) Marine Mammals and Sea Turtles. Marine mammals and sea turtles may be present in waters nearshore and offshore of Rincon Island and are vulnerable to impacts associated with underwater noise, water quality, disturbance from surveys and construction, and collision risk with vessels. Impacts to habitat and prey resulting from Project activities could also impact marine mammals and sea turtles.

- a) Protection Status. The U.S. Marine Mammal Protection Act of 1972 protects all marine mammals, including cetaceans, pinnipeds, and sea otters. All sea turtles are listed as endangered or threatened under the Federal ESA, and the Leatherback turtle (*Dermochelys coriacea*) is also listed as a State Candidate Endangered species.
- b) Survey and Analysis. The DEIR should include an analysis of potential impacts to marine mammals and sea turtles from Project activities and include mitigation measures to reduce those impacts. CDFW recommends the Project implement marine mammal and sea turtle monitoring protocols and appropriate buffer zones as specified by the NMFS guidance during all construction related activities.

6) Underwater noise impacts. The DEIR should describe the materials to be removed, methods for removal, underwater sound monitoring methods, and mitigation measures to avoid injurious sound pressure levels to fish, marine mammals, and sea turtles during in-water construction work. According to the Interim Criteria for Injury to Fish from Pile Driving Activities, the sound pressure levels should not exceed 206 decibels (dB) peak level, and 187 dB accumulated sound exposure level (SEL) for all listed fish except those that are less than two grams. In that case, the criteria for the accumulated SEL should be 183 dB. The NMFS Marine Mammal Acoustic Technical Guidance provides thresholds for underwater noise impacts to marine mammals. CDFW recommends the DEIR include an underwater sound attenuation monitoring plan and that monitoring results for this aspect of the Project are provided to CDFW and other appropriate regulatory agencies for review.

7) Water quality impacts. The DEIR should analyze impacts to water quality that could occur from Project activities, including the removal of the causeway, wharf, abutment, protective revetment, and Island. Seafloor sediment testing should be conducted to evaluate potential contamination of sediment underneath and surrounding the Island, and to assess the potential for contaminants to disperse into the water column and surrounding habitats during in-water construction. The DEIR should also analyze impacts to water quality from reuse of the well bay conductors. The DEIR should include the development and implementation of a Water Quality Monitoring Plan for all in-water construction work. The Plan should include measures to mitigate or reduce water quality impacts, and results from the monitoring plan should be provided to

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CDFW and other appropriate regulatory agencies. Additionally, the DEIR should include testing of the causeway pilings and decking materials to identify the potential presence of wood preservatives, such as creosote. If materials do contain wood preservatives or other toxins, mitigation measures to minimize leaching of toxins into marine waters during disassembly and transportation from the site should be developed.

8) Artificial Lighting. Adverse effects to fish, mammals, and birds have been noted with the use of artificial lighting during nighttime hours. Effects can include altered behaviors such as phototaxis, aggregation or repellent of species, and changes in species richness and diversity in the area. Care should be taken to minimize the use of artificial lighting to reduce light pollution. The DEIR should describe if any artificial lighting will be used during construction of the Project. CDFW recommends eliminating all non-essential artificial lighting. If artificial lighting is proposed, CDFW recommends proper placement and shielding be used to avoid light spillage skyward or onto marine waters. The DEIR should specify if any permanent lighting is proposed on the Island for navigation safety.

9) Scientific Collecting Permit. Fish and Game Code sections 1002, 1002.5 and 1003 authorize the CDFW to issue permits for the take or possession of wildlife and certain plants. CDFW currently implements this authority through Section 650, Title 14, California Code of Regulations, by issuing Scientific Collecting Permits (SCP). An SCP issued from CDFW will be required prior to relocating or transplanting any marine species, including fish, kelp, and eelgrass. More information can be found on CDFW's SCP webpage (<https://wildlife.ca.gov/Licensing/Scientific-Collecting>).

10) Future Management. The DEIR should discuss future management of Rincon Island under the different Project Alternatives, including:

- a) Changes in jurisdiction, ownership, and/or management of the Island;
- b) Future uses of the Island;
- c) Public access to the Island, causeway, wharf, or any other features;
- d) Maintenance of the Island and other structures in response to damage from storms, sea level rise, vessels, and other disturbances.

General Comments

1) Disclosure. A DEIR should provide an adequate, complete, and detailed disclosure about the effect which a proposed Project is likely to have on the environment (Pub. Resources Code, § 20161; CEQA Guidelines, §15151). Adequate disclosure is necessary so CDFW may provide comments on the appropriateness of proposed avoidance, minimization, or mitigation measures, as well as to assess the significance of the specific impact relative to the species (e.g., current range, distribution, population trends, and connectivity).

2) Biological Baseline Assessment. CDFW recommends providing a complete assessment and impact analysis of the flora and fauna within and adjacent to the Project areas, with emphasis upon identifying endangered, threatened, sensitive, regionally, and locally unique species and sensitive habitats. Impact analysis will aid in determining any direct, indirect, and

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cumulative biological impacts, as well as specific mitigation or avoidance measures necessary to offset those impacts. CDFW recommends avoiding any sensitive natural communities found on or adjacent to the Project. The DEIR should include the following information:

- a) Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region [CEQA Guidelines, § 15125(c)]. The DEIR should include measures to fully avoid and otherwise protect [Sensitive Natural Communities](#) (CDFWd 2022) from Project-related impacts. Project implementation may result in impacts to rare or endangered plants or plant communities that have been recorded adjacent to the Project vicinity;
- b) A complete floristic assessment within and adjacent to the Project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a thorough, recent, floristic-based assessment of special status plants and natural communities;
- c) Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at the Project site and within the neighboring vicinity. [The Manual of California Vegetation](#) (MCV), second edition, should also be used to inform this mapping and assessment (Sawyer, 2009). Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts off-site. Habitat mapping at the alliance level will help establish baseline vegetation conditions;
- d) A complete, recent, assessment of the biological resources associated with each habitat type on-site and within adjacent areas that could also be affected by the Project. CDFW's CNDDDB in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat. CDFW recommends that [CNDDDB Field Survey Forms](#) (CDFWe 2022) be completed and submitted to CNDDDB to document survey results;
- e) A complete, recent, assessment of rare, threatened, and endangered, and other sensitive species on-site and within the area of potential effect, including California Species of Special Concern and California Fully Protected Species (Fish & G. Code, §§ 3511, 4700, 5050 and 5515). Species to be addressed should include all those which meet the CEQA definition of endangered, rare, or threatened species (CEQA Guidelines, § 15380). Seasonal variations in use of the Project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. See CDFW's [Surveying and Monitoring Protocols and Guidelines](#) (CDFWf 2022) for established survey protocol for select species. Acceptable species-specific survey procedures may be developed in consultation with CDFW and the USFWS; and
- f) A recent, wildlife and rare plant survey. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to two years as long as there was not a prevailing drought during the time of the botanical survey. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if build out could occur over a protracted time frame, or in phases.

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- g) Presence/absence determinations of wildlife and rare plants in the Project area, specifically areas that would be impacted due to Project implementation (e.g., existing facilities), should be determined based on recent surveys. CDFW recommends the DEIR provide any recent survey data.

3) Data. CEQA requires that information developed in environmental impact reports 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 by completing and submitting [CNDDB Field Survey Forms](#) (CDFWe 2021). CSLC should ensure data collected for the preparation of the PEIR be properly submitted, with all data fields applicable filled out. The data entry should also list pending development as a threat and then update this occurrence after impacts have occurred.

4) Mitigation Measures. Public agencies have a duty under CEQA to prevent significant, avoidable damage to the environment by requiring changes in projects through the use of feasible alternatives or mitigation measures [CEQA Guidelines, §§ 15002(a)(3), 15021]. Pursuant to CEQA Guidelines section 15126.4, an environmental impact report shall describe feasible measures which could mitigate for impacts below a significant level under CEQA.

- a) Level of Detail. Mitigation measures must be feasible, effective, implemented, and fully enforceable/imposed by the lead agency through permit conditions, agreements, or other legally binding instruments (Pub. Resources Code, § 21081.6(b); CEQA Guidelines, §§ 15126.4, 15041). A public agency shall provide the measures that are fully enforceable through permit conditions, agreements, or other measures (Pub. Resources Code, § 21081.6). CDFW recommends that CSLC prepare mitigation measures that are specific, detailed (i.e., responsible party, timing, specific actions, location), and clear in order for a measure to be fully enforceable and implemented successfully via a mitigation monitoring and/or reporting program (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). Adequate disclosure is necessary so CDFW may provide comments on the adequacy and feasibility of proposed mitigation measures.
- b) Disclosure of Impacts. If a proposed mitigation measure would cause one or more significant effects, in addition to impacts caused by the Project as proposed, the environmental document should include a discussion of the effects of proposed mitigation measures [CEQA Guidelines, § 15126.4(a)(1)]. In that regard, the environmental document should provide an adequate, complete, and detailed disclosure about a project's proposed mitigation measure(s). Adequate disclosure is necessary so CDFW may assess the potential impacts of proposed mitigation measures.

5) Biological Direct, Indirect, and Cumulative Impacts. To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the DEIR for all Project sites:

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- a) A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage. The latter subject should address Project-related changes on drainage patterns and downstream of the Project site; the volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and, post-Project fate of runoff from the Project site. The discussion should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary and the potential resulting impacts on the habitat (if any) supported by the groundwater. Mitigation measures proposed to alleviate such Project impacts should be included;
- b) A discussion regarding indirect Project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a Natural Community Conservation Plan (NCCP, Fish & Game Code, § 2800 et. seq.). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR;
- c) An analysis of impacts from land use designations and zoning located nearby or adjacent to natural areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the DEIR; and,
- d) A cumulative effects analysis, as described under CEQA Guidelines section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

6) CESA. CDFW considers adverse impacts to a species protected by CESA to be significant without mitigation under CEQA. As to CESA, take of any endangered, threatened, candidate species, or CESA-listed plant species that results from the Project is prohibited, except as authorized by state law (Fish & G. Code §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9). Consequently, if the Project or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances, among other options [Fish & Game Code, §§ 2080.1, 2081, subds. (b) and (c)]. Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

7) Moving out of Harm's Way. The proposed Project may result in impacting habitats on and/or adjacent to the Project site that may support wildlife. To avoid direct mortality, CDFW

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recommends that a qualified biological monitor approved by CDFW be on-site prior to and during ground and habitat disturbing activities to move out of harm's way special status species or other wildlife of low mobility that would be injured or killed by grubbing or Project related construction activities. It should be noted that the temporary relocation of on-site wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss. If the Project requires species to be removed, disturbed, or otherwise handled, we recommend that the DEIR clearly identify that the designated entity shall obtain all appropriate state and federal permits.

8) Translocation/Salvage of Plants and Animal Species. Translocation and transplantation is the process of moving an individual from a project site and permanently moving it to a new location. CDFW generally does not support the use of translocation or transplantation as the primary mitigation strategy for unavoidable impacts to rare, threatened, or endangered plant or animal species. Studies have shown that these efforts are experimental and the outcome unreliable. CDFW has found that permanent preservation and management of habitat capable of supporting these species is often a more effective long-term strategy for conserving sensitive plants and animals and their habitats.

9) Project Description and Alternatives. To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, and wildlife, we recommend the following information be included in the DEIR:

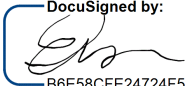
- a) A complete discussion of the purpose and need for, and description of, the proposed Project, including all staging areas and access routes to the construction and staging areas; and,
- b) A range of feasible alternatives to Project component location and design features to ensure that alternatives to the proposed Project are fully considered and evaluated. CDFW recommends CSLC consider configuring Project construction and activities, as well as the development footprint, in such a way as to fully avoid impacts to sensitive and special status plants and wildlife species, habitat, and sensitive vegetation communities. CDFW also recommends CSLC consider establishing appropriate setbacks from sensitive and special status biological resources. Setbacks should not be impacted by ground disturbance or hydrological changes for the duration of the Project and from any future development. Potential impacts to wildlife movement areas should also be evaluated, avoided, or mitigated consistent with applicable requirements of the City's General Plan and Local Coastal Program.

Conclusion

We appreciate the opportunity to comment on the NOP to assist the CSLC in identifying and mitigating Project impacts on biological resources. If you have any questions or comments regarding this letter, please contact Angela Castanon, Environmental Scientist, at Angela.Castanon@wildlife.ca.gov, or Corianna Flannery, Environmental Scientist, at Corianna.Flannery@wildlife.ca.gov for questions related to marine comments.

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Sincerely,

DocuSigned by:

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