

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

A. Coastal Zone Land Use Ordinance

1. Section 23.07.170, Environmentally Sensitive Habitats (ESHA):

“Development standards for environmentally sensitive habitats: 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.” Where avoidance is not possible the project must be the minimum necessary in order to avoid a takings of the property. Circumstances in which a development project would be allowable within an ESHA include resource dependent uses (i.e., coastal dependent), coastal access ways, incidental public utilities, and habitat enhancement.

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).

Per the Coastal Zone Land Use Ordinance (CZLUO) definition of Unmapped ESHA, the Department of Planning and Building is required to make a determination of the presence of Unmapped ESHA “at or before the time of application acceptance and shall be based on the best available information.” This specific language was included in the County’s CZLUO through consultation with the California Coastal Commission in the 1990’s in order to provide guidance for projects and project sites where ESHA mapping was not available or was outdated. Coastal Commission’s intent in including this ordinance language in the CZLUO is to require the Department to determine on a project-by-project basis, using the above referenced CDFW vegetation classification system, whether Unmapped ESHA is present and to do so at the earliest possible point in processing a coastal permit -- and to do so using the best information available.

It is often the case that there is limited, if any, information available to the Department to make a clear and concise determination of presence of Unmapped ESHA at the time of application acceptance because technical studies pertaining to ESHA have yet to be prepared or peer reviewed. Technical information required to make the ESHA determination is often generated or peer reviewed during the implementation of the CEQA process. The Department’s overriding requirement for processing permits in the coastal zone is to adhere to the Local Coastal Program (which includes the CZLUO) which is certified by the Coastal Commission and derived from the California Coastal Act. Therefore, the Department relies heavily on the collection of best available information during the CEQA process, which in the case of this Project involved preparation of an EIR, to make a final determination on presence or absence of Unmapped ESHA. If the Department relied solely on making a determination of Unmapped ESHA at the time of application acceptance, the Department would often find itself inconsistent with the Local Coastal Program because it would not include the best available data.

Shortly after the Applicant submitted their initial project application (April 2013), the Applicant agreed to preparation of an EIR (July 2013) and requested the Department

implement a facilitated EIR timeline that included preparation of the EIR and scheduling the Project for a Planning Commission hearing in fourteen months. The Department agreed to the facilitated schedule and immediately accepted the Applicant's application July of 2013 for purposes of processing the EIR. The Project application included botanical, archaeological, air quality, visual and other technical environmental studies prepared by the Applicant's consultants. The Department began preparation of the EIR in July 2013 with the understanding that the Applicant-submitted environmental studies would be peer reviewed by the EIR consultant and fully vetted during the Draft EIR public review process. It was not until review of public comments submitted on the Recirculated Draft EIR, the Department recognized the potential for the project site to contain Unmapped ESHA.

Based on the comments received on the Recirculated Draft EIR, the Applicant's consultants prepared updated vegetation classification and mapping and the Department's EIR consultant peer-reviewed this information. Based on the additional analysis that occurred during the CEQA process, and generation of better information than was available at the time of the Applicant's initial submittal in April 2013, the Department determined that Unmapped ESHA is in fact present throughout the area of proposed rail spur development (refer to Exhibit E, Figure E-3). Based on a site visit conducted May 27, 2015 by Coastal Commission staff scientists, the Commission corroborates the Department's determination of the presence of ESHA (Coastal Commission staff letter dated June 4, 2015 attached in Exhibit D).

The Project and associated infrastructure would extend within this habitat area and would impact approximately 20 acres of ESHA. 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 this standard (23.07.170 e) 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."

In order to allow development within an ESHA very strict criteria are outlined in the ordinance and one of those would be a project that is "coastal dependent." The definition of coastal dependent includes, "any development or use that requires a permanent location on or adjacent to the ocean." Construction of the Refinery by Union Oil began in 1953 and the location for the Refinery was selected due to close proximity to Santa Maria Oil Fields (by 1957 there were 1,775 oil wells in operation in the Santa Maria Valley). Throughout its history, the primary operation of the refinery has remained the same, to receive locally produced heavy, sour crude oil and refine it into gas oil, sulfur, and coke. The citing of the Refinery was also due to being in close proximity to the rail line and major north-south highway corridors so as to transfer the sulfur and coke to manufacturers of supplies using those products.

Phillips 66 states the "Project clearly is "coastal dependent" because it must, by definition, occur adjacent to the ocean, where both the refinery and the mainline rail to which the proposed rail spur is to be extended are located" and that "the Project is inextricably tied to a facility that is itself coastal dependent, as evidenced by the fact that it operates under National Pollutant Discharge Elimination System ("NPDES") permit for outfall into the Pacific Ocean." The Refinery is not a use that needs to be located within the coastal zone and does not meet the definition of being coastal dependent. The Refinery could have been built a short distance to the north or the east, outside of the coastal zone, and a longer ocean outfall pipeline constructed. In and of itself, the outfall into the ocean meets

the definition of being coastal dependent; however, the refinery does not have to be adjacent to the sea for it to operate since the outfall pipeline could easily be extended beyond the coastal zone boundary. Also, the use of ocean disposal is just one option for a refinery such as SMR for disposing of or re-using treated wastewater, as such, the use of an ocean outfall at the SMR does not make the entire SMR a coastal dependent use.

The same would apply for the mainline rail where a spur could be built at a location outside of the coastal zone. Just because the mainline rail tracks are located in the coastal zone does not make the SMR coastal dependent. The Project (i.e., construction and operation of a rail spur and crude oil unloading facility), like other rail spur projects proposed or built around the state and country (e.g., in locations such as Bakersfield, California) does not need to be located adjacent to or near the ocean in order to be an economically or technologically feasible project.

Due to the fact the Project would impact ESHA and is not considered a coastal dependent use, the Project is considered in direct conflict with this section of the Coastal Zone Land Use Ordinance.

B. Coastal Plan Policies

A portion of the County's adopted Local Coastal Program includes the Coastal Plan Policies which are in place to carry out the requirements of the California Coastal Act. These policies are required to be implemented in the County's General Plan and Ordinances. Projects must comply with all applicable Coastal Plan Policies in order to be approved. Following is a list of the pertinent Coastal Plan Policies for which this proposed project does not comply:

- 1. 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 throughout North America. 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.
- 2. 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.

3. **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. 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. 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.” As described above, neither the Project nor the existing refinery are coastal dependent uses (i.e., relying on adjacency and being dependent on the ocean). 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.

C. Coastal Zone Framework for Planning

1. **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 asks 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 and the trucks servicing the refinery. The project would also generate additional particulate matter emissions due to fugitive dust and diesel engines at the refinery in an area that already exceeds state PM₁₀ 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 bring additional negative health impacts as a result.
2. **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 SLOCAPCD cancer risk CEQA threshold is 10 in a million for toxic emissions. The project would also exceed the SLOCAPCD diesel particulate matter emission CEQA threshold of 1.25 lbs per day without full mitigation. Refer to the FEIR, Air Quality, Section 4.3.4.2, Impacts AQ.2 and AQ.4, for additional information on these significant impacts.

3. **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 as 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.

D. Conservation and Open Space Element of the General Plan

1. **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 rail spur project would generate NO_x and ROG emissions onsite that would lead to ozone increases. However, the NO_x and ROG emissions at the SMR can be offset using emission reduction credits. The Project would generate fugitive dust and DPM onsite that would contribute to PM₁₀ emissions within the County. It is unlikely that these fugitive dust and DPM emissions (i.e., PM₁₀ emissions) could be offset at the SMR due to a lack of available emission reductions. The addition of these PM₁₀ 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.
2. **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_{2.5}, and a level of severity III for PM₁₀. 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_{2.5} 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 approximately 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 cancer risk threshold. In addition, without full mitigation, the project would also exceed the SLOCAPCD diesel particulate matter emission CEQA threshold of 1.25 lbs per day. It should be noted that the most effective mitigation measure may not be implementable due to likely federal preemption (i.e., requiring use of Tier 4 locomotives). Refer to the FEIR, Air Quality, Section 4.3.4.2, Impacts AQ.2 and AQ.4, for additional information on these significant impacts.
3. **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 have shown that this Project would exceed the cancer threshold which is 10 in a million by resulting in a cancer risk of approximately 26.5 in a million (with no mitigation), or approximately 13.6 in a million (with mitigation, for emissions occurring at the project site and along the mainline impacting the same receptors near the SMR). 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 (for more detailed analysis refer to Section VII.B above the FEIR, Air Quality, Section 4.3.4.2, Impact AQ.4).

4. **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.
5. **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.
6. **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, this based upon the health risk assessment described in Section VII B above and the FEIR, Air Quality, Section 4.3.4.2, Impact AQ.4, and the increase in PM₁₀ emissions (both fugitive dust and DPM), Air Quality, Section 4.3.4.2, Impact AQ.2. 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.

E. South County Coastal Area Plan

1. **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 Santa Maria Valley. 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.
2. **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 (APCD) standards.” The Project does not comply with this requirement as it exceeds the minimum threshold for cancer risk and the daily threshold associated with diesel particulate matter. The toxic air emissions added to the basin as a result of this project is not in compliance with these requirements (refer

to Section VII.B. above and the FEIR, Air Quality, Section 4.3.4.2, Impacts AQ.2 and AQ.4).