3.3.9 LAND USE AND PLANNING

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
(a) Physically divide an established community?	☐	☐	☐	☒
(b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☒	☐
(c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☒

Environmental Setting

The proposed Project is located in northwestern Contra Costa County, California, near the city of Hercules and the town of Rodeo. The predominant land use in the Project area is open water in San Pablo Bay, and open space onshore. A description of current land uses in and adjacent to the Project area is included below.

Existing Land Uses – Onshore

Existing land uses on the onshore portion of the Project area include railroad right-of-way and recreation/open space. Along the shoreline just northwest of the vault are two sets of Union Pacific Railroad tracks. The railroad right-of-way is adjacent to the pipeline vault, and the buried pipeline alignment goes under the right-of-way to Victoria Crescent Open Space in Hercules. The Bay Trail recreational corridor also passes through the Project area. The portion of the Bay Trail in the Project area consists of an off-street trail along the shore from southwest of the Project area to Lone Tree Point,

and a planned section of the trail from Lone Tree Point to the east along the shore of the Bay. This section will eventually be connected to existing trail segments to the north and south of the park (ABAG 2008a).

Land uses in areas immediately adjacent to the Project area include park land, residential and industrial. Lone Tree Point is a 10-acre regional park managed by the East Bay Regional Park District, and is adjacent to the Project area to the northeast. Approximately 0.57 mile (3,000 feet) east of the Marine Oil Terminal (MOT) is the ConocoPhillips Refinery, located along the Bay front near Davis Point east of Interstate 80. Approximately one mile southeast of the MOT is the unincorporated town of Rodeo, which has single-family residences. These residences are separated from the Project onshore vault and pipelines by the Victoria Crescent Open Space and Union Pacific railroad right-of-way. Approximately one mile southeast of the MOT is the Victoria-By-The-Bay residential subdivision in Hercules. The subdivision is built on the former Pacific Refining Company refinery site, and is a 206-acre community with 748 single-family homes, 132 multi-family units, more than 30 acres of parks and designated open space, a commercial center, and an elementary school. The proposed Project onshore vault is separated from single-family residences in this subdivision by Victoria Crescent Open Space. The onshore vault is approximately 250 feet from the closest residences in the city of Hercules at the Victory-by-the-Bay subdivision, and the eastern terminus of the onshore pipeline is within approximately 150 feet of the nearest residences at the subdivision.

Existing Land Uses – Offshore

Existing land uses in the offshore portion of the Project area include a shipping channel and recreational boating area. The MOT is adjacent to a shipping channel that is navigable and used for commercial and military shipping. Deep water ship traffic bound for both the Port of Sacramento and the Port of Stockton traverse the Carquinez Strait.

Existing land uses adjacent to the offshore portion of the Project area also include outfalls, a refinery, and disposal sites. The proposed Project is located near two outfalls into San Pablo Bay. A city of Hercules storm water outfall is located southwest of Lone Tree Point and extends approximately 0.32 mile (1,700 feet) into the Bay. A Rodeo Sanitary District treated sewage outfall is located northeast of Lone Tree Point and extends approximately 0.89 mile (4,700 feet) into the Bay. In San Pablo Bay, northeast of the Project area, the ConocoPhillips Refinery has a MOT that extends approximately 0.34 mile (1,800 feet) from Davis Point north into the Bay. Finally, there are several

dredged material disposal sites in San Francisco Bay; the two closest to the Project area are the San Pablo Bay site and the Carquinez Strait site (ACOE 2001).

County General Plan and Zoning Ordinance Land Use Designations

The MOT is located in San Pablo Bay, in an area under the jurisdiction of Contra Costa County designated as *Water* (WA) in the General Plan. The submerged petroleum pipeline travels from the terminal to the shoreline, traversing an area designated as *Open Space* (OS) and *Public/Semi Public* (PS) (Contra Costa County 2005). The portion of the Project in Contra Costa County is zoned *U – Unrestricted* (Contra Costa County 2007). (See Figures 2-1 and 2-2 in Section 2.0, Project Description.)

Onshore, the pipeline is in the city of Hercules' jurisdiction, and is located in areas designated by the General Plan Land Use and Zoning map as *Waterfront Commercial* and *New Pacific Properties Specific Plan Area* (City of Hercules 2007). The New Specific Properties Specific Plan gives additional land use and zoning designations for land in the *New Pacific Properties Specific Plan Area.* The pipeline would terminate in land designated by the Plan as *Parks*, specifically *Community Trail and Shoreline Trail Parks*. Zoning for this area is *Open Space/Parks* (SP-OS) (City of Hercules 2000).

Marine Contractor Onshore Facilities

The locations of potential marine contractor onshore facilities have not been finalized. The following companies have expressed an interest in bidding on the Project:

- *Cooper Crane and Rigging*: Mare Island, Vallejo, CA 94592, Solano County
- *C.S. Marine Constructors, Inc.*: Mare Island, Vallejo, CA 94592, Solano County
- *The Dutra Group*: Richmond, CA 94801, Contra Costa County; Alameda, CA 94501, Alameda County; Rio Vista, CA 94571, Solano County; and San Rafael, CA 94901, Marin County
- *Manson Construction Co.*: Richmond, CA 94804, Contra Costa County
- *Vortex Marine Construction, Inc.*: Oakland, CA 94606, Alameda County

These locations all consist of existing commercial/industrial facilities. Of these seven locations, only those in Richmond are located in Contra Costa County, and those two fall under the jurisdiction of the city of Richmond. The remaining five are located in incorporated cities in Solano, Alameda, or Marin County. Land uses and zoning designations in those five locations are consequently determined according to the policies of the city in which they are located.

Regulatory Setting

Federal

There are no Federal regulations related to land use relevant to the Project.

State

Association of Bay Area Governments

The Association of Bay Area Governments (ABAG) is the official comprehensive planning agency for the San Francisco Bay region. It is composed of 101 cities and nine counties within the Bay Area, and its mission is to strengthen cooperation and coordination among local governments. ABAG examines regional issues including the environment, housing, transportation, education, and economic development, and its 38-member Executive Board (assembled of locally elected officials based on regional population) meets bimonthly to make operating decisions, authorize expenditures, appoint committee members, and recommend policy. As an advisory organization, ABAG has limited statutory authority (ABAG 2008b).

San Francisco Bay Area Conservancy Program

The San Francisco Bay Area Conservancy Program was established by the California State Legislature in 1997 to address the resource and recreational goals of the San Francisco Bay area, given the area's unique natural resource and recreational needs (State of California 2008). The conservancy helps public agencies and private nonprofit organizations preserve open space, promote the use of habitat restoration projects for environmental education, protect and restore fish and wildlife habitat, provide public access to open space areas, and restore urban waterfronts in the nine Bay Area counties (Bay Conservancy 2008).

San Francisco Bay Conservation and Development Commission

The San Francisco Bay Conservation and Development Commission (BCDC) was created by the California Legislature in 1965, and is comprised of 27 appointees from local governments and State/Federal agencies. The Commission has jurisdiction over the open water, marshes and mudflats of greater San Francisco Bay, including San Pablo, as well as the first 100 feet inland from the shoreline around San Francisco Bay. Among its duties, the Commission is charged with regulating all filling and dredging in San Francisco Bay, regulating new development within the first 100 feet inland from the Bay to ensure that maximum feasible public access to the Bay is

provided, and administering the Federal Coastal Zone Management Act within the San Francisco Bay segment of the California coastal zone to ensure that Federal activities reflect Commission policies. BCDC permits are required for projects proposed along the shoreline of the San Francisco Bay that would:

- Place solid material, build or repair docks, pile-supported or cantilevered structures, dispose of material or moor a vessel for a long period in San Francisco Bay or in certain tributaries that flow into the Bay;
- Dredge or extract material from the Bay bottom;
- Substantially change the use of any structure or area;
- Construct, remodel or repair a structure; or
- Subdivide property or grade land.

(BCDC 2008)

State Lands Commission

The California State Lands Commission (CSLC) was established in 1938 and has the authority and responsibility to manage and protect the important natural and cultural resources on certain public lands within the State, as well as the public's rights to access these lands. The CSLC is composed of the Lieutenant Governor, the State Controller and the State Director of Finance. A staff of more than 200 specialists assists the Commission with respect to mineral resources, land management, boundary determination, petroleum engineering and the natural sciences. The issuance of any lease, permit or other entitlement for use of State lands by the CSLC requires review for compliance with CEQA (CSLC 2008).

<u>Local</u>

Contra Costa County published the "Contra Costa County General Plan 2005-2020" in January 2005. The following goals and policies related to land use from the Contra Costa County General Plan were considered in this analysis:

Land Use Element

Goal 3-C: To encourage aesthetically and functionally compatible development which reinforces the physical character and desired images of the County.

Policy 3-18: Flexibility in the design of projects shall be encouraged in order to enhance scenic qualities and provide for a varied development pattern.

Conservation Element

Policy 8-A: To preserve and protect the ecological resources of the County.

Goal 8-F: To encourage the preservation and restoration of the natural characteristics of the San Francisco Bay/Delta estuary and adjacent lands, and recognize the role of Bay vegetation and water area in maintaining favorable climate, air and water quality, and fisheries and migratory waterfowl.

Open Space Element

Goal 9-A: To preserve and protect the ecological, scenic and cultural/historic, and recreational resources lands of the County.

Policy 9-2: Historic and scenic features, watersheds, natural waterways, and areas important for the maintenance of natural vegetation and wildlife populations shall be preserved and enhanced.

Goal 9-12: To preserve the scenic qualities of the San Francisco Bay/Delta estuary system and the Sacramento-San Joaquin River/Delta Shoreline.

(Contra Costa County 2005)

Hercules published the "City of Hercules, California, General Plan" in September 1998. The City's Housing Element was approved in February 2003. The following policies and objectives related to land use from the City of Hercules General Plan were considered in this analysis:

Land Use Element

Policy 1A: Encourage and only allow development that is consistent with the Land Use Diagram, Land Use Categories; and objectives, policies and programs of the Land Use Element.

Open Space and Conservation Element

Policy 1B: The City shall continue to work closely with the East Bay Regional Park District (EBRPD) in implementing the Shoreline Trail through Hercules.

Objective 5: Preserve salt marsh zones along San Pablo Bay.

(City of Hercules 1998)

Impact Analysis and Mitigation

Impact Discussion

(a) The proposed Project would be located primarily in San Pablo Bay and on the shoreline of the city of Hercules, and would not traverse the city of Hercules or the adjacent town of Rodeo. Furthermore, the act of removing the MOT would not restrict access or constitute a physical barrier to either of these communities. Routine operations at marine contractor onshore facilities would also not restrict access or constitute a physical barrier to any of the communities in which those facilities are located. Consequently, the proposed Project would have no impact to the physical division of an established community. (No Impact)

(b) The proposed Project would remove the MOT, a man-made industrial feature in San Pablo Bay. No long-term change in pattern, scale, or character of land use onshore will occur, as pipelines would be abandoned in place.

During deconstruction activities, there would be short-term impacts to land use in the vicinity of the Project. During pipeline abandonment at the vault site, informal access to fishing along the shoreline would be precluded for a period of one week. Also, boat use near the active deconstruction areas may be restricted over the course of the 5-½ month deconstruction period. No impacts to the use of Victoria Crescent Open Space or the Bay Trail would be anticipated, as pipeline abandonment activities would be restricted to the area north of the railroad right-of-way. The location for marine contractor onshore facilities has not been finalized, though Project plans call for onshore staging areas to be located at existing commercial sites near boat launch facilities. Consequently, marine contractor onshore facilities would be used for the proposed Project in a way that is consistent with current uses at those facilities. As such, the proposed Project would not alter or change current baseline conditions for land use.

As discussed above in the Regulatory Setting, the Project would traverse land designated in the Contra Costa County General Plan as *Water, Open Space*, and *Public/Semi Public*, in an area zoned *Unrestricted*. The removal of the MOT would be consistent with these land use and zoning designations. Furthermore, by removing an industrial structure and returning the Project area to its natural state, the Project aligns with goals and policies in the Land Use, Conservation, and Open Space Elements of the county General Plan. Removal of the MOT would promote aesthetically and functionally compatible development which reinforces the physical character and desired images of the County; would preserve and protect the ecological resources of the county; and would preserve the scenic qualities of the San Francisco Bay/Delta estuary system.

In Hercules, the Project would traverse land designated by the City of Hercules General Plan and Zoning Ordinance as *Waterfront Commercial* and *New Pacific Properties Specific Plan Area.* In the New Pacific Properties Specific Plan, the

Project would traverse land designated as *Parks*, and zoned *Open Space/Parks*. The removal of the MOT would be consistent with these land use and zoning designations. Additionally, the proposed Project would not conflict with any policies or goals in the city's General Plan or Specific Plan.

Prior to final approval of the application by the California State Lands Commission, Coscol would obtain local approvals from the city of Hercules and Contra Costa County. Prior to commencement of deconstruction activities, Coscol would obtain required permits including, but not limited to:

U.S. Army Corps of Engineers, San Francisco District: Deconstruction of the MOT would likely require an individual permit under Section 404 of the Clean Water Act.

San Francisco Bay Conservation and Development Commission: Abandoning the buried pipelines from the Hercules shoreline to the point of termination within the former Refinery property would require a permit application from BCDC for an Administrative Permit.

East Bay Regional Parks District (EBRPD): If abandonment of the buried pipelines from the Hercules shoreline inland to the pipeline terminus requires work within the area of the Bay Trail, an Encroachment Permit may be required by EBRPD. If the proposed approach of abandoning the pipes from offshore using a shallow draft barge is adopted, deconstruction activities would not encroach on the Bay Trail and a permit would not be necessary.

Contra Costa County Building Inspection Division: A Demolition Permit from the Contra Costa County Building Inspection Division would be required for the Project. Prior to issuance of the Demolition Permit, Coscol would have its Debris Recovery Plan approved, per Contra Costa County Ordinance 2004-16 and Chapter 418-14 of the County Code.

City of Hercules: Two permits would be required from the city of Hercules: an Encroachment Permit for abandonment activities from the City Public Works Department, and a Use Permit from the City Planning Department for abandonment activities within city limits.

If all required permits are obtained prior to deconstruction, the Project would not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project, adopted for the purpose of avoiding or mitigating an environmental effect. Therefore, this impact is considered less than significant. (Class III)

(c) As discussed in Section 3.3.4, *Biological Resources*, there are no habitat conservation plans or other approved governmental habitat plans that involve lands within the proposed Project areas. Therefore, the proposed Project would

not result in any conflicts with an adopted habitat conservation plan or natural community conservation plan and there would be no impact. (No Impact)