

Exhibit C – 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 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 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_x, 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_x, 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 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 onsite emission reductions. The addition of these onsite 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.

The rail spur project would be generating NO_x 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 PM₁₀ emissions within the County. Due to Federal preemption, the County may not be able to require emissions reduction credits for the mainline rail NO_x, ROG, and DPM emissions. The addition of these NO_x, ROG, and PM₁₀ emissions would further exacerbate the ability for the County to attain the state particulate matter and ozone standards. The addition of these NO_x, ROG, and PM₁₀ 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_{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 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_x 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 PM₁₀ emissions in the County. Due to Federal preemption, the County may not be able to require emissions reduction credits for the mainline rail NO_x, ROG, and diesel particulate matter emissions. The addition of these NO_x, ROG, and PM₁₀ 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_x 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 PM₁₀ emissions in the County. Due to Federal preemption, the County may not be able to require emissions reduction credits for the mainline rail NO_x, ROG, and diesel particulate matter emissions. The addition of these NO_x, ROG, and PM₁₀ 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 PM₁₀ 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.