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Exhibit D

**COUNTY OF SAN LUIS OBISPO  
DEPARTMENT OF PLANNING AND BUILDING  
STAFF REPORT**

**PLANNING COMMISSION**

MEETING DATE	CONTACT/PHONE	APPLICANT	FILE NO.
February 4, 2016	Ryan Hostetter / Senior Planner (805) 788-2351 rhostetter@co.slo.ca.us	Phillips 66 Company	DRC2012-00095
SUBJECT			
<p>Hearing to consider a request by the Phillips 66 Company for a Development Plan/Coastal Development Permit to allow the modification of the existing rail spur currently on the southwest side of the Santa Maria Refinery in order to allow for the import/unloading of crude oil at the refinery via train. The rail spur project includes a 6,915-foot long rail spur, an unloading facility, onsite pipelines, replacement of coke rail loading tracks, the construction of five parallel tracks with the capacity to hold a 5,190-foot-long unit train consisting of 80 tank cars (60 feet each), two buffer cars (60 feet each), and three locomotives (90 feet each), and accessory improvements outlined in more detail below in the staff report as well as the Final Environmental Impact Report (FEIR). The site is in the South County Coastal Planning Area, in the Industrial Land Use Category, and is located at 2555 Willow Road, approximately 3 miles west of the Nipomo Urban Reserve Line and approximately 3,300 feet from the nearest residence. Also being considered is the Final EIR.</p>			
RECOMMENDED ACTION			
<p>Staff recommends the Planning Commission take the following action:</p> <ol style="list-style-type: none"> <li>1. Deny the application for the Development Plan/Coastal Development Permit; and</li> <li>2. Adopt the Findings included in Exhibit C.</li> </ol>			
ENVIRONMENTAL DETERMINATION			
<p>The Environmental Coordinator, after completion of the initial study, found that there was evidence that the project may have a significant effect on the environment, and therefore a Final Environmental Impact Report (FEIR) was prepared (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) for this project. The FEIR considers the following issues: Aesthetics and Visual Resources, Agricultural Resources, Air Quality and Greenhouse Gases, Biological Resources, Cultural and Historical Resources, Geological Resources, Hazards and Hazardous Materials, Land Use and Recreation, Noise and Vibration, Population and Housing, Public Services and Utilities, Transportation and Circulation and Water Resources. The FEIR also considers alternatives in addition to the "No Project" alternative. Notice of the FEIR was provided to the public and copies were made available for public review. The FEIR was also distributed to the Planning Commission under separate cover. While a FEIR has been prepared, per the Public Resources Code 21080(b)(5) and CEQA Guidelines, CEQA does not apply to projects which a public agency rejects or disapproves. However, the FEIR has provided evidence and information to support this recommendation for denial, including an evaluation of the significant and unavoidable environmental impacts of the proposed project.</p>			
LAND USE CATEGORY	COMBINING DESIGNATION	ASSESSOR PARCEL NUMBER	SUPERVISOR DISTRICT(S)
Industrial	Coastal Appealable Zone, Flood Hazard Area, Local Coastal Plan Area	092-401-011, 092-401-013, 092-401-005, & 092-411-005	4
PLANNING AREA STANDARDS:			
South County Coastal Area Plan, Industrial Development			
EXISTING USES:			
Phillips 66 Company – Santa Maria Refinery			

ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT:  
COUNTY GOVERNMENT CENTER ■ SAN LUIS OBISPO ■ CALIFORNIA 93408 ■ (805) 781-5600 ■ FAX: (805) 781-1242

<p><b>SURROUNDING LAND USE CATEGORIES AND USES:</b></p> <p><i>North:</i> Industrial and Agriculture/ mixture of industrial, large lot residential and open space</p> <p><i>East:</i> Agriculture, Industrial and Recreation / agriculture, open space and residential</p> <p><i>South:</i> Agriculture / agricultural uses</p> <p><i>West:</i> Open Space / open space, dunes, Oceano Dunes State Vehicle Recreational Area and Pacific Ocean</p>	
<p><b>OTHER AGENCY / ADVISORY GROUP &amp; PUBLIC INVOLVEMENT:</b></p> <p>The project was referred to: County Public Works, County Environmental Health, County Agricultural Commissioner, Air Pollution Control District, County General Services, County Building Division, Cal Fire, Cambria Community Services District, Los Osos Community Services District, Avila Community Services District, Cayucos Fire, Cayucos Sanitary, Paso Robles Beach Water Association, Oceano Community Services District, San Miguelito Water Association, San Simeon Community Services District, Coast Union Joint School District, San Luis Coastal School District, Cal Trans, Regional Water Quality Control Board, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, California Coastal Commission, California Department of Parks and Recreation, Cayucos Citizens Advisory Council, North Coast Advisory Council, Los Osos Community Advisory Council, South County Advisory Council and the Avila Valley Advisory Council, Pacific Gas and Electric, Santa Barbara County, City of San Luis Obispo, City of Santa Maria, Division of Oil and Gas, City of Grover Beach, and the City of Guadalupe.</p> <p>In addition, this project has received a vast amount of public input in the form of emails and letters in addition to those published in the Final EIR. This additional correspondence is posted on the Planning Department Website for review by the Public and Planning Commission as a part of the record for the project. The letters can be found here:</p> <p><a href="http://www.slocounty.ca.gov/planning/environmental/EnvironmentalNotices/Phillips_66_Company_Rail_Spur_Extension_Project/Project_Comment_Letters__Post_EIR_Comment_Period_.htm">http://www.slocounty.ca.gov/planning/environmental/EnvironmentalNotices/Phillips_66_Company_Rail_Spur_Extension_Project/Project_Comment_Letters__Post_EIR_Comment_Period_.htm</a></p>	
<p><b>TOPOGRAPHY:</b></p> <p>Nearly level to steeply sloping dunes.</p>	<p><b>VEGETATION:</b></p> <p>Dune vegetation and grasses.</p>
<p><b>PROPOSED SERVICES:</b></p> <p><i>Water supply:</i> Onsite well</p> <p><i>Sewage Disposal:</i> Individual septic system</p> <p><i>Fire Protection:</i> CAL FIRE</p>	<p><b>ACCEPTANCE DATE:</b></p> <p>July 12, 2013</p>

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## I. STAFF RECOMMENDATION

Staff recommends the Planning Commission take the following actions:

1. Deny the application for Development Plan and Coastal Development Permit DRC2012-00095; and
2. Adopt the Findings included in Exhibit C.

The detailed basis for this recommendation can be found in Section V below under “Project Analysis.”

## II. SUMMARY

### A. Project Description:

The project (“Project”) includes modification of the existing rail spur by constructing five parallel tracks and an unloading rack area. The Project would involve unloading of up to five unit trains per week, or a combined total of five unit and manifest trains (manifest trains contain a mixture of goods within separate railcars and are also known as a mixed freight train), with an annual maximum number of trains of 250. Trains would arrive from different North American oilfields and/or crude oil loading points depending on market availability. In a unit train configuration, each train would consist of three locomotives, two buffer cars, and 80 railcars carrying approximately 27,300 gallons each, for a total of approximately 2,190,000 gallons (52,000 bbls) of crude oil. The Project would not affect the amount of material processed at the refinery. Throughput levels at the refinery are capped by previous permits issued by the County and by the San Luis Obispo County Air Pollution Control District. In addition, no crude oil or refined product would be transported out of the refinery by rail. The refined product would be shipped to the Rodeo Refinery in Contra Costa County via pipeline which is the refinery’s current operation.

### B. Community Concerns Regarding Health, Safety and Other Issues:

Extensive community input has been submitted to the County with regards to the Project. Out of the approximately 24,500 comment letters received on the project (including comments on the Draft Environmental Impact Report, Recirculated Draft Environmental Impact Report and throughout the process) approximately 150 of these have been in support of the Project. A majority of the letters submitted with comments and opinions on the project have been submitted from persons outside of San Luis Obispo County. For the remainder of the letters and comments submitted by residents of San Luis Obispo County, a similar ratio of opposition versus support of the project was the case.

The general consensus among the comments received is that Project benefits do not outweigh the potential hazards it will bring to the public. These hazards mainly stem from rail accidents, oil spills, health hazards, and explosions/fires within communities along rail lines as a result of an increase of crude transport via rail. These hazards are also exacerbated because the County is not legally able, due to federal preemption, to require certain conditions of approval for Union Pacific along the main rail lines (e.g., require particular emergency response preparations, use of particular routes to avoid sensitive areas, or modifications to Union Pacific Railroad [UPRR] tracks or operations), therefore the County’s approval of the project would allow an increase in risk to the populations within the County along the mainline (as well as outside the County and throughout the state) without the ability to enforce any measures to mitigate off-site impacts to populations along the rail lines.

### C. Recommendation for Denial:

Significant local, regional, and statewide concern has been expressed throughout the various phases of the Project including land use incompatibilities, toxic air emissions adjacent to the project site and adjacent to the UPRR mainline; risk of derailment, spill, and explosion in areas adjacent to the mainline; threat of impact to agricultural, biological, cultural, and water resources due to spill, fire, and explosion along the mainline; and, inadequate fire and emergency response services along UPRR mainline throughout the state in the event of a spill, fire or explosion. The Final Environmental Impact Report (FEIR) concluded that the Project, for components only on the project site, would result in two significant and unavoidable impacts (Class I impacts) stemming from diesel particulate matter emissions and toxic air emissions generated by increased locomotive activity at the Santa Maria Refinery site.

The FEIR also concluded that ten Class I impacts would result along the UPRR mainline, beyond the project site, including impacts to agricultural resources, air quality, biological resources, cultural resources, hazards, public services, and water resources.

The Planning and Building Department recommends denial of the Project because the project would be inconsistent with goals and policies outlined in the County's Local Coastal Program, Coastal Zone Land Use Ordinance (CZLUO), Coastal Plan Policies, and other sections of the County's General Plan. In addition, the Project would include 11 "Class I" environmental impacts, (two of which are on the project site) and there are insufficient economic, social, technological, or other benefits of the Project to override its significant unavoidable environmental impacts.

1. The Department of Planning and Building has found the Project to be inconsistent with several goals and policies of the following plans:
  - a. Coastal Zone Framework for Planning
  - b. County's Conservation and Open Space Element
  - c. Coastal Plan Policies
  - d. Safety Element
  - e. Coastal Zone Land Use Ordinance
  - f. South County Area Plan
2. The Project would be detrimental to the health, safety and welfare of the public and the residents of San Luis Obispo County due to the increase of hazardous accidents as a result of the Project.
3. The Project includes a significant and unavoidable environmental impact with regards to cancer risk (air quality) for the population near the proposed rail spur.
4. The Project includes a significant and unavoidable environmental impact with regards to diesel particulate matter (air quality) due to an exceedance of the SLOCAPCD CEQA threshold.
5. The Project would result in 10 significant and unavoidable environmental impacts (agricultural resources, four which are air quality, biological, cultural, hazards, public services, and water resources), with regards to the mainline rail operations within the County as a result of the Project.

6. The Project would result in 10 significant and unavoidable environmental impacts (agricultural resources, four which are air quality, biological, cultural, hazards, public services, and water resources), with regards to the mainline rail operations beyond San Luis Obispo County and throughout the State.
7. There is a lack of specific overriding economic, legal, social, technological, or other benefits of the Project that outweigh the significant effects on the environment, as would be required to approve the Project pursuant to Public Resources Code section 21081.

*End of Summary*

### **III. PROJECT DESCRIPTION**

#### **A. Project Description**

Phillips 66 proposes to extend an existing rail spur which is currently used for shipment of coke (an oil refinement by-product) from the southwest side of the refinery extending east to add an unloading facility for crude oil trains, onsite pipelines, and replacement coke rail loading tracks (refer to Exhibit E). This project would allow up to five trains per week or 250 trains annually in order to deliver heavy crude for refinement at the Santa Maria Refinery. Additionally, an existing agricultural road would be improved as an unpaved eastern Emergency Vehicle Access route between the eastern end of the rail spur and State Route 1 (refer to Exhibit E-1). The tracks and unloading facilities would be designed to accommodate trains of approximately 80 tank cars and associated locomotives and buffer cars in unit trains or manifest train configurations. These trains would deliver crude oil to the facility for refining. The unloaded material would be transferred to the existing crude oil storage tanks via a new pipeline that would be constructed across the existing coke storage area and along an existing internal refinery road. The project construction would occur entirely within the existing Phillips 66 Santa Maria Refinery (SMR) boundary.

The project would also include work within the existing refinery connecting and upgrading existing infrastructure. This includes adding a new electricity cable to an existing pipeway and adding a new fire water pipeline to an existing pipe rack. The rails on the existing rail spur would also be replaced.

The new rail spur lines would extend from the terminus of the current spur. The unloading facility would be located at the end of the existing coke storage area and along an existing internal refinery road.

The construction areas are summarized below:

- 6,915 feet – Length of spur extension (including approximately 2,445 feet within the existing industrial coke plant area);
- 270 feet – Maximum width of construction area for rail extension;
- 2,325 feet – Length of the new pipeline route from the unloading facility to the internal refinery (an additional 2,800 feet would be constructed within the existing refinery connecting to the existing storage tanks and existing steam boilers); and
- 2,400 feet - Length of new steam pipelines from the unloading facility east between Tracks 1 and 2.

The maximum width of the temporary construction area for pipeline installation would be 25 feet. Acreage breakdowns (temporary + permanent) are summarized below:

- 41.6 acres – Rail Spur and Unloading Facility (25.3 acres permanent + 16.3 temporary),
- 3.8 acres – New Pipeline (1.8 acres permanent + 2 acres temporary), and
- 1.6 acres – Secondary Emergency Vehicle Access (1.6 acres permanent).

Collectively, the entire project, including temporary and permanent impacts, would affect approximately 47 acres. Of this area, 19.5 acres would occur within the existing refinery and coke area, and 27.5 acres would occur in undeveloped areas outside the refinery and coke facilities. A more detailed description of the Project can be found in section 2.0 of the Final EIR.

**B. Project Location**

The Project is located approximately 3 miles west of the community of Nipomo on the west side of State Route 1, immediately east of the Oceano Dunes State Vehicle Recreation Area (ODSVRA). The project site is located at 2555 Willow Road, Arroyo Grande (SR 1) (APN 091-141-062, 092-391-021, 034, 092-401-005, 011, 013, 092-411-002, 005). The project site is located within the Industrial Land Use Category.

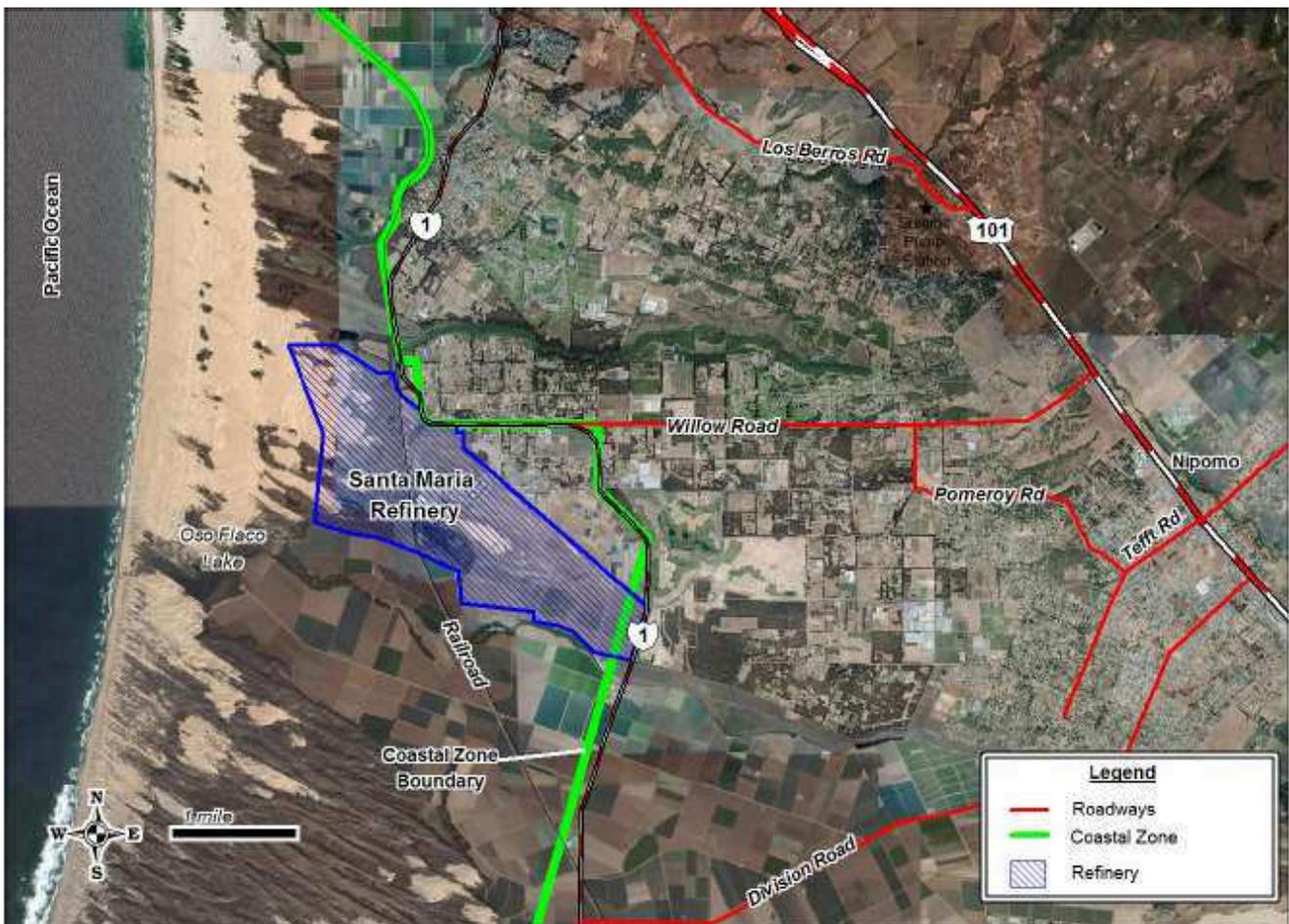


Figure 1 – Project Location Map

#### IV. APPLICATION HISTORY

An application for a Development Plan/Coastal Development Permit for the rail spur and crude oil delivery project (Project) was submitted to the Department of Planning and Building on April 30, 2013. The Project was accepted for processing in July of 2013. Upon preparation of the Initial Study, the County Planning Department determined that the Project would have the potential to result in significant and unavoidable impacts to the environment therefore an Environmental Impact Report (EIR) was required.

In July 2013, the County entered into a contract with Marine Research Specialists to prepare the EIR. A scoping meeting was held on July 29, 2013 to obtain public comments on the scope of the Draft EIR (DEIR). The DEIR was released for a 60-day public comment period in November 2013 and the public comment period closed on January 27, 2014. The Department held a public workshop during the public comment period (on December 12, 2013) and upon completion of the comment period received 201 comment letters, e-mails and comment cards (795 comments) on the DEIR.

Comments submitted on the DEIR included compelling arguments that, for purposes of full disclosure under CEQA, County decision makers need to be made aware of impacts of the Project beyond the project site along the mainline UPRR route, beyond the County of San Luis Obispo, and to the border of California. After lengthy discussions between the Applicant and the County, it was agreed in March 2014 that recirculation of the DEIR with an expanded geographic scope would make for a more legally defensible document.

Shortly before the release of the Recirculated Draft EIR (RDEIR), the County became aware of a comment letter dated October 2, 2014 from Attorney General Kamala D. Harris to the City of Benicia Community Development Department, on the proposed Valero Crude by Rail Project Draft EIR. This letter stated that impacts from the Valero crude by rail project listed in the City of Benicia's Draft EIR "Ignores reasonably foreseeable Project impacts by impermissibly limiting the scope of the affected environment analyzed to only the 69 mile stretch from Benicia to Roseville", reaffirming the County's decision to include evaluation of the mainline UPRR routes to the California border in the Project RDEIR.

Due to the extensive revisions to the original DEIR, a RDEIR was prepared and released for public review and specific written responses to DEIR comments were not prepared. The RDEIR was released for a 45-day public review comment period in October 2014 and the second public comment period closed on November 24, 2014. The Department held a public workshop during the public comment period (on November 5, 2014) and upon completion of the public comment period received 603 comment letters, e-mails and comment cards (2,206 comments). In addition, approximately 23,450 form letters were received during the RDEIR public review comment period. The Department reviewed all comments on the RDEIR and has provided responses to these comments which are contained in the Final EIR (FEIR) dated December 2015.

Based on Staff's review of the Project, including the information contained in the FEIR, Staff recommends that the Commission find that the Project is not consistent with the County General Plan. Applicable Development Plan findings cannot be made in support of the Project, and at the time of preparation of this Staff Report there are insufficient economic, social, technological, or other benefits of the Project to override its significant unavoidable environmental impacts.

**V. PROJECT ANALYSIS**

**A. General Plan Consistency**

Under State law, the County's decision makers must consider the Project's consistency with the County General Plan as a part of the decision making process. Staff recommends that the Project, as proposed, is inconsistent with the South County Coastal Area Plan, Coastal Plan Policies, Coastal Zone Framework for Planning, the Conservation and Open Space Element of the County General Plan, and the Environmentally Sensitive Habitat Area (ESHA) requirements of the CZLUO: all of which are part of the County's General Plan. The discussion below identifies these inconsistencies, environmental impacts, and the circumstances for which Staff is recommending denial of the Project. It is important to note that Staff's recommendation for denial of the Project does not preclude or set precedence for future projects or activities on the refinery property. This project was evaluated independently based on the currently proposed project characteristics. Future projects in this area will be evaluated based on proposed project characteristics at that time.

There are numerous policies that apply to the Project. While the Project is consistent with some of the County Policies and Ordinance requirements, there are many key policies and ordinance requirements with which this project is not in compliance. The policies and ordinance requirements with which the Project is not in compliance, and which staff is basing their recommendation, are summarized in the table below. A more detailed policy discussion is provided in Exhibits A and B for onsite and the mainline rail respectively.

The Project has been broken up into "onsite" versus "mainline" issues as they relate to the project discussion and evaluation here in the staff report. This has been done since different issues relate to the construction and operation of the rail spur on the Santa Maria Refinery property compared to the impacts related transportation of crude oil along the mainline rail routes.

<b>Policy Compliance Summary</b>	
<b>Policy, Goal, or Requirement Section</b>	<b>Compliance</b>
CZLUO Section 23.07.170, Environmentally Sensitive Habitats (ESHA)	Project not in compliance – Onsite
Coastal Plan Policies: Environmentally Sensitive Habitats, Sensitive Habitats, Policy 1, Land Uses Within or Adjacent to Environmentally Sensitive Habitats	Project not in compliance – Onsite
Coastal Plan Policies: Environmentally Sensitive Habitats, Sensitive Habitats, Policy 29, Protection of Terrestrial Habitats	Project not in compliance – Onsite & Mainline
Coastal Plan Policies: Environmentally Sensitive Habitat Area Policy 36, Protection of Dune Vegetation	Project not in compliance - Onsite
Framework for Planning: Land Use Goal 4, Land Use Compatibility	Project not in compliance – Onsite
Framework for Planning: Strategic Growth Goal 1 Objective 2 Air Quality	Project not in compliance – Onsite & Mainline
Framework for Planning: Sensitive Resource Area General Objective 1	Project not in compliance – Onsite
Conservation and Open Space Element: Air Quality Policy AQ 3.2 Attain Air Quality Standards	Project not in compliance – Onsite & Mainline
Conservation and Open Space Element: Air Quality Policy AQ 3.3 Avoid Air Pollution Increase	Project not in compliance – Onsite & Mainline

<b>Policy Compliance Summary</b>	
<b>Policy, Goal, or Requirement Section</b>	<b>Compliance</b>
Conservation and Open Space Element: Air Quality Policy AQ 3.4 Toxic Exposure	Project not in compliance – Onsite & Mainline
Conservation and Open Space Element: Air Quality Policy AQ 3.5 Equitable Decision Making	Project not in compliance – Onsite
Conservation and Open Space Element: Biological Resources Policy 1.2 Limit Development Impacts	Project not in compliance – Onsite
Conservation and Open Space Element: Non Renewable Energy Facility Siting Policy E 7.1	Project not in compliance – Onsite
South County Coastal Area Plan: Land Use Rural Area Industrial	Project not in compliance – Onsite
South County Coastal Area Plan: Industrial Air Pollution Standards	Project not in compliance – Onsite
Framework for Planning: Strategic Growth Goal 1 Preserve Resources	Project not in compliance – Mainline
Framework for Planning: Strategic Growth Goal 1 Objective 4 Agriculture	Project not in compliance – Mainline
Framework for Planning: Land Use Goal 2 Preserve Agriculture	Project not in compliance – Mainline
Coastal Plan Policies: Chapter 6 Environmentally Sensitive Habitats, Coastal Streams Policy 20	Project not in compliance – Mainline
Coastal Plan Policies: Chapter 7 Agriculture Policy 1	Project not in compliance – Mainline
Coastal Plan Policies: Chapter 12, Archaeology Policy 1, Protection of Archaeological Resources	Project not in compliance – Mainline
Conservation and Open Space Element: Air Quality Goal AQ 3, Implementation Strategy AQ 3.6.1, Identify Health Risks to Sensitive Receptors	Project not in compliance – Mainline
Conservation and Open Space Element: Biological Resources Policy BR 1.15 Restrict Disturbance in Sensitive Habitats, Nesting Birds	Project not in compliance – Mainline
Conservation and Open Space Element: Chapter 5 Energy Goal E7 Design Siting and Operation of Non Renewable Energy	Project not in compliance – Mainline
Conservation and Open Space Element: Chapter 4, Fire Safety Goal S-4, Reduce the threat to life, structures and the environment	Project not in compliance – Mainline
Conservation and Open Space Element: Chapter 4, Fire Safety Goal S-14, Reduce the threat to life structures and the environment	Project not in compliance – Mainline
Conservation and Open Space Element: Chapter 6, Other Safety Issues Goal S-6, Reduce the Potential for harm to individuals and damage to environment from hazards	Project not in compliance – Mainline

## VI. DEVELOPMENT PLAN FINDINGS

In order to approve a Development Plan, the CZLUO (Title 23.02.034(C) (4)) requires that the following findings must be made. Each finding must be supported by substantial evidence in the record. Based on staff's review of the Project, the staff report concludes that these findings cannot be made.

**Required findings.** The Review Authority shall not approve or conditionally approve a Development Plan unless it first finds that:

- a. *The proposed project or use is consistent with the Local Coastal Program and the Land Use Element of the General Plan; and*
- b. *The proposed project or use satisfies all applicable provisions of this Title; and*
- c. *The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use; and*
- d. *That the proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development; and*
- e. *That the proposed use or project will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project.*
- f. *The proposed use or land division (if located between the first public road and the sea or the shoreline of any body of water), is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act.*
- g. *Any additional findings required by planning area standards (Part II of the Land Use Element), combining designation (Chapter 23.07), or special use (Chapter 23.08).*

Exhibit C includes a complete discussion of the findings based upon facts that have been presented at the time of staff report publication. The Development Plan findings overlap to a certain extent with the issue of General Plan consistency and impact issue areas addressed in the Final EIR, and thus some issues may be discussed several times under different headings. In addition, many of these include issues related to the construction and operation of the spur and unloading facilities within the Santa Maria Refinery property (i.e., onsite) as well as inconsistencies related to the transportation of crude oil via rail along the mainline rail routes. These issues are discussed separately as either onsite or mainline impacts and are additionally reflected as such in the Final Environmental Impact Report (FEIR) and General Plan analysis.

In summary, the required findings for issuance of the Development Plan and Coastal Development Permit cannot be met. The Project does not comply with the County's Local Coastal Program and Land Use Element of the General Plan. As shown under the Project Analysis Section V of this Staff Report and Exhibits A and B, the Project does not comply with numerous General Plan policies, programs, and ordinance requirements as they relate to environmentally sensitive habitats, air quality,

safety, hazards, energy development, water resources, riparian areas, cultural resources, and agricultural resources.

The Project would adversely impact the health, safety, and welfare of the public as a result of significant and unavoidable impacts related to air quality, cancer risk, accidental release, fire and potential explosions as a result of the construction and operation of the Project. Public concerns have been expressed regarding the safety of the unloading process on the project site, as well as along the rail lines through the County and through the State. Some of the concern related to mainline rail also has to do with the County likely being preempted from mitigating or conditioning impacts to areas beyond the project site (refer to Section VII below for further discussion on preemption).

## VII. FEDERAL PREEMPTION

The federal government has historically, and heavily, regulated rail transportation in the U.S., beginning with the Interstate Commerce Act of 1887. In 1995, Congress enacted the Interstate Commerce Commission Termination Act (ICCTA), which replaced the Interstate Commerce Commission with the Surface Transportation Board. The ICCTA also included a broad statement of preemption of state and local regulation of rail transportation. In essence, this means that the federal government through the Surface Transportation Board has full authority over all rail transportation and therefore the County is unable to require local regulation within these areas:

As outlined in the ICCTA the jurisdiction of the [Surface Transportation] Board includes:

- (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services and facilities of such carriers; and
- (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

This law preempts state and local regulation “that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws of general application having a more remote or incidental effect on rail transportation.” (*People v. Burlington Northern Santa Fe Railroad* (2012) 209 Cal.App.4th 1513, 1528.). A project falling under the Surface Transportation Board’s jurisdiction is not subject to CEQA or to local regulation, except for ministerial permits and generally applicable codes protecting the public health and safety such as electrical, plumbing, and fire codes.

The Applicant has asserted that the ICCTA preempts the County from subjecting the rail component of the proposed project to CEQA review and from mitigating any of the potential impacts identified from project-related mainline activities. UPRR has generally concurred, pointing to cases where courts have found that local conditions imposed on permits unreasonably burdened rail carriage and were therefore preempted. (See Exhibit J for correspondence from the Applicant and UPRR regarding federal preemption.)

Opponents of this and other recently proposed rail projects state the regulatory authority granted by the ICCTA is not limitless, does not preempt CEQA, that CEQA is an information statute which does not interfere with interstate commerce, and that CEQA requires that all significant impacts of a project be mitigated if reasonably feasible.

In the case of this Project, it is clear that for activities performed within the Santa Maria Refinery (SMR) site the County is not preempted by federal law since these activities would not occur on UPRR property and would not involve infrastructure or trains operated by UPRR. However, federal law would likely limit the ability of the County to regulate the type and design of locomotives since they are owned and operated by UPRR to transport goods throughout the nation and because regulation of the types of locomotives that could be used for this project would likely interfere with interstate commerce. The impacts of the activities that occur on the Project Site are described and evaluated in the FEIR, and the County as CEQA Lead Agency has the authority to impose mitigation measures or conditions of approval to reduce potential impacts within the boundaries of the SMR.

As lead agency, the County determined that it would analyze potential project-related impacts that may occur along UPRR's mainline in order to meet the information disclosure requirements of CEQA. While the FEIR describes these potential impacts of project-related train movements along the UPRR mainline throughout the state, the County Department of Planning and Building, based on input from legal counsel, understands the County as CEQA Lead Agency may be preempted from imposing mitigation measures disclosed in the FEIR on UPRR equipment and train movements statewide on the mainline. This information was included in the FEIR to ensure full disclosure of impacts and mitigations.

## **VIII. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

### **A. Geographic Scope of Analysis**

The FEIR evaluates the environmental issues associated with the Project, both on the project site and beyond the boundaries of the project site onto the UPRR mainline throughout California and beyond. The operation of trains to and from the Santa Maria Refinery (SMR) would be performed by UPRR, on UPRR property, and on trains operated by UPRR employees.

Trains could enter California at five different locations. Depending upon the route taken by the train they could arrive at the project site from the north or the south. It is unknown what route UPRR would use to deliver the trains to the SMR. Coming from the north the routes merge at the UPRR Roseville Rail Yard. From the south the routes merge at the Colton Rail Yard. Given that the route the trains would travel to get to these two UPRR yards is speculative, the FEIR has evaluated in more detail the impacts of trains traveling from these two UPRR yards to the SMR.

Beyond the two UPRR Yards, trains could travel any number of routes. Crude oil delivered to California by UPRR would generally pass through either of these two rail yards in route to the SMR. Depending upon the source of the crude oil, crude oil trains could use any portion of the UPRR network between Roseville/Colton and the source location for the crude oil. The exact route that would be taken would depend upon a number of factors, that could include the source of the crude oil, weather conditions, train traffic conditions, etc. Since the routes past Roseville and Colton are somewhat speculative, the FEIR has discussed in a more qualitative nature the potential impacts of train traffic beyond these two rail yards.

Once the train arrives at the SMR, it would be operated by Phillips 66 personnel on property owned by Phillips 66. Therefore, activities performed within the SMR would not be preempted by federal law since they would not occur on UPRR property and would not be operated by UPRR employees. For the impacts of the activities that occur within the SMR, the County as CEQA Lead Agency, and other state and local responsible agencies have clear authority to impose mitigation measures. The following are discussions of the significant and unavoidable impacts associated with the Project at the SMR (refer to Section VII.B below) and on the mainline (refer to Section VII.C below).

## B. Project Site – CEQA Discussion

The FEIR identifies several project site-specific impacts (versus railroad mainline impacts) that would result from implementation of the project (i.e., impacts that would result solely based on activities on the project site). Of these impacts, most can be reduced to a level of insignificance through the County's ability to require implementation of various mitigation measures (i.e., resulting in Class II impacts). Issue areas where impacts can be reduced to insignificant include aesthetics/visual resources, water resources, biological, cultural, geological, noise, public services, traffic, and air quality impacts.

However, there would remain two project site-specific significant and unavoidable adverse air quality impacts (i.e., Class I impact) for operational activities at the SMR.

- 1. Air Quality (AQ.2):** The Project would exceed the diesel particulate matter (DPM) emission threshold of 1.25 pounds per day at the Santa Maria Refinery. The onsite DPM emissions for the project would be about 8.15 lbs per day. The use of Tier 4 locomotives and reduced idling time for locomotives onsite as mitigation would reduce the DPM emissions to 0.72 lbs per day. However, since UPRR (and not the Project Applicant) would own the locomotives, and the locomotives are used for interstate commerce, the mitigation measure to use Tier 4 locomotives would likely be preempted by Federal law, and therefore may not be a feasible mitigation measure. Without the use of Tier 4 engines the DPM emissions would be 7.45 lbs per day (this includes the reduction in idling at the site). DPM is an air toxic and would contribute to the local PM<sub>10</sub> emissions, which already exceed the State PM<sub>10</sub> air quality standard. Therefore, even with all of the proposed mitigation the County could feasibly implement, the impact would remain significant and unavoidable (Class I).
- 2. Air Quality (AQ.4):** The Project would generate toxic air emissions in the vicinity of the Santa Maria Refinery that exceed San Luis Obispo County Air Pollution Control District (SLOCAPCD) health risk thresholds when factoring in the 2012 California Office of Environmental Health Hazard Assessment (OEHHA) childhood exposure and breathing rate adjustments (refer to FEIR, Section 4.3.4.2, Impact AQ.4). The SLOCAPCD cancer risk CEQA threshold is 10 in a million for toxic emissions.

In assessing health risk impacts, the state-approved Hotspots Analysis and Reporting Program (HARP) model was used for the FEIR. In late April of 2015 OEHHA issued the final Guidance Manual for Preparation of Health Risk Assessments, as well as an updated health risk assessment model (HARP2). Given that this is the most recent up to date HRA model approved by the State, San Luis Obispo County Planning decided that all of the HRA analysis in the FEIR should be updated to reflect the final HRA guidance and HRA model from OEHHA. The California Air Pollution Control Officers Association (CAPCOA) guidelines for Health Risk Assessments (which are the guidelines the SLOCAPCD uses) requires that the health risk assessment for a facility include all existing fixed and mobile sources plus the proposed Project.

HARP2 modeling for the Project, when taking into consideration the existing SMR, all existing trucking operations, and the proposed project, results in a maximum exposed individual resident (MEIR) cancer risk of 26.5 in a million. This includes emission sources at the project site as well as the mainline emissions near the SMR. Both of these sources affect the same receptors near the SMR. The SLOCAPCD cancer risk threshold is 10 in a million for toxic emissions. Note that the APCD considers all sources (both the project site sources and the mainline sources) in comparison to the thresholds when determining significance (see section C.4 below). The maximum exposed individual location is the residential area north of the SMR.

The use of Tier 4 locomotives and reduced idling time for locomotives onsite as mitigation would reduce the MEIR to 6.0 in a million at the same receptor. However, since UPRR (and not the Project Applicant) would own the locomotives, and the locomotives are used for interstate commerce, the mitigation measure requiring the use Tier 4 locomotives would likely be preempted by Federal law, and therefore may not be a feasible mitigation measure. Without the use of Tier 4 engines but with implementation of other mitigation measures, the MEIR would be 13.6 in a million at the same receptor (this includes the reduction in idling at the site, use of cleaner truck engines, and daytime unloading only). Therefore, even with all of the proposed mitigation measures the County could implement, the impact would remain significant and unavoidable (Class I).

### C. Union Pacific Rail Road (UPRR) Mainline – CEQA discussion

The FEIR identifies ten impacts from operation on the mainline that are considered significant unavoidable (i.e., Class I impacts). The following is summary of the ten Class I impacts.

1. **Agricultural Resources (AR.5):** The Project would result in effects that impair adjacent agricultural resources and uses along the UPRR mainline in the event of a derailment and/or spill, including the generation of contaminated air emissions, soil and surface water contamination, and increased risk of fire, which have the potential to adversely affect adjacent agricultural areas. Implementation of mitigation measures have been recommended (i.e., measures that would reduce the likelihood of an oil spill and increase the ability of first response agencies to respond to a crude oil spill along the mainline); however, even with full implementation of these measures impacts to agricultural resources would be significant. In addition, Federal preemption would likely prevent local agency (County) regulation of rail lines and implementation of appropriate mitigation measures to protect and reduce impacts to agricultural resources along the mainline may not be feasible or enforceable. Therefore, oil spill impacts to agricultural resources along the UPRR mainline tracks would be significant and unavoidable (Class I).
2. **Air Quality (AQ.2):** Operational activities associated with the Project within San Luis Obispo County (SLOC) along the UPRR mainline would generate nitrogen oxide (NO<sub>x</sub>), reactive organic gases (ROG), and diesel particulate matter (DPM) emissions that exceed SLOCAPCD thresholds. For the mainline rail emissions it is possible that contractually the Applicant could require the use of lower emission locomotives such as Tier 4 locomotives. However, since these are operated by UPRR on UPRR tracks, a requirement that the Applicant enter into this type of contractual provision is likely preempted by Federal law and therefore unenforceable. The County may also be preempted by Federal law from requiring emission reduction credits for mainline rail emissions. Due to the possible preemption by Federal law which could prevent the mitigation measures from being implemented (outside of the SMR facility boundary), emission reduction credits might not be achievable and impacts would remain significant and unavoidable (Class I).
3. **Air Quality (AQ.3):** Operational activities of trains along the mainline rail route outside of SLOC associated with the Project would generate NO<sub>x</sub> and ROG emissions that exceed thresholds of 15 air districts other than SLOCAPCD. For three of these districts impacts cannot be mitigated to less than significant levels. Mitigation has been recommended that includes use of Tier 4 locomotives and the purchase of emission credits. For the mainline rail emissions it is possible that contractually the Applicant could require the use of lower emission locomotives such as Tier 4 locomotives. However, since these are operated by UPRR on UPRR tracks, a requirement that the

Applicant enter into this type of contractual provision would likely be preempted by Federal law and therefore unenforceable. The County may also be preempted by Federal law from requiring emission reduction credits for mainline rail emissions. Since it is unlikely that these mitigation measures will be implementable and it is uncertain if the other Air Districts could require emission reduction credits, the impacts associated with the mainline rail operation would remain significant and unavoidable (Class I).

4. **Air Quality (AQ. 5):** Operational activities of trains along the mainline rail route associated with the Project would generate toxic air emissions that exceed the San Luis Obispo County Air Pollution Control District (SLOCAPCD) health risk thresholds when factoring in the 2012 California Office of Environmental Health Hazard Assessment (OEHHA) childhood exposure and breathing rate adjustments (refer to FEIR, Section 4.3.4.2, Impact AQ.5). The SLOCAPCD cancer risk CEQA threshold is 10 in a million for toxic emissions. These activities include movement of the locomotives on the mainline (and in areas near the SMR which are also impacted by project site activities) due to the emissions of air toxics such as diesel particulate matter. Calculations in the FEIR show that this Project would exceed the cancer threshold of 10 in a million for areas where trains speeds are limited to 30 miles per hour or less. Mitigation has been recommended that includes use of Tier 4 locomotives and the purchase of emission credits. Since it is unlikely that these mitigation measures will be implementable due to Federal preemption, and it is uncertain if the other Air Districts could require emission reduction credits, the air toxic emission impacts associated with the mainline rail operation would remain significant and unavoidable (Class I).
5. **Air Quality (AQ.6):** Operational activities along the mainline rail routes would generate greenhouse gas (GHG) emissions that exceed SLOCAPCD thresholds. Emissions of GHG would result from locomotives operating along the mainline. Project-related GHG emissions within California would exceed the SLOCAPCD thresholds and therefore would be considered significant. Since the State does not have a GHG threshold, the FEIR used the SLOCAPCD threshold for determining the significance of GHG emissions for mainline operations. For the mainline rail GHG emissions it is possible that the Applicant could be required to obtain GHG emission reduction credits. However, the County may also be preempted by Federal law from requiring emission credits for mainline rail GHG emissions. Due to the possible preemption by Federal law which could prevent mitigation measures from being implemented (outside of the SMR facility boundary), emission reduction credits might not be achievable and impacts would remain significant and unavoidable (Class I).
6. **Biological Resources (BIO.11):** Transport of crude oil by rail, along the UPRR mainline, could result in a crude oil spill that significantly impacts sensitive plant and wildlife species, wetlands, creeks, rivers and waterways. Implementation of oil spill prevention plan and first response mitigation measures (i.e., BIO-11 and PS-4a through PS-4e in the FEIR) would serve to reduce the likelihood of an oil spill and enhance the ability of first response agencies to respond to a crude oil spill. The County may be preempted by federal law from implementing these measures as they require particular contractual provisions that might be determined to improperly impact interstate commerce. There are several state and federal laws and rules that are proposed to help minimize impacts from rail-related oil spills (e.g., SB 861 to be implemented by California Department of Fish and Wildlife/Office of Spill Prevention and Response (CDFW/OSPR) and United States Department of Transportation's (USDOT's) proposal for oil trains to have comprehensive Oil Spill Response Plans in place). Given the uncertain timing of these rules and that the County may be

preempted from implementing mitigation measures for the mainline rail oil spills, potential impacts to biological resources along the UPRR mainline tracks would be significant and unavoidable (Class I).

7. **Cultural Resources (CR.6):** Train traffic associated with the importation of crude oil to the project site could result in a derailment or a material spill, which could result in the disturbance and destruction of cultural resources along the mainline routes. Clean-up of an oil spill would likely require the use of bulldozers, front end loaders, and other construction equipment to remove any contaminated soil. Use of this type of construction equipment could impact both known and unknown cultural, historic, and paleontological resources. Implementing cultural resources emergency contingency and treatment plan mitigation measure CR.6 in the FEIR could reduce potential impacts; however, there is the potential that a derailment or a spill may destroy a significant cultural or historic resource, and remediation actions may not result in the recovery of significant resources. In the event this occurs, the residual effect could be significant and unavoidable (Class I).
8. **Hazards and Hazardous Materials (HM.2):** The potential for a crude oil unit train derailment would increase the risk to the public in the vicinity of the UPRR right-of-way. It is unknown what route UPRR would use to deliver the trains to the SMR. Coming from the north the routes merge at the UPRR Roseville Rail Yard and from the south the Colton Rail Yard. Modeled scenarios ranged from small releases from a tank car, to the complete loss of multiple tank cars. The worst case spill was assumed to be 180,000 gallons (about six tanker cars). An explosion of tank cars, simulated as a Boiling Liquid Expanding Vapor Explosion (BLEVE), was also evaluated. Implementing tank car design improvements, route analysis, positive train control (which is a system of functions for safety control such as GPS and other electronic safety features), and first responder mitigation measures would reduce the potential for a rail accident and loss of containment, and would also improve emergency response in the event of an accident. Even with this reduction in release probability, the hazards associated with the project risk along the UPRR right-of-way would still be significant in the event of a release of crude oil that resulted in a fire or explosion. The County may be preempted by federal law from implementing these measures, particularly those that would require particular contractual provisions that would improperly impact interstate commerce or conflict with the Interstate Commerce Commission Termination Act (ICCTA). Therefore, the risk to the public along the UPRR mainline tracks would be significant and unavoidable (Class I).
9. **Public Services (PS.4):** Operations of the crude oil train on the mainline UPRR tracks would increase demand for fire protection and emergency response services along the rail routes. As discussed above, the worst case spill from a unit train on the mainline tracks was assumed to be 180,000 gallons (about six tanker cars). An accident along the UPRR mainline tracks could result in an oil spill or fire, which would place demand on fire and emergency responders. Mitigation identified for this impact includes requiring the Applicant, as part of their contract with UPRR, to provide for advanced notice of shipments to the SMR, use of enhanced rail cars, annual funding for first responder training, and emergency notification in the event of an accident. It is not certain that implementation of the mitigation measures discussed above is feasible given that the County may be preempted by federal law. Therefore, oil spill impacts to fire protection and emergency response services along the UPRR mainline tracks would be significant and unavoidable (Class I).

10. **Water Resources (WR.3):** A rupture or leak from a rail car on the UPRR mainline track could substantially degrade surface water quality. While the exact route the trains would take to get to these two rail yards is speculative, all of the routes within and outside of California would traverse numerous creeks, washes, rivers, wetlands, and sloughs, which would increase the probability of a spill impacting water resource areas such as surface water bodies. Implementation of oil spill prevention plan and first response mitigation measures (i.e., BIO-11 and PS-4a through PS-4e in the FEIR) would serve to reduce the likelihood of an oil spill and the ability of first response agencies to respond to a crude oil spill. The County may be preempted by federal law from implementing these measures as they require particular contractual provisions that might be determined to improperly impact interstate commerce. There are several laws and rules that are proposed to help minimize impacts from rail-related oil spills (e.g., SB 861 to be implemented by CDFW/OSPR and USDOT proposal for oil trains to have comprehensive Oil Spill Response Plans in place). Given the uncertain timing of these rules and that the County may be preempted from implementing the identified mitigation measures, impacts to water resources along the mainline would be potentially significant and unavoidable (Class I).

## **IX. OTHER ISSUES / MAJOR ISSUES RECEIVED FROM PUBLIC COMMENTS**

### **A. Neighboring Governmental Entities**

In addition to the comments received during the public comment period for the EIR, the Department has continued to receive comments subsequent to the comment period from private individuals and others. Of note are the comments that have been received from state and local governmental officials, counties, cities, schools and fire protection districts expressing concern over the Project's use of the mainline to transfer crude oil through their communities and past their facilities (refer to Exhibit F for a list of post comment period agency and special district commenters). The comments generally request that County decision-makers do not approve the project; or, if they do consider Project approval to first conduct additional risk analysis, adopt the best available tank car standards and ensure that they are adhered to, and require that better crude by rail safety standards be implemented. The letters listed in Exhibit F as well as all others received, including those from private individuals, are included as a part of the record.

Because the Interstate Commerce Commission Termination Act (ICCTA) may preempt the County from imposing a number of conditions that would mitigate project-related impacts along UPRR's mainline, certain impacts would remain unmitigated. Some of those impacts, such as those to fire protection or first responder services, have the potential to negatively affect public health and safety and the health and safety of residents and workers outside of the County. Even though those impacts would occur outside of the County's jurisdiction, these are legitimate concerns to be considered by your Commission. As a political subdivision of the state, created for the purpose of "advancing the policy of the state at large," the County may appropriately consider the impacts its decisions may make on citizens of the state at large. As a result, the proposed findings included in Exhibit C hereto address some of these state-wide concerns.

### **B. Hazard Zone**

An ongoing issue of state and national controversy and concern, for this Project as well as other proposed rail projects, relates to Impact HM.2 (Hazards and Hazardous Materials) in the FEIR and described above. This impact deals with the potential for a crude oil unit train derailment that would increase risk to the public in the form of fire, explosion, and exposure in the vicinity of the UPRR right-of-way. The issue of rail car safety has come to the forefront

over that last several years due to the number train derailment and explosion incidents that have occurred (refer to Exhibit I, which provides a list of the 24 crude by rail accidents over the past few years). A related, and commonly discussed, issue is the exposure of the general public to the “blast zone” (properly referred to as the hazard zone). The hazard zone is an area where people could be injured or killed during an explosion and is an area calculated as part of consequence modeling. For some emergency response activities the hazard zone is typically referred to as the area that should be evacuated, which is usually larger than the area where people could be injured or killed.

For crude oil the hazard zone is typically driven by heat from a fire, or what is called thermal radiation. In recent crude by rail accidents rail cars have been punctured or valves/fittings have been damaged, oil spills and ignites, resulting in what is called a pool fire. A pool fire gives off a large amount of heat, which can injure or kill people who are too close to the fire. Depending upon the amount of oil spilled these pool fires can burn for a long period of time.

If a pool fire occurs underneath undamaged rail cars the cars can heat up and the tank can fail via what some people call a thermal tear. This can result in a boiling liquid expanding vapor explosion (BLEVE). A BLEVE can result in a fire ball, which burns very quickly and gives off large amounts of heat in a short period of time, which can injure or kill people who are too close to the fire. The extent of the fire and level of possible heat from the fire can be dependent upon a number of factors, one being the level of volatility of the crude oil. The volatility of crude oil is primarily driven by how much light end material is in the crude. Typically Bakken crude has more light ends than does Canadian Dil-bit crude.

Table 4.7.12 in the FEIR provides the estimated hazard zones for a mainline rail accident for the Canadian crudes evaluated in the FEIR. The maximum hazard zone was estimated to be about 1,690 feet. Canadian tar sands are not as “explosive” as Bakken crude oil. The FEIR does not include consequence modeling on Bakken crude as part of the proposed Project because the project would be prohibited from receiving Bakken as well as other light end crude and petroleum products with an API Gravity of 30° or greater. However, the FEIR did look at Bakken crude hazard zones as part of the cumulative analysis for other crude by rail projects. Consequence modeling of Bakken crude had a maximum hazard zone of about 2,340 feet. Hazard zones are specific to each type of crude based upon the composition of the crude and in particular the amount of light ends in the crude.

A 1.0 mile impact or “blast” zone was mentioned often in comment letters. The 0.5 mile U.S. Department of Transportation (USDOT) Evacuation Zone for Oil Train Derailments and 1.0 Mile USDOT Potential Impact Zone in case of Oil Train Fire numbers are derived from the 2012 Emergency Response Guidebook offered by the USDOT, and used throughout North America for initial response hazardous material releases. 0.5 mile is the recommended initial evacuation distance for a tank, rail car, or tank truck carrying a flammable liquid involved in a fire, while 1.0 mile is the recommended initial evacuation distance for a tank, rail car, or tank truck carrying a liquefied/flammable gas. The 2012 Emergency Response Guidebook offered by the USDOT also states that for large spills of flammable liquids without a fire the recommended evacuation zone is 1,000 feet. For large spills of flammable gasses without a fire the recommended evacuation zone is 0.5 mile.

### **C. Tank Car Regulations**

As a result of the numerous crude oil tank car derailments that have occurred over the last two years in conjunction with the rapid increase in transport of crude oil by rail, the USDOT, in coordination with the Federal Railroad Administration, National Transportation and Safety Board, Pipeline Hazardous Materials and Safety Administration, American Association of Railroads, as well as numerous state and local regulatory agencies have been active in

making recommendations and passing new laws with the objective of increasing the level of safety for transporting crude by rail. The USDOT (May 1, 2015) issued their final rule covering enhanced tank car standards and operational controls for high-hazard flammable trains. The final rule defines certain trains transporting large volumes of flammable liquids as “high-hazard flammable trains” (HHFT) and regulates their operation in terms of speed restrictions, braking systems, and routing. The final rule also adopts safety improvements in tank car design standards, a sampling and classification program for unrefined petroleum-based products, and notification requirements. Exhibit G, Table G-1 provides a summary of the elements of the final rule and Table G-2 further summarizes the design specifications for tank cars allowed under the final rule. New tank cars built after October 1, 2015 would be required to meet the new DOT-117 standard. All existing Non-Jacketed CPC-1232 tank cars in Packing Group I service (i.e., tank cars proposed for use by the project Applicant) would have to meet the DOT-117R standard by April 1, 2020.

Use of DOT-117 tanker cars would reduce the probability of a release from a rail car by about 73.9% percent over the rail car design that is currently proposed by the Applicant. Use of the DOT-117R tanker cars would reduce the probability of a release from a rail car by about 65.9% percent over the rail car design that is currently proposed by the Applicant. Exhibit G, Figure G-1 shows the risk for the mainline rail transport between the SMR and state line assuming the use of either DOT-117 or DOT-117R tanker cars. The FEIR recommends a tank car design mitigation measure that is more stringent and safer than the May 1, 2015 final rule (the DOT-117/117R requirements) issued by the USDOT (refer to FEIR, Section 4.7, Table 4.7.6, Option 1; and, Mitigation Measure HM-2a). The Applicant has stated that the County is preempted from requiring implementation of this and other mitigation measures associated with the mainline portion of the Project. The primary difference between the FEIR recommended tank car design and the DOT-117 tank car design is that the FEIR recommended Option 1 tank cars would have top fittings that would be less likely to be compromised in a tank car roll over and would initially also have a more advanced and safer braking system (refer to Exhibit G, Table G-3).

## **X. ALTERNATIVE PROJECT / REDUCED PROJECT**

The FEIR includes an alternatives section which describes multiple project alternatives such as a revised onsite rail spur configuration; shorter unit trains, hauling of crude by truck to a nearby pump station, and a reduced rail delivery project versus the proposed project of five trains per week. These alternatives are a requirement of CEQA in order to provide the public and decision makers an opportunity to review other potential project designs that could meet most of the project’s objectives and reduce or eliminate significant impacts on the environment.

Generally County Planning staff could recommend approval of a project alternative if it would lessen or avoid significant environmental impacts, and complied with the requirements set forth in the General Plan/CZLUO, including the findings regarding health, safety, welfare, and compatibility with surrounding uses. The Project however is unique in that all alternative designs of the rail spur project on the Santa Maria Refinery site do not comply with the County’s General Plan with regards to removal of environmentally sensitive habitat areas, and raise concerns in regards to health and safety, significant environmental impacts, and compatibility with surrounding uses at the project site and in communities along the mainline. Therefore, Planning staff is not recommending approval of an alternative version of the Project that modifies layout and design of the rail spur at the Santa Maria Refinery.

The FEIR evaluated a reduced delivery project alternative of three trains per week (versus five). Although this alternative reduces some impacts, significant environmental impacts would still result along with health and safety concerns which remain an issue.

The reduced delivery project alternative (three trains per week) would reduce the “Class I” significant toxic air emissions impact at the Santa Maria Refinery discussed above in Section VIII.B by lowering the cancer risk to below the San Luis Obispo County Air Pollution Control District threshold of 10 in a million. At three trains per week, or 150 trains per year, this alternative would result in a cancer risk of 9.5 in a million, which is below the 10 in a million threshold. Due to being below the SLOCAPCD threshold, this would no longer be considered a Class I significant impact. While no longer significant, health and safety risks, other significant environmental impacts, and other compatibility concerns remain a concern for affected communities and neighbors.

Air emissions of diesel particulate matter onsite (which are based on the peak day and would not change regardless of the number of trains used) would still be above the SLOCAPCD CEQA thresholds of 1.25 lbs per day even with partial mitigation, and would remain a Class I impact under the three train per week alternative. The diesel particulate matter emissions, which are an air toxic, would contribute to the localized PM<sub>10</sub> emissions, which already exceed the State PM<sub>10</sub> air quality standard. This onsite Class I impact would require the adoption of overriding considerations as discussed below in Section XI.

The reduced alternative of three trains per week would still require construction of the same facilities as the proposed Project with the same level of disturbance to environmentally sensitive habitat. Thus the three train per week alternative would still not comply with the environmentally sensitive habitat area requirements set forth in the General Plan, Local Coastal Program, and CZLUO.

While the reduced delivery alternative of three trains per week, would reduce the likelihood of a train accident and resultant oil spill along the mainline rail routes, the ten “Class I” mainline impacts would remain significant and unavoidable (Class I) resulting in the need for the adoption of overriding considerations as discussed below. Since the reduced delivery alternative would still result in the same Class I impacts for the mainline rail routes as the proposed Project, the areas of non-compliance with the General Plan and CZLUO identified for the proposed Project along the mainline rail route would remain the same for the reduced delivery alternative. Concerns regarding health and safety, compatibility with properties and neighbors of the project site, and with communities along the mainline remain considerable.

The table below has been included to show how the reduced delivery alternative of three trains per week would affect General Plan/CZLUO policy inconsistencies and Class I impacts onsite and along the mainline rail routes. Exhibit K provides a more detailed table on the comparison of Class I impacts and General Plan/CZLUO inconsistencies between the proposed Project (5 trains per week) and the reduced delivery alternative (3 trains per week).

<b>Reduced Rail Delivery Comparison</b>				
<b>Project/Alternative</b>	<b>Onsite</b>		<b>Mainline Rail Routes</b>	
	<b># Class I Impacts</b>	<b># of General Plan/CZLUO Inconsistencies</b>	<b># Class I Impacts</b>	<b># of General Plan/CZLUO Inconsistencies</b>
Proposed Project (5 trains per week)	2	15	10	17
Reduced Delivery Alternative (3 trains per week)	1	14	10	17

One of the Class I impacts (AQ.2) applies to both onsite and along the mainline rail route since it covers air emissions within San Luis Obispo County.

See Exhibit K for a detailed breakdown of the Class I impacts and General Plan/CZLUO inconsistencies.

In summary, staff carefully considered, and the FEIR evaluated, a range of project alternatives including a reduced rail delivery alternative of three trains per week. While a reduced rail delivery project reduced the severity of the Class I impacts associated with the Project, including a reduction of the significant cancer risk onsite, other impacts related to air quality onsite, as well as numerous significant impacts along the mainline, and health and safety concerns would remain. A reduced project would reduce some compatibility issues with surrounding properties as well as communities along the mainline, but significant compatibility and General Plan policy inconsistencies would remain along with lingering health and safety concerns. Staff does not recommend approval of the reduced rail delivery alternative.

## **XI. OVERRIDING CONSIDERATIONS REQUIRED**

In order to approve a project with significant and unavoidable impacts, the California Environmental Quality Act (CEQA) requires decision makers to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental impacts when determining whether to approve or deny the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of the proposed project outweigh the unavoidable adverse environmental effects, the adverse effects may be considered acceptable.

Based on Staff's review of the proposed project and the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits presented at this time, Staff is recommending that the proposed project be denied. At this time, the benefits of the project do not appear to outweigh the significant environmental impacts identified in the FEIR.

## **XII. STAFF COMMENTS**

A large volume of public and agency comments have been received from throughout the state of California during public review of the DEIR and the RDEIR as well as subsequent to the close of the RDEIR public comment period. Comments have been received both in support and in opposition to the Project (primarily the latter). As discussed above, the Project would result in significant and unavoidable impacts (Class I) which cannot be mitigated to a level of insignificance. The Project raises health and safety concerns and is inconsistent with provisions of the General Plan and with the findings required to approve a Development Plan and Coastal Development Permit. Through the public hearing process, your Commission may determine, based on public comment and other input from members of the public and / or the Applicant to either approve or deny the Project.

### **A. FEIR Certification**

Staff is recommending denial of the project; therefore staff and County Counsel are also recommending that the Final EIR not be certified by the Planning Commission. If the Planning Commission denies the project, the FEIR should not be certified for the following reasons:

1. CEQA does not apply to projects rejected or disapproved by a public agency (Pub. Res. Code 21080);
2. Were the EIR to be certified, anyone wishing to challenge the adequacy of the EIR must file a lawsuit within 30 days after the Notice of Determination is filed;
3. Without an approved Development Plan/Coastal Development Permit, the applicant would be under no obligation to defend or indemnify the County for the time and money required to defend such a lawsuit. Nor would the applicant be required to reimburse the County for any attorney's fees that the County might have to pay to the litigants in the event the EIR is found to be inadequate for any reason; and,

4. Certification opens the County to potential liability even though no project is approved.

### **XIII. AGENCY REVIEW**

There are numerous agencies which have submitted comments regarding the Project. Comments were submitted during the EIR process and many were submitted later for the Planning Commission's review as a part of the record for the deliberation process (a complete list of comment letters from agencies submitted after the close of the EIR comment period can be found in Exhibit F attached). In addition to the agencies listed on the first page of this staff report which received referrals when the project was initially submitted to the County Planning and Building Department, the following agencies have been involved in the project throughout the EIR process and their comments are listed in the Final EIR along with responses:

- Berkeley (City of);
- Davis (City of);
- Placer County Air Pollution Control District;
- Sacramento Area Council of Governments;
- Sacramento Metro Air Quality Management District;
- San Luis Obispo Council of Governments;
- Santa Barbara (County of);
- Santa Barbara County Air Pollution Control District;
- South Coast Air Quality Management District; and,
- Ventura County Air Pollution Control District.

### **XIV. LEGAL LOT STATUS**

The one existing parcel is a portion of Lots C, F, G, M and N and all of Lots H, I, J, K, and L of the Standard Eucalyptus Tract filed in the office of the County Recorder of said County of San Luis Obispo on 11/1/1909 and recorded in Book 1, at Page 12 of maps thereof, and also Lots 1-6 inclusive and Lots 9 to 19 inclusive of the map entitled "Map of the Subdivisions of Lot "E" of the Standard Eucalyptus Tract" filed in the office of the County Recorder of said County of San Luis Obispo on 3/10/1910 and recorded in Book 1, at Page 17 of maps thereof. The parcel was legally created by deeds, Public Lot 80-88 and Parcel Map CO73-350, at a time when that was a legal method of creating parcels.

The Staff Report was prepared by the County of San Luis Obispo Department of Planning and Building with assistance from SWCA, Inc., and Marine Research Specialists.

**EXHIBITS**

Exhibit A – Project Analysis, General Plan and Ordinance INCONSISTENCIES “Onsite”

Exhibit B – Project Analysis, General Plan and Ordinance INCONSISTENCIES “Mainline”

Exhibit C – Findings for Denial

Exhibit D – California Coastal Commission Site Visit Letter

Exhibit E – Project Graphics

Exhibit F – Post Comment Period Agency & Special District Comments

Exhibit G – USDPT Rail Car Specifications and Risk Levels

Exhibit H – Agencies and Individuals Consulted During EIR

Exhibit I – Crude by Rail Accident Table

Exhibit J – Correspondence from the Applicant and UPRR Regarding Federal Preemption

Exhibit K – Detailed Reduce Rail Delivery Comparisons

## Findings for Denial

### A. Environmental Determination

1. The Environmental Coordinator, after completion of the initial study, found that there is evidence that the project may have a significant effect on the environment, and therefore a Final Environmental Impact Report (FEIR) was prepared (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) for this project. The FEIR considers the following issues: Aesthetics and Visual Resources, Agricultural Resources, Air Quality and Greenhouse Gases, Biological Resources, Cultural and Historical Resources, Geological Resources, Hazards and Hazardous Materials, Land Use and Recreation, Noise and Vibration, Population and Housing, Public Services and Utilities, Transportation and Circulation and Water Resources. The FEIR also considers alternatives in addition to the "No Project" alternative.
2. While a FEIR has been prepared, per the Public Resources Code 21080(b)(5) and CEQA Guidelines, CEQA does not apply to projects which a public agency rejects or disapproves. However, the FEIR has provided evidence and information to support this recommendation for denial, including an evaluation of the significant and unavoidable environmental impacts of the proposed project.
3. There are insufficient specific, overriding economic, legal, social, technological, or other benefits of the project that outweigh the significant effects on the environment, as would be required to approve the project pursuant to Public Resources Code section 21081. Additionally, due to federal preemption, implementation of mitigation measures to lessen the Class I impacts on the Mainline within San Luis Obispo County and the state are infeasible, as argued by the Applicant.

### B. Environmentally Sensitive Habitat

4. The proposed project is located within an Environmentally Sensitive Habitat area:

Following the circulation of the Public Draft EIR, additional biological survey efforts were conducted in 2015 by Arcadis and Leidos to ensure accuracy and consistency with vegetation type mapping with the National Vegetation Classification system, as described within A Manual of California Vegetation (Sawyer et al 2009).

Based on the best available information, it is determined that the Rail Spur Project area:

- a. Is currently occupied by plant species that are listed as Rank 1B status by the California Native Plant Society; and,
- b. Is currently occupied by sensitive communities as classified by the California Department of Fish and Wildlife (CDFW) under the National Vegetation Classification system described in A Manual of California Vegetation, Second Edition.

Due to these factors, the project site meets the definition of Unmapped ESHA in the County's LCP (CZLUO Section 23.11). The area contains sensitive plant and animal species needing protection, including Rank 1B status plants, sensitive communities recognized by the CDFW, burrowing owls, and coast horn lizard. In addition, the Rail Spur Project area meets the definition of ESHA as defined in the guidelines set forth by the California Coastal Commission for defining ESHA (CCC 2013). As discussed further below in impact BIO.5, the Rail Spur Project would permanently impact a total of about 20 acres of ESHA, including the sensitive

plant communities as classified by the California Department of Fish and Wildlife (CDFW) under the National Vegetation Classification system described in A Manual of California Vegetation, Second Edition.

5. The Proposed Project does not meet the requirements of Coastal Zone Land Use Ordinance Section 23.07.170 b for Environmentally Sensitive Habitat Areas:
  - a. *There would be a significant negative impact on the identified sensitive habitat and the proposed uses would be inconsistent with the biological continuance of the habitat* because the proposed rail spur would remove approximately 20 acres of habitat area containing “rare” or “1B” species, and is not a project that is included within the list of projects noted in the ordinance as a “development project (which) would be allowable within an ESHA” such as a resource dependent use, habitat enhancement project, or coastal access way.
  - b. *The proposed uses would significantly disrupt the habitat* because development would remove approximately 20 acres of habitat area containing listed “rare” or “1B” species by the California Department of Fish and Wildlife and the California Native Plant Society. The Project is located within dune habitat containing sensitive vegetative communities as classified by the California Department of Fish and Wildlife (CDFW) under the National Vegetation Classification system described in A Manual of California Vegetation, Second Edition (i.e., Silver dune lupine – mock heather scrub). The Project and associated infrastructure would extend within this habitat area. Due to the extensive distribution of Unmapped ESHA, there does not appear to be an alternative design or Project configuration that would avoid disturbance and removal of this habitat in order for the Project, or any project alternative, to proceed on the portion of the property outside the existing disturbed envelope of the refinery. The inability to avoid ESHA is in direct conflict with sub-section (e) of 23.07.170 which states, “All development and land divisions within or adjacent to an Environmentally Sensitive Habitat Area shall be designed and located in a manner which avoids any significant disruption or degradation of habitat values.”

### **C. Development Plan Findings**

*The proposed project does not meet the requirements of 23.02.034.c.4 as follows:*

- A. The proposed project or use is not consistent with the Local Coastal Program, the Land Use Element of the General Plan, and the General Plan. Following is a list of the items for which the project is not in compliance:**

*Coastal Plan Policies:*

6. Environmentally Sensitive Habitats, Sensitive Habitats, Policy 1, Land Uses Within or Adjacent to Environmentally Sensitive Habitats: This policy states that new development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area. Unmapped ESHA is present throughout the Project area and within 100 feet of other areas determined to be Unmapped ESHA, including portions of the project area where the rail spur and unloading facility would be constructed, the emergency vehicle access route, and the area where the pipelines would be constructed from the rail spur unloading facility to the existing storage tanks. The Project would impact 20 acres of Unmapped ESHA. The Refinery was built in 1955 to be in close proximity to local onshore oil sources (non-coastal dependent). In the mid-1980’s, upon development of offshore oil, the Refinery began use of

offshore crude as a major source. During this time, and to present day, the Refinery has used a combination of offshore crude as well as a variety of onshore sources (including Canadian Tar Sands crude which arrives by truck from the Central Valley and is delivered to the Santa Maria Pump Station). The Refinery is dependent upon a complex arrangement of roadways, rail lines, pump stations, and pipelines that are located, in some instances in the coastal zone, but primarily outside of the coastal zone. The Refinery does not rely on the ocean or marine resources and is therefore not coastal dependent. Because the Project would impact Unmapped ESHA and is not a coastal dependent use, it would be inconsistent with this policy.

7. **Environmentally Sensitive Habitats, Sensitive Habitats, Policy 29, Protection of Terrestrial Habitats:** This policy states that designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site. The Project would be located within and would impact an approximate 20-acre area that contains Unmapped ESHA. In addition the Project is not a coastal dependent use as described above. Because the Project is not considered a coastal dependent use and would impact Unmapped ESHA, it is not consistent with this policy.

The proposed Project has the potential to result in oil spills and resultant fires that could impact terrestrial habitats along the mainline rail routes. Depending upon the location of an oil spill it could result in significant impacts to terrestrial habitats. Given the potential significant impacts that could occur to terrestrial habitats within the County in the case of an oil spill, rail transport of crude oil along the mainline it is not consistent with this policy.

8. **Environmentally Sensitive Habitat Area Policy 36, Protection of Dune Vegetation:** Policy 36 states “disturbance or destruction of any dune vegetation shall be limited to those projects which are dependent upon such resources where no feasible alternatives exist and then shall be limited to the smallest area possible. Development activities and uses within dune vegetation shall protect the dune resources and shall be limited to resource dependent, scientific, educational and passive recreational uses. Coastal dependent uses may be permitted if it can be shown that no alternative location is feasible, such development is sited and designed to minimize impacts to dune habitat and adverse environmental impacts are mitigated to the maximum extent feasible.” Based on the location of proposed improvements associated with the Project, portions of the development would be located within and would impact approximately 20 acres of Unmapped ESHA. As described above, neither the Project nor the existing refinery are coastal dependent uses (i.e., requiring a site on, or adjacent to, the sea to be able to function at all). The objective of the Project is to increase the Applicant’s ability to access more economically priced crude from a wider diversity of suppliers throughout various locations in North America. Because the Project and the existing refinery are not “coastal dependent” and would result in the removal of Unmapped ESHA, the Project does not comply with this policy.

*Coastal Zone Framework for Planning:*

9. **Land Use Goal 4:** The Land Use Element land use categories identify areas that are to be compatible with each other and specific goals related to conflicts of uses and preservation of important areas. Land use goal no. 4 provides that “areas where agricultural, residential, commercial and industrial uses may be developed in harmonious patterns and with all the necessities for satisfactory living and working environments.” The proposed rail spur project would modify an existing industrial property to allow the construction of the spur within a buffer area between neighboring residential and agricultural land uses. Operation of the rail spur project could result in significant health risk impacts to the closest residences mainly due to

diesel particulate matter from the locomotives servicing the refinery. The project would also generate additional particulate matter emissions due to fugitive dust and diesel locomotive engines at the refinery in an area that already exceeds state PM<sub>10</sub> standards. Therefore, the project would be inconsistent with this policy by allowing an expansion of a use that is not compatible with neighboring residential or agricultural uses and would result in additional negative health impacts.

10. **Strategic Growth Goal 1, Objective 2. Air Quality:** This air quality objective is put forth to maintain and protect a living environment that is safe, healthful and pleasant for all residents. The applicable goal associated with this objective seeks to ensure that development projects maintain, or exceed, the minimum state and federal ambient air quality standards. The Project would not comply with this objective and goal because it would generate toxic air emissions that exceed San Luis Obispo County APCD (SLOCAPCD) health risk thresholds when factoring in the 2012 California Office of Environmental Health Hazard Assessment (OEHHA) childhood exposure and breathing rate adjustments. The proposed Project would result in a maximum exposed individual resident (MEIR) cancer risk of 26.5 in a million. This includes emission sources at the project site as well as the mainline emissions near the SMR. The SLOCAPCD cancer risk threshold is 10 in a million for toxic emissions. The use of Tier 4 locomotives and reduced idling time for locomotives onsite as mitigation would reduce the MEIR to 6.0 in a million at the same receptor. However, since UPRR (and not the Project Applicant) would own the locomotives, and the locomotives are used for interstate commerce, the mitigation measure requiring the use Tier 4 locomotives would likely be preempted by Federal law, and therefore may not be a feasible mitigation measure. Without the use of Tier 4 engines but with implementation of other mitigation measures, the MEIR would be 13.6 in a million at the same receptor (this includes the reduction in idling at the site, use of cleaner truck engines, and daytime unloading only). In addition, without full mitigation, the project would also exceed the SLOCAPCD diesel particulate matter threshold of 1.25 lbs per day onsite.

The Project would also not comply with this objective and goal because it would generate toxic air emissions that exceed San Luis Obispo County APCD (SLOCAPCD) health risk thresholds of 10 in a million for mainline rail operations in areas where train speeds would be less than 30 mph. The project would also exceed the SLOCAPCD NO<sub>x</sub>, ROG, and diesel particulate matter emission CEQA thresholds without full mitigation. Due to Federal preemption, the County may not be able to require emissions reduction credits for the mainline rail NO<sub>x</sub>, ROG, and DPM emissions, leaving potential exceedances of the state and/or federal ambient air quality standards unmitigated and making the Project inconsistent with this goal.

11. **Combining Designations, SRA – Sensitive Resource Area, General Objectives: 1.** General Objective 1 states that Environmentally Sensitive Habitats should be identified and protected by construction setbacks, use limitations, and other appropriate regulations. A portion of the Project area of disturbance is located within the existing refinery site in an area previously disturbed for storage and handling of coke; however, a large portion of the improvements associated with the Project would be located within identified sensitive vegetative communities as classified by the California Department of Fish and Wildlife (CDFW) under the National Vegetation Classification system described in A Manual of California Vegetation, Second Edition and Unmapped ESHA (i.e., Silver dune lupine – mock heather scrub). Project construction would impact approximately 20 acres of this sensitive vegetative community and Unmapped ESHA. For this reason, the Project would not comply with this objective.
12. **Coastal Zone Framework for Planning, Coastal Zone Land Use Element Strategic Growth Goal 1:** The Land Use Element states that the County will “preserve open space, scenic natural beauty and natural resources” and in addition “conserve energy” and “protect

agricultural land and resources.” The project has the potential to result in an increased risk of oil spills and fires that could impact natural resources, scenic areas, and agricultural land along the mainline rail routes as a result of this project. An oil spill could result in significant impacts to agricultural, biological, and water resources in the event of a spill because of the additional rail traffic from this proposed project. These impacts are discussed in applicable sections of Chapter 4.0 of the FEIR. Because the project is anticipated to increase the oil spill risk, the project would not be in compliance with this goal of the Land Use Element.

13. **Strategic Growth Goal 1: Objective 4. Agriculture & Land Use Goal 2:** This objective states that agricultural land for the production of food, fiber and other agricultural commodities is to be protected. This includes the protection and support of the rural economy and locally based commercial agriculture. The proposed rail spur project has the potential to result in oil spills or fires that could impact agricultural land along the mainline rail routes. An oil spill could result in significant impacts to agricultural commodities and soils within the County. Because of the increase in risk and potential for a spill which would directly impact agricultural resources the project is not consistent with this land use policy.
14. **Chapter 6: Environmentally Sensitive Habitats, Coastal Streams Policy 20:** Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological systems and ecological functions of coastal streams shall be “protected and preserved”. The proposed rail spur project has the potential to result in oil spills and fires that could impact coastal streams and riparian areas along the mainline rail routes. An oil spill could result in significant impacts to coastal streams and riparian vegetation which is discussed in section 4.4 (Biological Resources) of the FEIR. This project would allow for an increase of rail traffic which would increase the probability of a potential spill which could severely impact the County’s riparian areas. Because of this, the project is not consistent with this Coastal Policy.
15. **Chapter 7: Agriculture Policy 1:** Policy 1 states that prime agricultural land shall be maintained and protected for agricultural uses. Similar to the strategic growth goals listed above related to agriculture, the Coastal Plan Policies also outlines requirements for protection of agricultural lands which would potentially be impacted severely as a result of an accident or spill of oil on agricultural resources or soils, which is discussed in section 4.2 Agricultural Resources in the FEIR. The proposed project would increase oil traffic via rail throughout the County and thereby increase the probability of an accident or spill. In the event of a spill or fire there could be significant impacts to agricultural resources as a result of this project. Therefore, the project is not in compliance with this policy.
16. **Chapter 12: Archaeology, Policy 1: Protection of Archaeological Resources:** This General Plan policy states that the County shall provide for the protection of both known and potential archaeological resources. All available measures shall be explored at the time of a development proposal to avoid development on important archaeological sites. While development is not proposed on or near an archaeological site, impacts to archaeological resources could occur as a result of an oil spill and associated clean up actions along the mainline rail routes. Impacts to archaeological resources could not be avoided if a spill were to occur within an area where these resources are located in proximity to the mainline rail within the County. Therefore, the project is not in compliance with this policy.

*South County Coastal Area Plan:*

17. **Land Use, Rural Area Land Use, Industrial:** The Area Plan states that for the existing Santa Maria Refinery (SMR), the refinery occupies only a portion of the total area, and the large vacant areas around the refinery provide a desirable buffer from adjacent uses and an area

where wind-carried pollutants can be deposited onsite, thereby not affecting neighboring properties. This is particularly important to the agricultural uses in the vicinity of the project site. The Area Plan provides that any proposed modification or expansion of the refinery (e.g., the proposed rail spur project) should be subject to Development Plan approval covering the entire property to designate buildable and open space areas. The Area Plan continues by stating offshore oil and gas lease sales may generate the need for onshore partial oil and gas processing facilities and that expansion of industrial uses in the vacant portion of the rail spur project site may be appropriate in the future to accommodate offshore oil and gas lease sales. However, the Plan does not envision expansion for other purposes such as the Project. The rail spur component of the Project would extend an approximate 200-foot wide swath of development and industrial use approximately 0.8 mile to the east beyond the currently industrialized portion of SMR, toward existing residences and Highway 1. From the eastern terminus of the proposed rail spur, the buffer would be reduced to approximately 0.5 mile to the eastern boundary of the project site. This would reduce the buffer area between the Project and the residential area to the east and would therefore result in the Project being inconsistent with this policy.

18. **Industrial Air Pollution Standards:** This requirement of the South County Area Plan requires that “any expansion or modification of existing petroleum processing or transportation facilities or the construction of new facilities shall meet San Luis Obispo County Air Pollution District (SLOCAPCD) standards.” The Project does not comply with this requirement as it exceeds the minimum threshold for cancer risk of 10 in a million. Without full mitigation, the project would also exceed the SLOCAPCD threshold for DPM of 1.25 lbs per day onsite and due to federal preemption, the County cannot impose measures (e.g. Tier 4 locomotives) to fully mitigate this impact. The toxic air emissions including the DPM added to the basin as a result of this project is not in compliance with this requirement.

*Safety Element of the General Plan:*

19. **Safety Element of the General Plan, Fire Safety Goal S-4:** “Reduce the threat to life, structures and the environment caused by fire.” There is the potential for fire and explosions along the mainline rail routes due to a train derailment, which could impact life, structures and the environment depending on the location of the accident. The County is likely preempted from implementing conditions or mitigation measures that could mitigate these impacts along the mainline rail route. There are significant impacts to the safety of the populations near the rail lines within the County and the project is not consistent with this policy of the General Plan.
20. **Safety Element of the General Plan, Fire Safety Policy S-14, Facilities, Equipment and Personnel:** “Ensure that adequate facilities, equipment and personnel are available to meet the demands of fire fighting in San Luis Obispo County based on the level of service set forth in the fire agency’s master plan.” It has come to the County’s attention through numerous letters from jurisdictions along the mainline that there are not adequate resources through their respective fire agencies to respond to a derailment, spill or explosion as a result of a rail accident. In addition, the County may be preempted from implementing conditions or mitigation measures that could mitigate these impacts along the mainline rail routes, therefore the County can’t ensure there will be adequate facilities, equipment and personnel available in the event of an accident. This is the case throughout the state as well as within San Luis Obispo County. Therefore, the project is not consistent with this policy of the General Plan.
21. **Safety Element of the General Plan, Hazardous Materials Policy S-26, Program S-68:** S-26 states: “Reduce the potential for exposure to humans and the environment by hazardous substances.” S-68 states “Review commercial projects which use, store, or transport hazardous materials to ensure necessary measures are taken to protect public health and

safety.” Implementation measure Program S-68 states that commercial projects which use, store, or transport hazardous materials are to ensure necessary measures are taken to protect public health and safety. As the Applicant has stated, the County would not be able to mitigate or require conditions upon the project which would ensure the safety for citizens along the mainline rail routes, including the portions within the County, due to the County likely being preempted from requiring these types of measures. The project is not in compliance with this policy because the County would not be able to ensure the safety of the residents of the County, or the state, as a result of the additional probability of a derailment, spill, fire or explosion because of the proposed project.

*Conservation and Open Space Element of the General Plan:*

- 22. Air Quality Policy AQ 3.2, Attain Air Quality Standards:** Policy AQ 3.2 states that the County will attain or exceed federal or state ambient air quality standards for measured criteria pollutants. San Luis Obispo County is in non-attainment for ozone standards as well as the state particulate matter standards. The Project would generate fugitive dust and DPM onsite that would contribute to PM<sub>10</sub> emissions within the County. It is unlikely that these fugitive dust and DPM emissions (i.e., PM<sub>10</sub> emissions) could be offset at the SMR due to a lack of available onsite emission reductions. The addition of these onsite PM<sub>10</sub> emissions would further exacerbate the ability for the County to attain the state particulate matter standards and therefore the project would not be in compliance with this General Plan policy of the Conservation and Open Space Element.

The rail spur project would be generating NO<sub>x</sub> and ROG emissions along the mainline rail route that would lead to ozone increases and would generate DPM along the mainline rail routes that would contribute to PM<sub>10</sub> emissions within the County. Due to Federal preemption, the County may not be able to require emissions reduction credits for the mainline rail NO<sub>x</sub>, ROG, and DPM emissions. The addition of these NO<sub>x</sub>, ROG, and PM<sub>10</sub> emissions would further exacerbate the ability for the County to attain the state particulate matter and ozone standards. The addition of these NO<sub>x</sub>, ROG, and PM<sub>10</sub> emissions along the mainline rail route within the County would further exacerbate the ability for the County to attain the state particulate matter and ozone standards and therefore the project would not be in compliance with this General Plan policy of the Conservation and Open Space Element.

- 23. Air Quality Policy AQ 3.3, Avoid Air Pollution Increases:** Policy AQ 3.3 states that the County will, “Avoid a net increase in criteria air pollutant emissions in planning areas certified as Level of Severity II or III for Air Quality by the County’s Resource Management System (RMS).” The Nipomo Mesa area is in a level of severity II for Ozone, a level of severity III for PM<sub>2.5</sub>, and a level of severity III for PM<sub>10</sub>. The “PM” or particulate matter includes hazardous materials in the air that gets into the lungs and causes a variety of health effects. The PM<sub>2.5</sub> tends to be a greater health risk because the particles are smaller and can travel deeper into the lungs. Sources of particulate pollution include diesel exhaust, mineral extraction and production, combustion products from industry and motor vehicles, smoke, wind-blown dust and other sources (Source: County Resource Summary Report). The Project does not comply with this standard because it would add diesel exhaust from locomotives to an area which is currently in a level of severity of III. Even with implementation of mitigation measures the Project would exceed the threshold of cancer causing diesel particulate which is 10 in a million by creating a risk factor of about 13.6 in a million (for emissions occurring at the project site and along the mainline impacting the same receptors near the SMR). Without implementation of mitigation, the Project would create a risk factor of 26.5 in a million, both of which are exceeding the threshold. In addition, without full mitigation, the Project would exceed the 1.25 lbs per day threshold for DPM onsite. In addition, the most effective mitigation measure is likely not implementable due to federal preemption (i.e., requiring use of Tier 4 locomotives).

Operation of the locomotives along the mainline rail routes would result in increase in NO<sub>x</sub> and ROG emissions that would lead to ozone increases. The locomotives would also generate diesel particulate matter emissions along the mainline rail routes, which would increase PM<sub>10</sub> emissions in the County. Due to Federal preemption, the County may not be able to require emissions reduction credits for the mainline rail NO<sub>x</sub>, ROG, and diesel particulate matter emissions. The addition of these NO<sub>x</sub>, ROG, and PM<sub>10</sub> emissions would result in air pollution increases in the County and therefore the project would not be in compliance with this General Plan policy of the Conservation and Open Space Element.

24. **Air Quality Policy AQ 3.4, Toxic Exposure:** Policy AQ 3.4 states that the County will, “Minimize public exposure to toxic air contaminants, ozone, particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, and lead.” This Project does not comply with this Policy of the General Plan because it allows for an increase in hazardous emissions as a result of the project. Calculations in the FEIR have shown that this Project would exceed the cancer threshold, which is 10 in a million, by resulting in a cancer risk of about 26.5 in a million (with no mitigation), or about 13.6 in a million (with partial mitigation). This impact would exceed San Luis Obispo County Air Pollution Control District (APCD) health risk thresholds when factoring in the 2012 California Office of Environmental Health Hazard Assessment (OEHHA) childhood exposure and breathing rate adjustments.

The Project does not comply with this Policy of the General Plan because it allows for an increase in hazardous emissions as a result the locomotives operating on the mainline rail routes in the County. Calculations in the FEIR show that the Project would exceed the cancer threshold of 10 in a million for areas where trains speeds are limited to 30 miles per hour or less and thus impacting people in the county along the routes which will see the additional rail traffic as a result of this proposed project.

25. **Air Quality Policy AQ 3.5, Equitable Decision Making:** Policy AQ 3.5 states that the County will, “Ensure that land use decisions are equitable and protect all residents from the adverse health effects of air pollution.” This policy is also consistent with the discussion above regarding air quality Policy AQ 3.3. The Project would bring locomotives (up to 5 trains per week, 10 round trips) to the site for unloading of heavy crude, and would depart the site empty. The additional diesel exhaust from these locomotives, upwind of many residences and sensitive receptors, would cause a significant impact to the air quality for these residences. In addition, a large onsite buffer between the residential neighborhoods and the facility would be reduced from over 7,600 feet to approximately 3,300 feet. This project application for a “Development Plan/Coastal Development Permit” is a discretionary land use permit with the discretion by the County to decide if this project complies with the General Plan including the health and safety of the County’s residents. The Project imposes health risks which would be inconsistent with the health and safety requirements of the General Plan with regard to air quality from the property (increase in cancer causing thresholds). This project would not ensure that all residents are protected from the adverse health effects of air pollution as this policy requires.

26. **Air Quality Goal AQ 3: Implementation Strategy AQ 3.6.1, Identify Health Risks to Sensitive Receptors:** This implementation strategy of the General Plan states that health risks are to be mitigated consistent with Air Pollution Control District standards. This is generally applicable to projects for which construction would occur near a freeway or rail line and mitigation would be required to reduce the air quality hazards to “sensitive receptors” or citizens which are sensitive to these pollutants. However, this project would increase the amount of toxic emissions as an increase in rail traffic would occur as a result of the proposed project. Toxic emissions from the locomotives operating on the mainline rail routes would exceed the cancer risk thresholds for areas where speeds are limited to 30 miles per hour or

less and thus impacting people in the county along the routes which will see the additional rail traffic as a result of this proposed project. Therefore, the project would not be in compliance with this General Plan policy of the Conservation and Open Space Element.

27. **Biological Resources Policy 1.2, Limit Development Impacts:** This policy calls for the regulation and minimization of proposed development in areas that contain essential habitat for special-status species, sensitive natural communities, wetlands, coastal and riparian habitats, and wildlife habitat and movement corridors as necessary to ensure the continued health and survival of these species and protection of sensitive areas. The Project would result in the extension of refinery infrastructure (i.e., rail spur, unloading facility, pipelines, and emergency vehicle access road) into a dune habitat system. Approximately 20 acres of various project features would be constructed within dune vegetation that is considered sensitive habitat as classified by the California Department of Fish and Wildlife (CDFW) under the National Vegetation Classification system described in A Manual of California Vegetation, Second Edition and is also considered Unmapped ESHA; therefore, the Project does not comply with this policy.
28. **Biological Resources, Policy BR 1.15: Restrict Disturbance in Sensitive Habitats during Nesting Seasons:** This General Plan policy states that projects are to avoid impacts to sensitive riparian corridors, wetlands and coastal areas in order to protect bird-nesting activities. In addition to the impacts discussed above related to Coastal Streams in Coastal Plan Policies, impacts as a result of a spill along the mainline would negatively impact nesting birds which is in conflict with this General Plan policy. This project would increase the risk of a spill or fire which would remove and damage nesting habitats. Therefore, the project would not be in compliance with this General Plan policy of the Conservation and Open Space Element.
29. **Energy, Goal E 7: Design, siting, and operation of non-renewable energy facilities:** Implementation Strategy E 7.1.1 states that new facilities will not be located in a manner which will impact the health and safety of human populations with special attention to disabled and elderly populations as they require additional resources for evacuation in the event of an emergency. The risk analysis for the mainline rail routes found that significant hazards would exist to the public in the vicinity of the mainline rail routes in the event of a derailment and release of crude oil that could lead to a fire or explosion. This proposed project would increase crude oil rail traffic which could have potential for catastrophic impacts in the event of a derailment or explosion and would be in direct conflict with this General Plan policy as it relates to the health and safety of the citizens around the mainline within San Luis Obispo County.
30. **Non-Renewable Energy Facility Siting Policy E 7.1:** Energy Goal 7 states that, "Design, Siting, and Operation of Non-renewable energy facilities will be environmentally appropriate." In addition the related Policy E 7.1 for Non-Renewable Energy Facility Siting, "Energy fossil fuel, and related facilities will be sited, constructed, and operated in a manner to protect the public from potential hazards and significant environmental impacts." The implementation Strategy related to Goal 7 and Policy 7.1 requires facility design, siting and operational standards: There are 30 of these outlined for energy projects and the pertinent policies for the rail spur project are listed here (numbers correspond to the numbers in the Conservation and Open Space Element Energy Policy E 7.1):

- 3) Continue to maintain, operate, monitor, and repair the facility so that it does not constitute a public safety hazard or an environmental threat.

The Project does not comply with this component of the goal due to air toxic emissions from the operation of the Project that would exceed the acceptable levels determined

by the SLOCAPCD for both cancer risk and diesel particulate matter. The Project, while located within and adjacent to an existing facility, would increase the intensity of rail activity and change the use of the site to allow for crude to be brought in via rail. The addition of up to five trains per week would increase toxic air emissions which would impact neighboring residences to the east and north of the project site.

4) Employ the best reasonably achievable techniques available to prohibit disruption of environmentally sensitive areas such as wetlands, animal or bird refuges, or habitat of species of special concern. Avoid impacts to habitat of rare, threatened, or endangered species.

The Project does not comply with this component of the policy because construction of the Project would impact about 20 acres of sensitive habitat as classified by the California Department of Fish and Wildlife (CDFW) under the National Vegetation Classification system described in A Manual of California Vegetation, Second Edition and an area of the project site considered Unmapped ESHA.

**B. The proposed project does not satisfy all applicable provisions of Title 23 of the County Code because:**

31. **Section 23.07.170 of the Coastal Zone Land Use Ordinance Environmentally Sensitive Habitats:** The Project is located within dune habitat containing sensitive vegetative communities as classified by the California Department of Fish and Wildlife (CDFW) under the National Vegetation Classification system described in A Manual of California Vegetation, Second Edition (i.e., Silver dune lupine – mock heather scrub). The Project will extend within this habitat area, and there are no alternatives around disturbance or removal of this habitat area in order for the project, or project alternative, to proceed. This is in direct conflict with this standard which states, “All development and land divisions within or adjacent to an Environmentally Sensitive Habitat Area shall be designed and located in a manner which avoids any significant disruption or degradation of habitat values. This standard requires that any project which has the potential to cause significant adverse impacts to an ESHA be redesigned or relocated so as to avoid the impact, or reduce the impact to a less than significant level where complete avoidance is not possible.” The extension of the rail spur adjacent to the Santa Maria Refinery is located within a dune habitat area which also acts as a spatial buffer between the refinery and the residences to the east.

**C. The establishment and subsequent operation or conduct of the use will, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, and will be detrimental or injurious to property or improvements in the vicinity of the use because:**

32. The Rail Spur Project would modify and expand the existing industrial uses and activities at the Santa Maria Refinery (SMR) by delivering crude oil to the refinery by rail. The onsite activities associated with the rail spur project would result in cancer risk from air toxics and increased DPM that would both exceed Air Pollution Control District CEQA thresholds. These significant air quality impacts would directly impact neighboring residences, employees, and populations in the vicinity of the Santa Maria Refinery. The Project would generate toxic air emissions that exceed San Luis Obispo County APCD (SLOCAPCD) health risk thresholds when factoring in the most recent 2012 California Office of Environmental Health Hazard Assessment (OEHHA) childhood exposure and breathing rate adjustments. The SLOCAPCD cancer risk CEQA threshold is 10 in a million for toxic emissions and with this proposed project (with partial mitigation) there would be a risk of 13.6 in a million, which exceeds these

thresholds. Onsite operation of the locomotives would exceed the SLOCAPCD CEQA threshold of 1.25 lbs per day of diesel particulate matter even with partial mitigation. These are both considered a significant and unavoidable environmental impact.

Operation of the locomotives along the mainline rail routes would result in increase in NO<sub>x</sub> and ROG emissions that would lead to ozone increases both in the County and in other parts of the State. Operational activities of trains along the mainline rail route outside of San Luis Obispo County associated with the Project would generate criteria pollutant emissions that exceed thresholds of 15 air districts other than SLOCAPCD. For three of these districts impacts cannot be mitigated to less than significant levels. Mitigation has been recommended that includes use of Tier 4 locomotives and the purchase of emission credits. For the mainline rail emissions it is possible that contractually the Applicant could require the use of lower emission locomotives such as Tier 4 locomotives. However, since these are operated by UPRR on UPRR tracks, a requirement that the Applicant enter into this type of contractual provision would likely be preempted by Federal law and therefore unenforceable. The County may also be preempted by Federal law from requiring emission reduction credits for mainline rail emissions. Since these mitigation measures may not be implementable and it is uncertain if the other Air Districts could require emission reduction credits, the impacts associated with the mainline rail operation would remain significant.

The locomotives would also generate diesel particulate matter emissions along the mainline rail routes, which would increase PM<sub>10</sub> emissions in the County. Due to Federal preemption, the County may not be able to require emissions reduction credits for the mainline rail NO<sub>x</sub>, ROG, and diesel particulate matter emissions. The addition of these NO<sub>x</sub>, ROG, and PM<sub>10</sub> emissions would result in significant and unavoidable air quality impacts.

This proposed project would increase rail traffic by importing heavy crude via rail into the Santa Maria Refinery. A risk assessment was conducted for the mainline rail routes to the Santa Maria Refinery. The risk along the mainline rail routes that were evaluated was found to be significant in the event of a rail accident that occurred near populated areas. The EIR identified mitigation measures to reduce the potential for release of crude oil in the event of an accident. However, the County may be preempted by Federal law from applying these mitigations to the project. Furthermore it has been communicated to the County through numerous letters from outside jurisdictions that many of the jurisdictions do not have the necessary personnel, equipment or training in order to provide appropriate emergency response to an oil train derailment or explosion within their areas. This proposed project will create a significantly hazardous and potentially dangerous situation within many areas along the mainline not only in San Luis Obispo County, but to other jurisdictions along the main rail lines and therefore, the project is inconsistent with this policy.

**D. The proposed project or use will be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because:**

33. The proposed rail spur project will expand the existing industrial uses of the Santa Maria Refinery onto a currently vacant portion of the refinery property which acts as a buffer between the residential areas to the east and the refinery operations. The South County Coastal Area Plan specifically identifies the undeveloped areas of the project site as providing a desirable buffer from the heavy industrial activities and more sensitive adjacent land uses. The rail spur extension would extend a total of approximately 1.3 miles (6,915 feet), including approximately 0.5 mile (2,445 feet) within the exiting industrial coke area. This would result in an extension of industrial uses approximately 0.85 mile into the undeveloped area in the eastern portions of the project site. The buffer between residential and recreational uses east of State Route 1 would be reduced from approximately 1.4 miles to 0.6 mile. The rail spur extension would

similarly reduce existing buffers between the industrial structures and agricultural crops located northeast and southeast of the project site.

This important buffer is what allows these incompatible land uses (refinery and residential) to coexist as neighbors, however this project will greatly reduce this buffer. The rail spur will be incompatible with the residential and agricultural resources that surround the spur and will bring additional toxic air contaminants and PM<sub>10</sub> closer to the residential and agricultural land uses. Therefore, the proposed extension of the industrial activities by allowing the railroad spur would be incompatible with surrounding uses and would therefore not comply with the character of the immediate neighborhood and will be contrary to its orderly development.

**E. Coastal Access:**

34. Coastal access was addressed in a previously approved permit (Throughput DRC2008-00146), which included a condition of approval requiring Phillips 66 to construct coastal access improvements associated with the vertical public access within "...10 years of the effective date of this permit (including any required Coastal Development Permit to authorize such construction) or at the time of any subsequent use permit approved at the project site, whichever occurs first." Because the proposed rail spur project (DRC2012-00095) is recommended for denial, the previous condition of approval from the Throughput project will remain in place and effective. Phillips 66 will be required to uphold the previous coastal access condition of approval from DRC2008-00146 as adopted. Denial of the proposed rail spur project will not impact Coastal Access.