



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



June 26, 2023

Cindy Chambers, Senior Planner  
County of San Luis Obispo Department of Planning and Building  
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**Subject: (NOP) C-DRC2022-00048 Phillips 66 Santa Maria Refinery Demolition & Remediation Project**  
**SCH: 2023050020**

Dear Cindy Chambers:

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

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

## CDFW ROLE

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

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

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

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

### **Nesting Birds**

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

### **PROJECT DESCRIPTION SUMMARY**

**Proponent(s):** Phillips 66

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

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

**Timeframe:** N/A.

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## COMMENTS AND RECOMMENDATIONS

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

### Nipomo Mesa Lupine

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

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

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

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

### **California Black Rail**

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

### **California Least Tern**

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

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

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

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

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

### **Western Bumble Bee**

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

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

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

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

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

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

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

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

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

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

### **Nesting birds**

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

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

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

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

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

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

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

### **Federally Listed Species**

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



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## **Lake and Streambed Alteration**

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

## **ENVIRONMENTAL DATA**

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

## **FILING FEES**

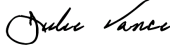
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is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

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

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

Sincerely,

DocuSigned by:  
  
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Julie A. Vance  
Regional Manager

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**Attachment 1**

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

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

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

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