Michael W. Stamp
Molly Erickson

STAMP | ERICKSON
Attorneys at Law

479 Pacific Street, Suite One
Monterey, California 93940
T: (831) 373-1214
F: (831) 373-0242

May 8, 2015

Hon. Debbie Arnold, Chair
Board of Supervisors
San Luis Obispo County
Room D-430, County Government Center
San Luis Obispo, CA 93408

Ken Topping, Chair
Planning Commission
San Luis Obispo County
976 Osos Street, Room 200
San Luis Obispo, CA 93401

Re: Objections to the proposed Phillips 66 Santa Maria Refinery Rail Spur Extension Project

Dear Chair Arnold and Supervisors, and Chair Topping and Commissioners:

We represent Friends, Artists, and Neighbors of Elkhorn Slough (FANS) which objects to the Phillips 66 Santa Maria Refinery Rail Spur Extension Project due to the potential severe impacts on the Elkhorn Slough in Monterey County.

FANS is an association of citizens committed to preserving and enhancing the Elkhorn Slough and its watershed through public education, citizen activism and advocacy. FANS advocates for management of the Slough and its environment in order to protect the environmental, cultural and agricultural integrity of the Slough.

The Elkhorn Slough

Elkhorn Slough is an exceptional ecosystem providing a key linkage between land and sea. The Slough harbors California's largest tract of tidal salt marsh outside San Francisco Bay. The tidal habitats encompass extraordinary biological diversity, providing critical habitat for more than 135 aquatic bird, 550 marine invertebrate, and 102 fish species. The Slough is home for sea lions, harbor seals, and California sea otters. More than 200 different bird species use the Slough as a resting spot during their annual migration. Located on the Pacific Flyway, the area is renowned for outstanding birding opportunities.[1] The habitats include three of the top ten most imperiled U.S. habitats: freshwater wetlands, coastal prairie, and maritime chaparral. These systems are amazingly diverse. Coastal prairie is the most species rich grasslands in north America.

Estuaries like Elkhorn Slough are among the most threatened ecosystems in California, facing rates of habitat loss between 75 and 90 percent. As a result, a disproportionate number of rare, threatened, and endangered species reside in the estuaries that remain. In the Elkhorn Slough watershed, two dozen species are rare, threatened, and endangered. Recognizing the value of these resources to the country,

[1] http://www.nerrs.noaa.gov/Reserve.aspx?ResID=ELK

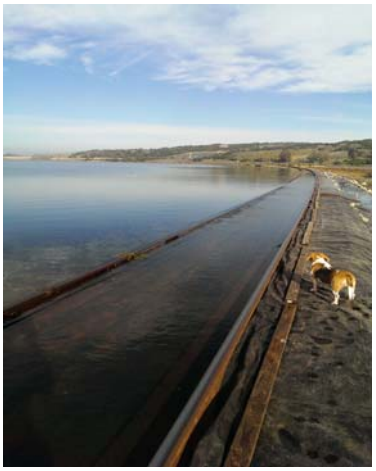
the National Oceanic and Atmospheric Administration designated areas of Elkhorn Slough as part of the Monterey Bay National Marine Sanctuary and as a National Estuarine Research Reserve.

The California Department of Fish and Wildlife has designated parts of Elkhorn Slough as a State Ecological Reserve and as a Wildlife Management Area, and has designated three marine protected areas: the Elkhorn Slough State Marine Reserve and Conservation Area and the Moro Cojo State Marine Reserve. The National Audubon Society includes the slough in its Globally Important Bird Areas and the Western Hemisphere Shorebird Reserve Network designated it a Site of Regional Importance. The Nature Conservancy and Elkhorn Slough Foundation have invested in protecting over 3,500 acres of this watershed.[2] These multiple designations and land acquisitions reinforce the importance of this place as a key conservation asset.[3]

Train Tracks Go Through Elkhorn Slough – *in the Water.*

The proposed project would require trains carrying crude oil to travel through Monterey County and/or Santa Barbara County. An estimated five trains a week, each hauling 80 tank cars, could travel through Monterey County.

In Monterey County, the train tracks go through the Elkhorn Slough for more than five miles, within feet of the water. The tracks are under water during high tides. The 2015 photographs below show trains going through the water of the Slough, and the train tracks surrounded by water. The tracks likely will be under water more frequently in the future due to climate change.



[2] http://www.elkhornslough.org/conservation/why.htm

[3] The attached Natural Environment Study/Jurisdictional Delineation Report shows the many public agencies and private research institutions that have property interests in the Slough.

San Luis Obispo County Should Protect the Valuable Resources in Elkhorn Slough against Crude Oil Spills.

If there is an oil spill, Elkhorn Slough would not recover. An oil spill at Elkhorn Slough would cause massive harm to the environment. Any oil spilled would spread on the water and would be absorbed into the ecologically rich mud flats. These mud flats contain more than 10,000 creatures in a single cubic yard.

The EIR for the proposed project did not adequately evaluate the potential harm to the Slough. The Slough is a national treasure filled with valuable ecological resources that are protected by the public trust doctrine. It is not enough to merely assume that any impacts would be significant and unavoidable, as the EIR has done here. You, the decision makers, as required to have the actual information that shows how severe and awful the impacts would be, in the event of an oil spill or other accident. You must have that information in the EIR before can you make an informed decision as to whether you want to approve the project, despite its tragic consequences to public trust resources.

The CEQA Notice of Availability released by San Luis Obispo County did not adequately inform Monterey County and FANS of the project and its impacts.

FANS would have liked to comment during the public review period for the Recirculated Draft Environmental Impact Report (RDEIR). However, FANS did not know about the EIR or the project. The Notice of Availability for the RDEIR was flawed because it did not provide adequate notice to FANS, to Monterey County, or any person and organization in Monterey County.

The Notice of Availability for the RDEIR did not mention any potential project impacts outside of San Luis Obispo County. To the contrary, the Notice of Availability emphasized that the project is located *within* San Luis Obispo County, by saying:

> The proposed project is within the Industrial land use category, located in the southwestern corner of San Luis Obispo County, approximately 1 mile southwest of State Route 1, approximately 3.5 miles west of the community of Nipomo.

Thus, the Notice of Availability did not give adequate notice to interested persons that the project could have harmful impacts in other Counties outside of San Luis Obispo County. According to project planner Murry Wilson, San Luis Obispo sent the Notice of Availability to only one person in Monterey County: the County planning director, Mike Novo. I spoke with Mr. Novo, who has an excellent memory. He has no recollection of receiving the Notice of Availability. Either he did not receive it, or he simply discarded it for a good reason: nothing on the Notice informed him that the

project had any implications for Monterey County. CEQA's public informational purposes were thwarted due to the flawed Notice.

Once Monterey County found out about the project, the Board of Supervisors wrote to you in strong and unanimous opposition to it.

Had FANS known of the Draft EIR circulation period, FANS would have written comments, and suggested alternatives and mitigations. Our comments would have included these:

> The revised DEIR fails to adequately analyze the risk along the crude oil train routes, including the routes through Monterey County. The DEIR uses materially outdated statistics to analyze risk and accidents. Oil by rail has increased by 4000% since 2008. Accidents have increased to 144 in the calendar year 2014, up from 1 in 2007. On May 6, 2015 another accident occurred. The accident was on dry land. If the accident had occurred in Elkhorn Slough, immense damage would have been caused and the damage would be permanent.
>
> The EIR should use only statistics from the last few years. Instead, the EIR averaged risk over many past years, and ignored the last two years information, which is the most pertinent. By doing so, the EIR determined that the Phillips 66 project would have an artificially low risk for oil train travel. A proper calculation of risk has not been done by the EIR, and the decision makers have not been adequately informed of the risk.

San Luis Obispo County Should Deny the Project

The only way to prevent the harm is to deny the project. FANS is one of many groups, public agencies, and political leaders opposing this project. Many county and city governments have opposed this project, including unanimous Boards of Supervisors of Monterey County and Santa Cruz County.

FANS urges you to deny the proposed project due to its foreseeable harmful impacts. Thank you.

Very truly yours,

STAMP | ERICKSON

Rachael McLaren for

Molly Erickson

Attachments:	Exhibit A:	Photographs (all photos from Mari Kloeppel unless noted otherwise)
	Exhibit B:	Natural Resources of Elkhorn Slough

cc via email: Ryan Hostetter, Project Manager, San Luis Obispo County

EXHIBIT A

Image from Google Earth

EXHIBIT B

Natural Resources of Elkhorn Slough

Special Status Plants. Suitable habitat is present within the Elkhorn Slough for at least 11 federally listed and/or State listed special-status plant species including Monterey spineflower (*Chorizanthe pungens* var. *pungens*), robust spineflower (*Chorizanthe robusta* var. *robusta*), Seaside bird's beak (*Cordylanthus rigidus* subsp. *littoralis*), Menzies wallflower (*Erysimum menziesii* subsp. *menziesii*), Yadon's wallflower (*Erysimum menziesii* subsp. *yadonii*) , sand gilia (*Gilia tenuiflora* subsp. *arenaria*), Santa Cruz tarplant (*Holocarpha macradenia*), beach layia (*Layia carnosa*), Tidestorm's lupine (*Lupinus tidestromii*), Yadon's rein orchid (*Piperia yadonii*), and Hickman's potentilla (*Potentilla hickmanii*). Suitable habitat is present for nine other special-status plant species (including those listed by the CNPS as List 1B, 2, 3, and 4) including sandmat manzanita (*Arctostaphylos pumila*), Hutchinson's larkspur (*Delphinium hutchinsoniae*), Eastwood's goldenbush (*Ericameria fasciculata*), Coastal dunes milk vetch (*Astragalus tener* var. *titi*), sand-loving wallflower (*Erysimum ammophilum*), fragrant fritillary (*Fritillaria liliacea*), Kellogg's horkelia (*Horkelia cuneata* var. *sericea* [syn. *H. cuneata* subsp. *sericea*]), Choris' popcornflower (*Plagiobothrys chorisianus* var. *chorisianus*), and Santa Cruz clover (*Trifolium buckwestiorum*).

Special-Status Animals. At least three special-status animal species are present in the Slough: the southern sea otter [*Enhydra lutris nereis*], the California brown pelican [*Pelecanus occidentalis californicus*], and American peregrine falcon [*Falco peregrinus anatum*].

> **Southern Sea Otter.** The southern sea otter was listed as a federally threatened species in 1977. Southern sea otters forage and rest in and adjacent to the Slough and the train tracks through the Slough. In the eastern north Pacific, sea otters historically ranged from Alaska to central Baja California, Mexico and in the western Pacific south to northern Japan. During the eighteenth and nineteenth centuries sea otter populations were decimated by hunting for their valuable hides and were pushed to the brink of extinction. In 1911, sea otters were protected under the International Fur Seal Treaty and populations have slowly recovered, but with a much more restricted geographic range.
>
> **California Brown Pelican.** The California brown pelican is a Fully Protected Species by the State of California. California brown pelicans forage regularly within the Slough.
>
> **American Peregrine Falcon.** This species nests and forages widely over a wide variety of open landscapes, including salt marshes and grasslands present in the Slough.

Three other special-status wildlife species have the potential to occur within the Slough, including green sturgeon (*Acipsenser medirostris*), South/Central California Evolutionarily Significant Unit (ESU) of steelhead (*Oncorhynchus mykiss irideus*), and

tidewater goby (*Eucyclogobius newberryi*).

The California sea lion (*Zalophus californianus*) and harbor seal (*Phoca vitulina richardsi*) are protected under the federal Marine Mammal Protection Act. Both of these species are commonly observed in the Slough.

The commonly occurring wildlife of the Elkhorn Slough/Moss Landing area and species observed during the surveys are discussed below.

Birds

Over 265 species of birds have been recorded in the Moss Landing/Elkhorn Slough area (De Vogelaere et al., 1998; Roberson, 2002). This area of Monterey County is noted for its outstanding diversity of water birds, raptors, and the occurrence of unusual migrants. The channels of Elkhorn Slough and adjacent areas provide excellent foraging and loafing habitat for a variety of water birds. Water birds observed include surf scoter (*Melanitta perspicillata*), longtailed duck (*Clangula hyemalis*), bufflehead (*Bucephala albeola*), two species of loons, three species of grebes, brown pelican (*Pelecanus occidentalis*), double-crested cormorant (Phalacrocorax auritus), Brandt's cormorant (*Phalacrocorax penicillatus*), pelagic cormorant (*Phalacrocorax pelagicus*), seven species of gulls and three species of terns (see Appendix C). Shorebird foraging habitat is extensive on the mud flats of the Slough. Several species of shorebirds including the black-bellied plover (*Pluvialis squatarola*), willet (*Tringa semipalmata*), and marbled godwit (Limosa fedoa) have recently been observed.

Three heron species regularly observed in the area include the great blue heron (*Ardea herodias*), great egret (*Ardea alba*), and snowy egret (*Egretta thula*). These species nest colonially (rookeries), primarily in trees, and are known to nest in the Elkhorn Slough protected lands

Many species of raptors are known to be in the Slough area. Biologists regularly observe both osprey (*Pandion haliaetus*) and peregrine falcon (*Falco peregrinus anatum*) in the Slough. Both species are attracted to estuaries and associated marine habitat where they forage for fish and water birds, respectively.

Land birds that breed in the Slough include Anna's hummingbird (*Calypte anna*), black phoebe (*Sayornis nigricans*), California towhee (*Melozone crissalis*), song sparrow (*Melospiza melodia*), and house finch (*Haemorhous mexicanus*). Tree swallows (*Tachycineta bicolor*) and barn swallows (*Hirundo rustica*) forage and nest in the Slough's protected lands. Wintering and/or migrant land birds observed in the Slough include hermit thrush (*Catharus guttatus*) and yellow-rumped warbler (*Setophaga coronata*).

Amphibians: The Elkhorn Slough area supports nine species of native

amphibians (De Vogelaere et al., 1998; Stebbins, 2003) including populations of California tiger salamander (*Ambystoma californiense*), Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*), and California red-legged frog (*Rana draytonii*).Gabilan Mountains slender salamander (*Batrachoseps gavilanensis*)

Reptiles: The western pond turtle (*Actinemys marmorata*), the only native freshwater turtle in northern California, is known to be in freshwater wetlands on and adjacent to the Slough. About 17 species of lizards and snakes are known from the Elkhorn Slough area (De Vogelaere et al., 1998; Stebbins, 2003).

Mammals: The most prominent mammals in Elkhorn Slough/Moss Landing Harbor are the California sea lion (*Zalophus californianus*), harbor seal (*Phoca vitulina*), and southern sea otter (*Enhydra lutris*); all occur in the Slough and adjacent harbor areas.

Fish: Over 80 species of fish have been recorded in Elkhorn Slough (Brown, 2002; De Vogelaere et al., 1998). The fish fauna includes species that favor the open water and strong currents of the tidal channel and species moving to and from Monterey Bay and the upper reaches of Elkhorn Slough with the changing tides. The presence and abundance of various species in the slough also changes with the seasons. Examples of elasmobranches known to occur in the Slough include leopard shark (*Triakis semifasciata*), brown smoothound (*Mustelus henlei*), and bat ray (*Myliobatis californica*); bony fishes include topsmelt (*Atherinops affinis*), jacksmelt (*Atherinopsis californiensis*), northern anchovy (*Engraulis mordax*), lingcod (*Ophiodon elongates*), California halibut (*Paralichthys californicus*), starry flounder (*Platichthys stellatus*), black surfperch (*Embiotooca jacksoni*), pile surfperch (*Damalichthys vacca*), and shiner surfperch (*Cymatogaster aggregata*). Elkhorn Slough is an important nursery area for a variety of fish species including species that are residents and species that use the slough seasonally such as leopard shark, northern anchovy, and various flatfishes and gobies (Brown, 2002).

Invertebrates: Species living in the Elkhorn Slough sediments require adaptation for condition with lack of oxygen, gill-clogging silt and the periodic exposure to the drying air in areas between the mean high water and high tide line. In prime habitat, a single square foot of mud may be crowded with thousands of animals, such as mud crabs (*Hemigrapsus oregonensis*), lined shore crab (*Pachygrapsus crassipes*), ghost shrimp (*Callianassa californiensis*), Phoronid tube worm (*Phoronopsis viridis*), rubber-band worm (*Motomastus* tenuis), moon snail (*Polinices lewisii*), gaper clam (*Tresus nuttallii*), white sand clam (*Macoma secta*), or gem clam (*Gemma gemma*), and others. Eelgrass growing in portions of Elkhorn Slough provides extremely valuable habitat for invertebrates such as shrimps, worms, and pipefishes.

Various species of elasmobranches and boney fishes use the upper slough

seasonally and temporally with the changing tides (Brown 2002; Ebert, 2003), and the channel is an important movement corridor for these aquatic vertebrates. Leopard sharks and bat rays pup and breed in the slough (Ebert, 2003; Talent, 1985). A variety of boney fishes (Yoklavich et al, 1991) and larval fishes use the channel to disperse from nursery areas in the upper slough to Monterey Bay. Various species of invertebrate animals (adults and/or larvae) also disperse between the bay and the upper slough through the channel. (RDEIR, Chapter 3, p. 45.)

Regional Species and Habitats of Concern
Regional habitats of concern existing in the Slough include dune scrub, maritime chaparral coastal and valley freshwater marsh, coastal brackish marsh, and northern coastal salt marsh (Figure 6). Estuarine wetland/open water also is present in Elkhorn Slough and Moss Landing Harbor.

At least 38 special status plant species had the potential to occur on or within the vicinity of the Elkhorn Slough.

Suitable habitat occurs within or immediately adjacent to the Slough for 26 special status wildlife species and that these species would be evaluated in this NES. Nineteen of these species included in this table are listed as federal- and/or State-listed endangered or threatened, or proposed endangered or threatened, or are considered Fully Protected species by the State of California.

Special Status Plant Species
Thirty-seven (37) species of special status plants occur within the vicinity of the Slough and thirteen special status plant species have been identified within 5 miles of the Slough (CDFG, 2009).

Within the Slough area, suitable habitat is present for 17 special status plant species occurring in the vicinity, including six federally and/or State-listed or candidate species (purple amole, Gowen cypress, Contra Costa goldfields, Dudley's lousewort, white-rayed pentachaeta, and Monterey clover) and eleven CNPS-listed species (Hickman's onion, Hooker's manzanita, Anderson's manzanita, Toro manzanita, Pajaro manzanita, Kings Mountain manzanita, alkali milk vetch, Congdon's tarplant, Santa Cruz Mountains beardtongue, pine rose, and saline clover).

Suitable habitat is present within the Slough for 11 federal- and/or State-listed special status plant species: Monterey spineflower, robust spineflower, Seaside bird's beak, Menzies wallflower, Yadon's wallflower, sand gilia, Santa Cruz tarplant, beach layia, Tidestrom's lupine, Yadon's rein orchid, Hickman's potentilla. Nine other special status plant species, including those listed by the CNPS as List 1B, 2, 3, and 4 with suitable habitat occurring within the Slough, are as follows: sandmat manzanita, Hutchinson's larkspur, Eastwood's goldenbush, Coastal dunes milk vetch, sand-loving wallflower, fragrant fritillary, Kellogg's horkelia, Choris' popcornflower, and Santa Cruz clover.

Critical Habitat
Critical habitat for four federally listed species occurs in and adjacent to the Slough: Monterey spineflower, green sturgeon, tidewater goby, western snowy plover. Critical habitat for the Monterey spineflower is located in dune habitat in the Slough. Tidewater goby critical habitat is located in the North Harbor (Bennett Slough). The western snowy plover critical habitat is in several areas in the Slough. Critical habitat for green sturgeon encompasses the marine coastal zone of Monterey Bay.

Elkhorn Slough provides habitat for over 80 fish species, many of which move between the slough and Monterey Bay either daily or seasonally.