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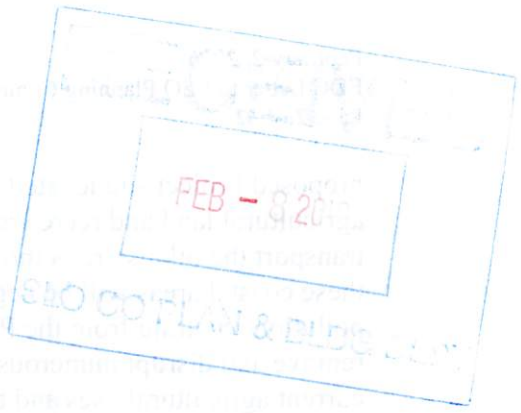


February 2, 2016

Planning Commission
San Luis Obispo County
Department of Planning and Building
976 Los Osos Street, Room 200
San Luis Obispo, CA 93408-2040

**Re: Phillips 66 Santa Maria Refinery Rail Spur Extension Project – Final Environmental Impact Report, Findings and Recommendation for Denial**

Dear Commissioners,

The following comments are submitted by the Environmental Defense Center ("EDC") on behalf of the Sierra Club, ForestEthics, the Center for Biological Diversity, and EDC, urging the San Luis Obispo County Planning Commission ("Commission") to (I) deny certification of the Final Environmental Impact Report ("FEIR") for the Phillips 66 Santa Maria Refinery Rail Spur Extension Project ("Project"), and (II) deny the application for the Project. As noted in this letter, the Project cannot be approved because the FEIR is inadequate, and because the Project is inconsistent with San Luis Obispo County's ("County") Local Coastal Program ("LCP"). Our clients are submitting additional comments under separate cover addressing other concerns about the Project and the FEIR.

EDC is a non-profit, public interest law firm that protects and enhances the environment in Santa Barbara, Ventura, and San Luis Obispo Counties through education, advocacy and legal action. The Sierra Club, a national nonprofit organization with roughly 146,000 members in California, is dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and encouraging humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. ForestEthics is a citizen-powered organization dedicated to creating a world where respect for people and the environment come first. The Center for Biological Diversity is a non-profit environmental organization with over 900,000 members and online activists throughout California and the United States dedicated to the protection of native species and their habitats through science, law, and creative media. All of our clients have members who live, visit, work, and recreate in the area and would be affected by the Project.

Our clients are concerned about the environmental impacts associated with modification of the existing rail spur at the Santa Maria Refinery ("SMR") in order to allow for the transportation and unloading of large amounts of crude oil at the SMR via train. Not only is the

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proposed Project site located in a very sensitive ecological area surrounded by valuable agricultural land and recreational resources, but the mainline track that would be used to transport the oil also runs through ecologically sensitive and agriculturally valuable areas. All of these coastal areas will be negatively impacted by the increased potential for spills, fires, and air pollution resulting from the Project. As discussed in detail below, if approved the Project will remove and disrupt numerous acres of important sensitive habitat and native vegetation, displace current agricultural uses and threaten the viability of future agricultural resources, and increase toxic air emissions known to cause cancer and degrade human health. For all of these reasons and more, the County Planning and Building Department recommends denying the Project. Our clients agree with these recommendations, and urge the Commission to take the following comments into consideration in order to support denial of the Project.

## I. The FEIR Is Inadequate and Should Not Be Certified

The EIR is the "heart of CEQA;"[1] it is the "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."[2] Preparation of an adequate EIR is necessary "not only to protect the environment but also to demonstrate to the public that it is being protected."[3] The requirements of CEQA must be interpreted so "as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."[4]

An EIR must identify and discuss any inconsistencies between a proposed project and applicable general plans, specific plans, and regional plans.[5] The California Coastal Act recognizes that "the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people," and that "it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction" in order to "promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment."[6] Because most of the Project falls within the Coastal Zone, it is subject to the policies and ordinances contained in the County's certified LCP, including the Local Coastal Program Policy Document ("Coastal Plan"), the Coastal Zone Land Use Ordinance ("CZLUO"), the Framework for Planning – Coastal Zone ("Framework for Planning"), and the South County Coastal Area Plan ("Area Plan"). (FEIR at 4.8-11 – 12) As demonstrated in section I(A) below, by omitting numerous LCP policies

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[1] *Citizens of Goleta Valley v. Bd. of Supervisors*, 52 Cal. 3d 553, 564 (1990) (citing CEQA Guidelines § 15003(a)).
[2] *County of Inyo v. Yorty* 32 Cal.App.3d 795, 810 (1973).
[3] CEQA Guidelines § 15003(b).
[4] *Friends of Mammoth v. Bd. of Supervisors* 8 Cal.3d 247, 259 (1972).
[5] CEQA Guidelines § 15125(d); *see also* CEQA Guidelines Appendix G, § X(b) (the EIR should evaluate whether a project would "[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect"); *see also Napa Citizens for Honest Gov't v. Napa Cnty. Bd. of Supervisors*, 91 Cal. App. 4th 342, 360-61 (2001), *as modified* (Aug. 7, 2001), *as modified on denial of reh'g* (Sept. 4, 2001) ("[W]hile there is no requirement that an EIR itself be consistent with the relevant general plan, it must identify and discuss any inconsistencies between a proposed project and the governing general plan. (CEQA Guidelines, § 15125, subd. (d).) The failure to provide enough information to permit informed decision-making is fatal.").
[6] Cal. Pub. Res. Code §§ 30001(a), (c).

relevant to the Project and subsequently failing to discuss any of the Project's inconsistencies with those policies, the FEIR does not meet the statutory goals of the EIR process.[7] Furthermore, as discussed in section I(B), the FEIR's land use policy consistency analysis incorrectly concludes that the Project is consistent with other relevant LCP policies. Discussion of inconsistencies with LCP policies is of particular importance given that "the Coastal Act reflects strong rules of public policy adopted for the public's benefit that implicate matters of vital interest."[8]

### A. The FEIR Is Inadequate Because it Omits—and Fails to Discuss Project Consistency With—Relevant LCP Policies

To ensure an adequate analysis under CEQA, the FEIR must discuss the Project's potential inconsistency with all applicable policies and ordinances in the LCP. As explained herein, the FEIR is inadequate because it does not include, or analyze, the Project's consistency with all relevant LCP policies. As such, the FEIR cannot be certified because it is inadequate for failure to include relevant information.[9]

#### i. Biological Resources

The FEIR Appendix G Policy Consistency Analysis omits analysis of several relevant and important coastal policies and ordinances adopted to protect sensitive biological resources, including Coastal Plan Chapter 4 Policy 7; Coastal Plan Chapter 6 Policies 30 and 35; CZLUO Sections 23.07.170(a)(5) and 23.07.176; and Framework for Planning Strategic Growth Goal 1, Objective 1.

##### a. Coastal Plan Chapter 4, Policy 7

> "Except for pipelines exempted from coastal development permits under Section 30610 (d) and (f) of the Coastal Act and Section 23.03.040 of the CZLUO, a field survey funded by the applicant shall be conducted along the proposed pipeline route in all sensitive resource areas. The survey shall identify the type and extent of impacts from the construction and operation of the proposed pipeline on important coastal resources, including sensitive habitat and sensitive or endangered flora species, visual resources and archaeological resources. Measures to mitigate these impacts shall also be evaluated and where appropriate required. Examples are pipeline route relocation, measures to enhance the revegetation of temporarily disturbed areas (e.g., separation of topsoil and vegetative materials

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[7] *Kings Cnty. Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 712 (Ct. App. 1990), *reh'g denied and opinion modified* (July 20, 1990) ("A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.").

[8] *Feduniak v. Cal. Coastal Comm'n*, 148 Cal. App. 4th 1346, 1376 (2007) (internal quotations and citations omitted).

[9] *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs*, 91 Cal. App. 4th 1344, 1356 (2001), *as modified on denial of reh'g* (Sept. 26, 2001) (An EIR must "reasonably set[] forth sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision").

from excavation spoils for subsequent spreading over excavation spoils) and archaeological investigations or excavation programs. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.08.284 OF THE COASTAL ZONE LAND USE ORDINANCE.]"

(Coastal Plan Chapter 4, Policy 7)

This policy is not analyzed in the FEIR. Policy 7 requires that pipeline routes avoid sensitive habitats and flora in order to mitigate impacts to these resources. The Project pipeline would be contained within the development footprint (FEIR at 2-5), and may intrude into sensitive habitats (FEIR at G-11). The California Coastal Commission ("CCC") identified a flaw in the RDEIR's analysis of sensitive vegetation communities.[10] As a result, the FEIR re-evaluated this issue and determined that the area in question is in fact comprised of sensitive communities. Although the pipeline passes through this sensitive but unmapped habitat, the FEIR omits analysis of "pipeline route relocation" as a mitigation measure, as required by Policy 7.

**b. Coastal Plan Chapter 6, Policy 30**

"Native trees and plant cover shall be protected wherever possible. Native plants shall be used where vegetation is removed. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]"

(Coastal Plan Chapter 6, Policy 30)

This policy is not analyzed in the FEIR, even though it applies to the Project on the Project site *and* along the mainline routes within San Luis Obispo County.

**Project Site:** The FEIR acknowledges native vegetation, but does not analyze avoidance of these native plants and habitats. The FEIR states that the Project removes 20.88 acres of native dune vegetation that the CCC believes is unmapped Environmentally Sensitive Habitat Area ("ESHA"). (FEIR at 4.4-39)[11] The FEIR confirms that this area is comprised of sensitive native vegetation and native plants. (FEIR at 4.4-31 - 4.4-39) The FEIR also states that the Project removes a total of 26.5 acres of native plant cover and vegetation that may be considered habitat for the burrowing owl. (FEIR at 4.4-49) The FEIR does not, however, analyze avoidance of these native plants and habitats.

Importantly, the FEIR actually understates the extent of the ESHA onsite. Expert biologist Lawrence E. Hunt "consider[s] the *entire project area*, including the SMR facility, to be an unmapped ESHA of statewide importance because of its geological and biological uniqueness." According to Mr. Hunt, who has extensive experience studying this area, "[i]f mapped in its functional entirety, the ESHA should extend from the beach, through the project

[10] CCC letter to Murry Wilson, November 24, 2014, at pp. 2 – 3.
[11] CCC letter to Murry Wilson, *supra,* at pp. 2 – 3; *see also* CCC letter to Ryan Hostetter, June 4, 2015, at p. 1.

area, and onto Nipomo Mesa in order to capture the full spectrum of recurring dune sheets at this time."[12]

**Mainline:** The Project is potentially inconsistent with Coastal Plan Policy 30, which warrants analysis in the FEIR. The Project's increased intensity of use of the mainline increases the risk of a mainline oil spill reaching an offsite sensitive terrestrial habitat in the County, necessitating cleanup activities in the terrestrial habitat that would be inconsistent with Coastal Plan Policy 30. The FEIR finds that an oil spill may in fact occur along the mainline route and adversely affect sensitive habitats including those within the County, constituting a Class I (significant and unavoidable) impact. (FEIR at 4.4-52) "Crude oil or oily water spills during the rainy season have the potential to affect large areas of coastal scrub and adjacent property with riparian habitat." (FEIR at 4.4-46) The Project creates a situation that could allow a mainline oil spill to reach offsite terrestrial ESHA in the County, causing direct impacts and necessitating native plant removal via cleanup activities. (FEIR at 4.4-47) Therefore, the FEIR is deficient for not analyzing the Project's consistency with this policy.

### c. Coastal Plan Chapter 6, Policy 35

> "Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]"
>
> (Coastal Plan Chapter 6, Policy 35)

The FEIR does not discuss Policy 35, even though it applies to the Project on the Project site and along the mainline routes within San Luis Obispo County.

**Project Site:** Vegetation which is rare or serves as cover for endangered wildlife must be protected against significant disruption pursuant to Policy 35. The Project includes uses that will remove and substantially disturb rare and endangered dune vegetation including 20.88 acres of sensitive dune vegetation. (FEIR at 4.4-39) This vegetation supports numerous rare and endangered wildlife species. (FEIR at 4.4-37 - 38 and 4.4-49) The Project removes vegetation that is rare and endangered and which serves as cover for endangered wildlife, and therefore conflicts with Policy 35.

**Mainline:** If this development, including increased use of the mainline, were to result in a mainline oil spill that reached an offsite sensitive terrestrial habitat in the County necessitating cleanup activities in the terrestrial habitat, then the Project would be inconsistent with Coastal Plan Policy 35. The FEIR finds that an oil spill may in fact occur along the mainline route and adversely affect sensitive habitats including those within the County. (*See e.g.*, FEIR at G-2) "Crude oil or oily water spills during the rainy season have the potential to affect large areas of

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[12] Letter from Lawrence Hunt and Associates, Biological Consultants to San Luis Obispo County Planning Commission, January 26, 2016, at p. 2 (*emphasis added*). (attached).

coastal scrub and adjacent property with riparian habitat." (FEIR at 4.4-46) The FEIR concludes that—although the chance of such a mainline spill may be relatively small—the potential for a mainline spill, including a mainline spill in the County but offsite, constitutes a Class I (significant and unavoidable) impact to sensitive communities. (FEIR at 4.4-52) The Project creates a situation that could allow an oil spill to reach offsite terrestrial ESHA in the County, causing direct impacts and necessitating vegetation removal via cleanup activities. (FEIR at 4.4-47) Therefore, the FEIR is deficient for failing to analyze the Project's consistency with this policy.

**d. CZLUO Subsection 23.07.170(a)(5)**

> "The provisions of this section apply to development proposed within or adjacent to (within 100 feet of the boundary of) an Environmentally Sensitive Habitat as defined by Chapter 23.11 of this title.
>
> a. Application content. A land use permit application for a project on a site located within or adjacent to an Environmentally Sensitive Habitat shall also include a report by a biologist approved by the Environmental Coordinator that:
>
> ...
>
> (5) Verifies that applicable setbacks from the habitat area required by Sections 23.07.170 to 23.07.178 are adequate to protect the habitat or recommends greater, more appropriate setbacks."
>
> (CZLUO Subsection 23.07.170(a)(5))

The FEIR analyzes consistency with several subsections of CZLUO 23.07.170, but omits analysis of consistency with setbacks required by CZLUO Subsection 23.07.170(a)(5) and is deficient in this regard. As discussed below, the Project is inconsistent with this subsection because the Project does not include a setback of any distance from the sensitive communities that qualify as unmapped ESHAs (CZLUO Section 23.11.030), and instead would be built within the 20.88 acres of the sensitive communities. (FEIR 4.4-39)

The FEIR concludes that "the Rail Spur Project area meets the definition of ESHA" and "appears to meet" the County's definition of unmapped ESHA:

> Due to these factors, 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). The Rail Spur Project site also appears to meet the definition of Unmapped ESHA in the County's LCP (CZLUO Section 23.11) since the area contains sensitive plant and animal species needing protection, which includes California Rare Plant Rank 1B species (i.e., Blochman's leafy daisy and dune larkspur), burrowing owls, and coast horn lizard. Utilizing this definition, and as discussed below in impact BIO.5, the Rail Spur Project would permanently impact approximately 20.88 acres of habitat that is considered sensitive by California Department of Fish and Wildlife (CDFW). (FEIR at 4.4-31)

The FEIR describes sensitive plant communities within the development footprint (FEIR at 4.4-3 - 7), and identifies three sensitive plant communities totaling 20.88 acres that would be directly impacted by the Project. (FEIR at 4.4-39) The presence of these sensitive plant communities, along with the ten sensitive plant and animal species, means that the area in question qualifies as unmapped ESHA.[13] The FEIR makes clear that "the best available information" was considered in preparation of the FEIR, which concludes that the area "[i]s currently occupied by plant species that are listed as Rank 1B status by the California Native Plant Society," and "[i]s currently occupied by sensitive communities recognized by the California Department of Fish and Wildlife." (FEIR at 4.4-26 and 4.4-31)

There is no question that the 20.88 acres of sensitive communities to be removed is ESHA, pursuant to the CZLUO definition of unmapped ESHA, because:

1) Plant and animal life in this area is rare, including numerous State Species of Concern, a state and federally endangered plant, and five other plant species designated as rare by the California Native Plant Society (FEIR at 4.4-31-4.4-49);

2) These plants and animals are "easily disturbed or degraded by human activities and development" as evidenced by the FEIR's impact analysis (FEIR 4.4-31 – 4.4-49);

3) They include "terrestrial" "habitats that may not be mapped" (CZLUO Section 23.11.030); and

4) They contain "other areas commonly known as habitat for species determined to be threatened, endangered, or otherwise needing protection." (CZLUO Section 23.11.030). This includes the state and federally endangered Nipomo Mesa lupine (RDEIR at 4.4-31), five additional special-status plant species (RDEIR at 4.4-35), two special-status State Species of Concern: coast horned lizard and silvery legless lizard (FEIR at 4.4-37), and the State Species of Concern American badger (FEIR at 4.4-38) and burrowing owl (FEIR at 4.4-49). The presence of any one sensitive species is adequate to denote the presence of ESHA. The Project site supports at least ten sensitive species and therefore qualifies as unmapped ESHA.

Accordingly, the FEIR is deficient for failing to analyze and disclose the Project's inconsistency with CZLUO Subsection 23.07.170(a)(5)).

### e. CZLUO Section 23.07.176

"The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.

[13] *See also* Lawrence Hunt letter to County Planning Commission, *supra.*

**a. Protection of vegetation.** Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat."

(CZLUO Section 23.07.176)

CZLUO Section 23.07.176 applies to the Project on the Project site and along the mainline route within San Luis Obispo County. Unfortunately, the FEIR omits analysis of this pertinent ordinance, and therefore fails to identify any of the inconsistencies discussed below.

**Project Site:** Pursuant to CZLUO Section 23.07.176(a), the Project must protect vegetation that is rare or endangered, or that provides cover for rare or endangered species, and must focus on protecting the "entire ecological community." However, according to the CCC's comments on the RDEIR, the RDEIR failed to correctly apply state protocol for vegetation mapping.[14] The FEIR appears to correct this error, concluding that 20.88 acres of sensitive communities/ESHA onsite would be removed by the Project. (FEIR at 4.4-39) In addition, at least five special-status plant species, the American badger, burrowing owl and the federally-listed and state-listed Nipomo mesa lupine—all indicators of unmapped ESHA—occur in the area and are expected to be impacted. (FEIR Chapter 4.4)[15]

The Project does not focus on protection of "the entire ecological community" because 20.88 acres of sensitive ecological communities would be removed by the Project. (FEIR at 4.4-39) Furthermore, the Project is not sited to minimize disturbance, which would entail avoiding or reducing the acreage of native vegetation to be impacted. Therefore the FEIR should have addressed this inconsistency.

**Mainline:** A mainline oil spill from increased rail haul could reach offsite sensitive terrestrial habitat in the County, necessitating cleanup activities in the terrestrial habitat. Thus, analysis of the Project's consistency with CZLUO Section 23.07.176 is needed.

The FEIR finds that an oil spill may occur along the mainline route and adversely affect sensitive habitats and sensitive plants, including those within the County but offsite. "Based on the database query among the UPRR mainline, there are currently a minimum of 167 sensitive plant species occurrences documented within 300 feet of the rail. Approximately 35% of these species occur within San Luis Obispo and Santa Barbara counties alone. In the event of a trail derailment or cargo spill, sensitive plant species could be either directly impacted by the spill, or incur secondary impacts associated with emergency response units and oil spill clean-up procedures." (FEIR at 4.4-53) "Crude oil or oily water spills during the rainy season have the potential to affect large areas of coastal scrub and adjacent property with riparian habitat." (FEIR at 4.4-46)

The FEIR states that the chance of such a mainline spill may be relatively small, although the potential for a mainline spill, including a mainline spill in the County but offsite, constitutes a Class I (significant and unavoidable) impact to sensitive communities. (FEIR at 4.4-52) The

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[14] CCC letter to Murray Wilson, *supra*, at pp. 2 – 3.
[15] *See also* RDEIR comments by Scott Cashen, Independent Biological Resources and Forestry Consultant.

Project creates a situation that could allow an oil spill to reach offsite terrestrial ESHA in the County, causing direct impacts and necessitating vegetation removal via cleanup activities. (FEIR at 4.4-47) Therefore, the FEIR is deficient for failing to analyze the Project's consistency with this policy.

### f. Framework for Planning Strategic Growth Goal 1, Objective 1

> **"Goal 1:** Preserve open space, scenic natural beauty and natural resources. Conserve energy resources. Protect agricultural land and resources.
>
> **Objective 1.** Environment - Maintain and protect a living environment that is safe, healthful and pleasant for all residents by:
>
> **a.** Assuring the protection of coastal resources such as wetlands, coastal streams, forests, marine habitats, and threatened and endangered species."
>
> (Framework for Planning Strategic Growth Goal 1, Objective 1(a))

The FEIR omits analysis of Goal 1 Objective 1, which applies to the Project, and therefore fails to identify any inconsistencies discussed below. The Project fails to preserve open spaces and natural resources as required under Goal 1. By converting open space and 20.88 acres of sensitive coastal dune vegetation for an industrial use (FEIR at 4.4-31 – 4.4-43 and 4.4-49) —including habitat for a number of special-status species—the Project fails to preserve the open space and natural resources pursuant to Goal 1. While 2:1 compensatory mitigation is proposed to lessen the loss of habitat, mitigation would occur within existing habitat areas *outside* the Project footprint. (FEIR at 4.4-40 – 4.4-43) Mitigation in the FEIR does not include redesigning the Project to avoid the 20.88 acres of sensitive habitat or the ten threatened and endangered species that reside there. Therefore the Project does not protect existing threatened and endangered species on the Project site and is inconsistent with Goal 1, Objective 1a.

Additionally, the state and federally-listed Nipomo Mesa lupine has been documented onsite. This species occurs as a seed bank in the soil and may sprout and be identifiable within the Project footprint only after disturbance. (FEIR at 4.4-31 – 4.4-35) Mitigation Measure BIO-1 requires additional surveys for this plant prior to construction, if the Project is approved. If the plant is found within the footprint, the applicant is required to obtain a state "take" permit allowing for destruction of these federally and state endangered plants and their habitat. (FEIR at 4.4-31 – 4.4-35) Therefore, because the Project may not preserve open space and natural resources, or protect all threatened and endangered species, it is inconsistent with Framework for Planning Strategic Growth Goal 1 and Objective 1(a). This inconsistency should have been addressed and disclosed in the FEIR.

### ii. Agricultural Resources

The FEIR Appendix G Policy Consistency Analysis omits analysis of relevant and important coastal policies and ordinances adopted to protect agricultural resources, including Coastal Plan Chapter 9, Policy 6; and Framework for Planning Strategic Growth Goal 1, Objective 3(d).

### a. Coastal Plan Chapter 9, Policy 6

"Agriculture shall be given priority over other land uses to ensure that existing and potential agricultural viability is preserved, consistent with protection of aquatic habitats. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]"

(Coastal Plan Chapter 9, Policy 6)

This policy is not analyzed in the FEIR. Policy 6 requires that agriculture be given priority over all other land uses to ensure that *both* "existing *and potential* agricultural viability is preserved," indicating that this policy does not apply solely to agriculturally-designated parcels. The Project includes permanent conversion of 22.3 acres of Farmland of Statewide Importance currently used for grazing (FEIR at 4.2-33), all or most of which is in the Coastal Zone. Encompassing areas with both "existing and potential agricultural viability," this area is comprised of Oceano Dune 0-9% slope soil, which has the potential to support intensive agricultural operations (i.e., strawberries). (FEIR at 4.2-34) As such the Project falls under this policy, which should be analyzed in the FEIR.

Furthermore, the Project prioritizes an industrial use over both existing agriculture (grazing) and potential crops (strawberries) in the area, and is therefore inconsistent with this policy. Thus the FEIR is deficient for omitting this policy analysis and for failing to disclose the Project's inconsistency with Coastal Plan Chapter 9, Policy 6.

### b. Framework for Planning Strategic Growth Goal 1, Objective 3(d)

"Preserve urban and rural open space as an irreplaceable natural resource for future generations by... [p]rotecting agricultural, natural and other rural areas between communities, and working with landowners and these communities to maintain rural character and land uses."

(Framework for Planning Strategic Growth Goal 1, Objective 3(d))

The FEIR does not analyze Objective 3(d) of Goal 1 of the Framework for Planning. Objective 3(d) requires that agricultural areas be protected, and that the rural character and land uses of these areas be maintained. Goal 1 and its respective objectives protect "agricultural land resources" generally, which includes existing agricultural operations on land that is not zoned Agriculture. As such the Project falls under this policy, which should be analyzed in the FEIR.

The Project does not protect agricultural land in the Coastal Zone, as 22.3 acres of Farmland of Statewide Importance would be permanently converted, most of which is in the Coastal Zone. (FEIR at 4.2-33) Furthermore, the FEIR finds this area is suitable for intensive crops such as strawberries, (FEIR at 4.2-34), and the 22.3 acres of agricultural land and their agricultural soil resources are currently part of a grazing operation. (FEIR at 4.2-33) By

converting these acres, the Project is inconsistent with Goal 1 Objective 3(d), which requires protection of rural lands and maintenance of the coastal area's rural character. The FEIR is thus deficient for omitting this policy analysis and for failing to disclose the Project's inconsistency with Objective 3(d).

### iii. Air Quality

The FEIR Appendix G Policy Consistency Analysis omits analysis of Coastal Plan Chapter 13, Policy 1, which is a relevant and important coastal policy adopted to protect air quality.

#### a. Coastal Plan Chapter 13, Policy 1

> "The County will provide adequate administration and enforcement of air quality programs and regulations to be consistent with the County's Air Pollution Control District and the State Air Resources Control Board. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.06.080 OF THE CZLUO.]"
>
> (Coastal Plan Chapter 13, Policy 1)

The FEIR does not analyze Chapter 13, Policy 1, which is intended to address the Coastal Act concern for air quality, requiring that new development "be consistent with requirements imposed by an air-pollution control district" and "minimize energy consumption and vehicle miles travelled." (Coastal Plan Chapter 13 at 13-1)

As the FEIR correctly discloses, the Project would exceed APCD standards and therefore be inconsistent with other policies addressed in Appendix G. For example, the FEIR determines that "air toxic emissions from the operation of the Rail Spur Project would exceed the acceptable cancer risk levels determined by the SLOCAPCD, based upon a health risk assessment." (FEIR at G-80, 4.3-73 – 76) In addition, the Project would generate criteria air pollutants that exceed APCD thresholds. (FEIR 4.3-53 – 55) As the FEIR notes, the County may be preempted from requiring offsets or Tier 4 locomotives on the mainline, and without such requirements it is unlikely that emissions of diesel particulate matter could be reduced below APCD standards. (FEIR at G-80, 4.3-53 – 55) In addition, while the total GHG emissions within the County would not exceed thresholds, GHG emissions within California would exceed APCD thresholds. (FEIR at 4.3-76) Mitigation below the threshold may not be feasible because the County may be preempted from requiring emissions credits for mainline GHG emissions. (FEIR 4.3-78 – 79) Because of these impacts, the project would be inconsistent with specific standards adopted by the APCD, and accordingly, inconsistent with Coastal Plan Chapter 13, Policy 1.

The FEIR further fails to analyze consistency with the APCD Clean Air Plan, another set of APCD requirements with which Chapter 13 requires consistency. The APCD developed the Clean Air Plan to address the Clean Air Act requirement to maintain the state ozone standard by the earliest practicable date. (FEIR 4.3-27) The Clean Air Plan sets forth control measures

designed to reduce ozone precursor emissions from various sources. The FEIR identifies numerous APCD rules that may be applicable to the Project. (FEIR 4.3-28)

However, the FEIR fails to fully analyze consistency with the Clean Air Plan. The FEIR concludes that although the Project would exceed APCD standards, because the Applicant must obtain an Authority to Construct (ATC) and Permit to Operate (PTO), this would "assure that the project complies with all the rules and regulations of the SLOCAPCD. The requirement to obtain these permits would assure the project is consistent with this policy." (FEIR at G-82) However, the FEIR fails to address any of the specific APCD rules and regulations, or analyze how the permit requirements would ensure consistency with those rules and regulations. Thus, the FEIR is deficient for omitting this policy analysis and for failing to disclose the Project's inconsistency with the Clean Air Plan, and therefore Coastal Plan Chapter 13, Policy 1.

**iv. Safety/Fire**

The FEIR Appendix G Policy Consistency Analysis omits analysis of relevant and important coastal policies and ordinances adopted to ensure public safety, including CZLUO sections 23.05.082 and 23.06.108.

**a. CZLUO Section 23.05.082**

"The purpose of a fire safety plan is to enable a fire protection agency that has jurisdiction over a proposed site to evaluate the adequacy of proposed fire protection measures, and to keep itself informed of new developments to evaluate their effect upon the ability of the agency to provide continuing service. The approval of a fire safety plan does not imply a commitment by any agency to an increased level of service. [Amended 1992, Ord. 2570]

**a. Where required:** A fire safety plan is to be submitted with a land use permit application as follows:

**(1) Within urban and village reserve areas:** All land use permit applications shall be submitted to the applicable fire protection agency, except for single family dwellings proposed on existing lots where a letter from the applicable fire protection agency is submitted that verifies that adequate fire flow and fire hydrants exist.

**(2) Rural areas:** All applications for uses proposed outside of urban or village reserve lines are to be submitted to the County Fire Chief or designated appointee, except agricultural uses not involving buildings and agricultural accessory buildings.

**(3) Exception:** The requirements of this section may be waived where the applicable fire protection agency verifies in writing that fire safety review is unnecessary.

**b. Fire safety plan content:**

...

**(2) Rural areas:** A fire safety plan shall include the location of: available water storage; any storage of fuel, explosives, flammable or combustible liquids and gases; and identification of the extent of proposed vegetative fuel reduction areas.

**(3) Exception to content requirements:** Where the applicable fire protection agency determines that information provided with the project application and plans is sufficient to enable fire safety review without the need for a separate fire safety plan, the information required by subsections b(1) and b(2) of this section need not be supplied. A letter verifying the adequacy of application information shall be submitted to the Planning and Building Department.

**c. Fire safety plan review:**

**(1) Timing of review:** Review of a fire safety plan is to be completed before approval of a Minor Use Permit or Development Plan application; and before application for construction permits in cases of Plot Plan approval. [Amended 1992, Ord. 2570]"

(CZLUO Section 23.05.082)

Although the Project falls under CZLUO Section 23.05.082, the FEIR omits analysis of the Project's consistency with this policy, and for this reason is inadequate. CZLUO Section 23.05.082 requires the applicant to submit a rural area Fire Safety Plan that identifies the locations of all water sources, flammable or combustible liquids or gases, and vegetation reduction areas.

The FEIR includes a Preliminary Fire Protection Plan in Appendix E. The Preliminary Fire Protection Plan includes a bullet point list of assumptions, components, and statistics comprising the Santa Maria Crude Oil Unloading Rack Fire Protection Summary, and schematics showing foam and water systems. However, this Plan lacks specific items required by the CZLUO including (1) water storage location; (2) fuel, explosives, flammable or combustible liquids and gases storage locations; and (3) identification of the extent of proposed vegetative fuel reduction areas. The County planner indicated that "[t]he site contains an existing fire safety plan which will be updated as a result of this Project if approved."[16] Absent an adequate Final Fire Safety Plan submitted prior to approval and which addresses all elements required pursuant to the CZLUO, the Project is inconsistent with CZLUO Subsection 23.05.082.b(2), and findings of consistency with the CZLUO cannot be made.

San Luis Obispo County adopted the "California Fire Code and the California Building Code, with amendments, into local ordinances. These local ordinances include but are not necessarily limited to water requirements, minimum access road requirements, construction requirements, hazard abatement, and turnaround requirements. (FEIR at 4.11-15) However, the Preliminary Fire Plan and FEIR do not address total volume of stored water available, minimum access road requirements, hazard abatement (vegetation reduction) or turnaround requirements.

[16] December 2, 2015 email from SLO County Planner Ryan Hostetter to Brian Trautwein, EDC.

Therefore the Project appears to be inconsistent with County ordinances, State codes for fire safety, and CZLUO Section 23.05.082.b(2). The FEIR is thus deficient for omitting this policy analysis and for failing to disclose the Project's inconsistency with CZLUO Section 23.05.082.b(2).

**b. CZLUO Section 23.06.108**

> "Land use permit applications that require discretionary review for projects that have potential to release toxic or hazardous materials (e.g., gas stations, businesses that handle hazardous wastes) shall include measures, and where applicable, Best Management Practices that: a) minimize the amounts of potential contaminants that may be stored or handled, b) assure proper containment and c) *prevent release of contaminants into the environment.* These measures and practices shall be referred to the County Division of Environmental Health for review and for recommendations that shall be implemented through the land use permit. [Added 2004, Ord 3048]"
>
> (CZLUO Section 23.06.108; *emphasis added*)

Although the Project falls under CZLUO Section 23.06.108, the FEIR omits analysis of the Project's consistency with this important ordinance. The CZLUO requires measures that would "prevent the release of" toxic chemicals into the environment. While some such measures are required as mitigation measures in the FEIR, the FEIR notes that such measures may not be enforceable because the County may be preempted. (FEIR at 4.4-57) Even if no mitigation measures are preempted, the FEIR still finds that the Project may release toxic chemicals, including crude oil, into the environment. (FEIR at 4.4-57) Therefore the Project violates CZLUO Section 23.06.108, and the FEIR is inadequate for failure to include this policy analysis.

**v. Visual**

The FEIR Appendix G Policy Consistency Analysis omits analysis of Coastal Plan Chapter 10, Policy 5, which is a relevant and important coastal policy adopted to protect visual aesthetics.

**a. Coastal Plan Chapter 10, Policy 5**

> "Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]"
>
> (Coastal Plan Chapter 10, Policy 5)

Although the Project falls under Chapter 10, Policy 5, the FEIR's Policy Consistency Analysis omits the analysis of the Project's consistency with this important policy. Policy 5 requires minimization of landform alterations and "major vegetation removal" in public view corridors. However, the Project entails removal of 26.5 acres of dune vegetation (FEIR at 4.4-

49), including 20.88 acres of sensitive plant communities. (FEIR at 4.4-39) Therefore, given this significant vegetation removal, the Project is inconsistent with Coastal Plan Chapter 10, Policy 5, and the FEIR is inadequate for failure to include this policy analysis.

### vi. Energy and Industrial Land Use

The FEIR Appendix G Policy Consistency Analysis omits analysis of Framework for Planning Strategic Growth Goal 1, Objective 5, which is a relevant and important coastal policy adopted to ensure energy efficiency in land use planning.

#### a. Framework for Planning Strategic Growth Goal 1, Objective 5

**"Conserve Energy Resources by:**

**a.** Planning for energy efficiency and conservation through land use and transportation, and in subdivision and building.

**b.** Decreasing reliance on environmentally costly energy sources, increasing conservation efforts, and encouraging use of alternative energy sources."

(Framework for Planning Strategic Growth Goal 1, Objective 5)

Although the Project falls under Goal 1, Objective 5, the FEIR's Policy Consistency Analysis omits the analysis of the Project's consistency with this important policy. The Project would encourage long-distance rail haul and related use of traditional energy sources, and thus would not "conserve energy resources." This energy use results in significant air pollution emissions. The FEIR notes that "[t]he primary source of the emissions of ROG+NOx and diesel particulate is the diesel powered train locomotives while operating on the refinery site and along the mainline." (FEIR at 4.3-50) The Project runs directly counter to Goal 1 Objectives 5(a) and 5(b) because: (1) the Project is not planned for energy efficiency and is not intended to minimize rail haul distance compared to current importation of crude oil, (2) the Project is not a result of land use planning to increase energy efficiency, and (3) the Project increases reliance on environmentally costly fossil fuels to transport crude to Nipomo and process it at the SMR and does not encourage "the use of alternative energy sources." However, the FEIR omits this analysis of the Project's consistency with Goal 1 Objective 5, and is thus inadequate.

### vii. Open Space

The FEIR Appendix G Policy Consistency Analysis omits analysis of Framework for Planning Strategic Growth Goal 1, Objective 3, which is a relevant and important coastal policy adopted to preserve open spaces.

#### a. Framework for Planning Strategic Growth Goal 1, Objective 3

**"Open Space** - Preserve urban and rural open space as an irreplaceable resource for future generations by:

**a.** Encouraging cooperation of governmental agencies, landowners, and non-profit organizations in the preservation of open space.

**b.** Balancing the rights of individual property owners and need for open space.

**c.** Encouraging better access to the coast through the acquisition and development of coastal accessways, trails, and parks, in appropriate locations.

**d.** Protecting agricultural, natural and other rural areas between communities, and working with landowners and these communities to maintain rural character and land uses."

(Framework for Planning Strategic Growth Goal 1, Objective 3)

Although the Project falls under Goal 1, Objective 3, the FEIR's Policy Consistency Analysis omits analysis of the Project's consistency with this important policy. The Project would not protect or "preserve" "rural open space" "between communities" pursuant to Objective 3. It would fail to protect an agricultural area occurring between communities, displacing 22.3 acres of Farmland of Statewide Importance which is currently used for grazing and is suitable for strawberries. (FEIR at 4.2-33 – 4.2-35) It would fail to maintain the rural character and rural land uses by expanding an industrial use into an area considered by the FEIR to be an important buffer between the Project site and nearby residences and farms. (FEIR at G-78) As a result the Project is inconsistent with Framework for Planning Strategic Growth Goal 1, Objective 3. Unfortunately the FEIR omits analysis of Goal 1 Objective 3, and is thus inadequate and should not be certified.

### B. The FEIR is Inadequate Because it Fails to Properly Analyze the Project's Potential Inconsistency With Relevant LCP Policies.

"[W]hile there is no requirement that an EIR itself be consistent with the relevant general plan, it must identify and discuss any inconsistenciaies between a proposed project and the governing general plan. [citation] The failure to provide enough information to permit informed decision-making is fatal."[17] The FEIR is inadequate because it fails to properly analyze the Project's potential inconsistency with all relevant LCP policies, and incorrectly concludes that the Project is potentially consistent with the various policies discussed below.

#### i. Biological Resources

The FEIR evaluates the Project's consistency with the following policies for the protection of biological resources, but the analyses and conclusions are incorrect and are not supported by substantial evidence in the record. Instead, substantial evidence supports a finding that the Project is inconsistent with these polices, as discussed below.

[17] *Napa Citizens for Honest Gov't, supra*, 91 Cal. App. 4th at 360-61.

### a. Coastal Plan Chapter 4, Policy 8

"When feasible, pipelines shall be routed to avoid important coastal resources including recreation, sensitive habitats, archaeological areas and seismically active or geologically unstable areas. Unavoidable routing through recreation, habitat, or archaeological areas, or other areas of significant coastal resources, shall be done in a manner that minimizes the extent of disturbance, erosion potential and the impacts of a spill, should it occur (by considering oil spill volumes, durations, and projected path). Where new petroleum pipeline segments (excluding natural gas) pass through sensitive resource areas, recreation areas, archaeological areas or seismically active areas, the segment shall be isolated (in the case of a break) by automatic shutoff valves. The County may determine whether spacing automatic shutoff valves at intervals less than the maximum set by the Department of Transportation is required to protect sensitive coastal resources. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]"

(Coastal Plan Chapter 4, Policy 8)

Policy 8 requires that pipelines be routed to avoid sensitive habitats when feasible. The FEIR finds that the pipeline would pass through the sensitive habitats on the Project site (FEIR at G-11), but incorrectly concludes that the Project would be potentially consistent with Policy 8. The FEIR does not evaluate the potential feasibility of routing the pipeline to avoid the sensitive habitat, and as such erroneously finds that the proposed placement of the pipeline would be consistent with Policy 8. Without an evaluation of the feasibility of re-routing the pipeline to avoid environmentally sensitive vegetation, the FEIR cannot conclude that the Project would be consistent with this policy.

### b. Coastal Plan Chapter 6, Policy 2

**"Permit Requirement**
As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]"

(Coastal Plan Chapter 6, Policy 2)

The Project would remove 20.88 acres of three different sensitive communities, including possible take of state-listed plants, and therefore precludes continuation of this habitat area. (FEIR at 4.4-35, 4.4-39, 4.4-40) These communities are recognized as sensitive by the

California Department of Fish and Wildlife. (FEIR at 4.4-39) The CCC also considers these plant communities to constitute ESHA and to be imperiled.[18]

The FEIR, however, finds that the Project is potentially consistent with Policy 2. (FEIR at G-11) This preliminary conclusion is based on the presumption that policy consistency would be achieved if the displaced ESHA is mitigated elsewhere, on or offsite. This presumption is false because under Policy 2 and the CZLUO, uses that are not dependent on the resources of ESHA, and uses that preclude continuation of the habitat, are not allowed in ESHA regardless of mitigation, and are therefore inconsistent with Policy 2. (CZLUO Section 23.07.170)[19]

Furthermore, the Project is inconsistent with Policy 2 because it will potentially impact sensitive ground-dwelling species such as coast horned lizard, silvery legless lizard, and California Badger, considered by CDFW as California Species of Special Concern. (Impacts BIO-3 and BIO-4; FEIR at pp. 4.4-37 – 4.4-38) Another special-status species, the burrowing owl, may overwinter in burrows on the site and could be impacted by the Project. (FEIR at 4.4-49) The presence of these species is an indicator of ESHA. (CZLUO Section 23.11.030 – definition of unmapped ESHA)[20] The Project allows non-resource dependent uses in the ESHA, would prevent the continuation of the existing habitat within the Project footprint, and may result in significant damage to ESHA in violation of Policy 2.

In addition, the Project is located in habitat for several special-status plants, including the state and federally listed Nipomo Mesa lupine. (FEIR at 4.4-31 – 4.4-35) California Native Plant Society ("CNPS") noted in comments on the RDEIR that this species thrives on disturbance, and that the locations in which this species was identified may be only a small subset of the locations in which it actually exists.[21] CNPS believes this species appears after disturbance, and so may appear during Project construction. Mitigation for this impact includes potentially obtaining a section 2081 take permit to destroy the listed species. (FEIR at 4.4-31 – 4.4-35) The Project could prevent the continuation of the habitat in the Project footprint where these species currently occur and result in uses in their ESHA habitat which are not dependent on the resources of the ESHA. As a result, the Project violates Policy 2.

The Project would also result in the potential for oil spills into ESHA on the Project site. (FEIR at 4.4-46 – 4.4-49) This would allow an activity that may significantly impact the sensitive habitats, and preclude continuation of the habitat in violation of Policy 2.

### c. Coastal Plan Chapter 6, Policies 20 and 21

> **"Coastal Streams and Riparian Vegetation**
> Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved."

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[18] CCC letter to Ryan Hostetter, *supra*, at p. 1.
[19] *See also* Cal. Pub. Res. Code § 30240; *see also Bolsa Chica Land Trust v. Superior Court* 71 Cal.App.4th 493, 507, 514 (1999).
[20] *See also* Lawrence Hunt letter to County Planning Commission, *supra.*
[21] CNPS letter re DEIR, 1-23-14 at p. 2.

(Coastal Plan Chapter 6, Policy 20)

**"Development in or Adjacent to a Coastal Stream**

Development adjacent to or within the watershed (that portion within the coastal zone) shall be sited and designed to prevent impacts which would significantly degrade the coastal habitat and shall be compatible with the continuance of such habitat areas. This shall include evaluation of erosion and runoff concerns. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]"

(Coastal Plan Chapter 6, Policy 21)

Policy 20 requires that the natural hydrological system and the ecological function of streams be protected and preserved. Policy 21 requires that development adjacent to coastal streams must be compatible with the continuation of the stream habitat, and development must not significantly degrade creek habitats. A tributary to Oso Flaco Creek is located 500 feet from the Project site. (FEIR at 4.4-26, 4.4-27 and 4.4-46) The Project may result in oil spills that could enter sensitive habitats such as the creek and/or a tributary to the creek requiring vegetation removal. (FEIR at 4.4-46 and 4.4-47) The Project is therefore inconsistent with Policies 20 (for the Project site) and 21 because oil spills and spill cleanup activities may significantly degrade the coastal stream habitat and may be incompatible with the continuation of the habitat.

**d. CZLUO Section 23.05.034.c**

**"Grading adjacent to Environmentally Sensitive Habitats.** Grading shall not occur within 100 feet of any Environmentally Sensitive Habitat except:
**(1)** Where a setback adjustment has been granted as set forth in Sections 23.07.172d(2) (Wetlands) or 23.07.174d(2) (Streams and Riparian Vegetation) of this title . . ."

(CZLUO Chapter 5, Section 23.05.034.c)

The CZLUO requires a 100-foot buffer between grading and ESHA except in specific circumstances. The FEIR finds the Project potentially consistent with this section and relies on the fact that a final grading plan will be submitted and must be approved by the County. (FEIR at G-58)

The FEIR, however, concludes that the Project will be developed within and next to areas that qualify as ESHA. Given the FEIR's conclusion that the Project will eliminate a 20.88 acre area of sensitive communities which qualify as ESHA, as currently proposed, regardless of future grading plans, the Project will not retain a 100-foot buffer from the sensitive plant communities and therefore is inconsistent with CZLUO Section 23.05.034(c).

### ii. Agricultural Resources

The FEIR evaluates the Project's consistency with the following policies for the protection of agricultural resources, but the analyses and conclusions are incorrect and are not supported by substantial evidence in the record. Instead, substantial evidence supports a finding that the Project is inconsistent with these polices, as discussed below.

#### a. Coastal Plan Chapter 7, Policy 1

**"Policy 1: Maintaining Agricultural Lands**

> Prime agricultural land shall be maintained, in or available for, agricultural production unless: 1) agricultural use is already severely limited by conflicts with urban uses; or 2) adequate public services are available to serve the expanded urban uses, and the conversion would preserve prime agricultural land or would complete a logical and viable neighborhood, thus contributing to the establishment of a stable urban/rural boundary; and 3) development on converted agricultural land will not diminish the productivity of adjacent prime agricultural land.
>
> Other lands (non-prime) suitable for agriculture shall be maintained in or available for agricultural production unless: 1) continued or renewed agricultural use is not feasible; or 2) conversion would preserve prime agricultural land or concentrate urban development within or contiguous to existing urban areas which have adequate public services to serve additional development; and 3) the permitted conversion will not adversely affect surrounding agricultural uses."

(Coastal Plan Chapter 7, Policy 1)

The FEIR incorrectly finds the Project (onsite) to be consistent with Coastal Plan Chapter 7, Policy 1. To find consistency, the FEIR relies on language in Policy 1, implying that all lands suitable for agriculture are already designated Agriculture. Because the land being converted in the Coastal Zone is not zoned Agriculture, the FEIR assumes that it is therefore not suitable for agriculture, and thus Policy 1 does not apply:

> Per the LCP, all prime and other (non-prime) lands suitable for agricultural use are designated as Agriculture unless agricultural uses are limited by conflicts with urban uses. Therefore, the area to be converted as a result of the Rail Spur Project is not considered suitable for agricultural purposes per guidance in the LCP and for other reasons discussed above. Because these areas are not suitable for agricultural purposes, the LCP does not require their maintenance for agricultural production (refer to Policy 1, above, which only applies to other (non-prime) lands suitable for agriculture). (FEIR at 4.2-34 – 35)

However, this statement is inconsistent with factual statements in the FEIR that the areas being converted, while not zoned Agriculture in the Coastal Zone, are nevertheless currently

used for agriculture (grazing), and have the potential for more intensive agriculture such as strawberries. (FEIR at 4.2-34) This area is also suitable for continued grazing of up to 67 cattle on the 22.3 acres. (FEIR at 4.2-34)

Continued grazing and/or more intensive agricultural uses in these areas proposed for conversion is feasible, and therefore the land is suitable for agriculture even though it is not zoned Agriculture. The Project would permanently convert land suitable for agriculture, and the Project is inconsistent with Policy 1.

Additionally, Policy 1 requires that the "permitted conversion will not adversely affect surrounding agricultural uses." The FEIR finds that the Project will encroach into the buffer between the refinery operation and farms, including those in the Coastal Zone portion of the Santa Maria Valley in San Luis Obispo County. (FEIR at G-78) The Project could therefore harm surrounding agricultural operations in the County's Coastal Zone by reducing this important buffer in conflict with Policy 1.

**b. Area Plan Chapter 6**

> "Agriculture has historically been, and still is, the most widespread use of land in the South County Planning Area. Agricultural practices of varying degrees of intensity involve over two-thirds of the planning area. Any appreciable loss in farm acreage should be avoided."
>
> (Area Plan, Chapter 6, A-Rural Area Land Use)

The Project would displace 22.3 acres of Farmland of Statewide Importance, and would extend 0.8 miles into this area within the Coastal Zone. (Impact AR.2; FEIR at 4.2-33) The emergency access road would also be constructed within this 22.3 acre area. (FEIR at 4.2-33) Nonetheless, the FEIR finds the Project (onsite) consistent with the Area Plan requirement based on the presumption that despite conversion, "the proposed use would not disturb existing grazing activities and this area is not used for intense agricultural production." (FEIR at G-78) Additionally, the FEIR states that regulatory constraints make future farming "unlikely." (FEIR at G-78) Finally, the FEIR finds that the "site has not historically been grazed anywhere near the allowable capacity," and that the Project's impacts to existing grazing would be less than significant. (FEIR at 4.2-34)

However, the FEIR also finds that, "[c]onversion of this area would remove existing rangeland with the capacity for approximately 67 cattle (22.3 acres times 3 head per acre)." (FEIR at 4.2-34) In addition, the FEIR finds this farmland capable of supporting intensive crops such as strawberries. (FEIR at 4.2-34) The FEIR's analysis of consistency with this policy is therefore flawed because the Chapter 6 does not require avoidance of the loss of only "intense" agricultural operations, or avoidance of "significant" impacts. Instead, this Policy protects "farm acreage" generally. Given the appreciable loss of 22.3 acres of Farmland of Statewide Importance in the Coastal Zone, the Project is inconsistent with Area Plan Chapter 6.

### c. Framework for Planning Strategic Growth Goal 1

The FEIR incorrectly finds the Project (onsite) to be consistent with Framework for Planning Strategic Growth Goal 1. This goal requires the County to "Preserve open space, scenic natural beauty and natural resources. Conserve energy resources. Protect agricultural land and resources." (Framework at p. 1-12) Contrary to this policy, the Project does not "protect agricultural land and resources" in the Coastal Zone. The FEIR argues that the Project is potentially consistent with Goal 1 because the site is zoned for industrial uses. (FEIR at G-2) However, the policy protects not only agriculturally zoned land, but also "agricultural land and resources," which includes existing agricultural operations on land not zoned Agriculture.

The Project does not protect agricultural land in the Coastal Zone, as 22.3 acres of Farmland of Statewide Importance would be permanently converted, most of which is in the Coastal Zone. (FEIR at 4.2-33) The FEIR claims that even though the site supports viable agricultural soils, it is "unlikely" this acreage would be used for farming due to existing zoning, the presence of state and federally-listed species, and coastal development permitting requirements. (See e.g., FEIR at pp. G-78) In addition, the FEIR finds consistency with Goal 1 in part because, "[w]hile the site does support viable agricultural soils, it is not likely that these would be used for intensive agricultural production." (FEIR at G-2)

However, Strategic Growth Goal 1 does not require protection of only areas suitable for intensive agriculture. Instead, it requires the protection of "agricultural land and resources." Moreover, the FEIR finds this area is suitable for intensive crops such as strawberries. (FEIR at 4.2-34) The 22.3 acres of agricultural land and its agricultural soil resources are currently part of a grazing operation. (FEIR at 4.2-33) By converting these acres, the Project is inconsistent with Goal 1.

### d. Framework for Planning Strategic Growth Goal 1, Objective 4

> "**Agriculture** - Encourage the protection and use of agricultural land for the production of food, fiber and other agricultural commodities, and support the rural economy and locally-based commercial agriculture."
>
> (Framework for Planning Strategic Growth Goal 1, Objective 4)

The FEIR incorrectly finds the Project (onsite) to be consistent with Framework for Planning Strategic Growth Goal 1, Objective 4. The Framework for Planning notes that "it has become more crucial than in the past to encourage continuing agricultural production so that the income provided by this sector can be maintained," and the County's policy of protecting farmland is a "top land use priority" because agriculture is a stable sector of the County economy. (Framework for Planning at 2-14 – 15) The gross value of agriculture is multiplied by a factor of two to three times through the local economy. Additionally, the Framework for Planning notes that agriculture is not growth-inducing and requires fewer services than other industries, so it results in a net financial surplus to the County. However, the Project would not encourage the protection of agricultural land for the production of food and fiber pursuant to Objective 4, but instead would convert 22.3 acres of Farmland of Statewide Importance.

Contrary to the FEIR's statement that the Project would not disrupt the grazing activity, the Project would eliminate 22.3 acres which are part of a grazing operation, impairing current and future agricultural production and potential in an area suitable for growing strawberries. (FEIR at 4.2-33) While grazing may continue in adjacent areas if the Project is constructed, the Project does not protect these 22.3 acres of agricultural land and soil resources, and is therefore inconsistent with Objective 4.

### v. Visual

The FEIR evaluates the Project's consistency with the following policy for the protection of visual aesthetics, but the analysis and conclusion is incorrect and not supported by substantial evidence in the record. Instead, substantial evidence supports a finding that the Project is inconsistent with Coastal Plan Chapter 10, Policy 1, as discussed below.

#### a. Coastal Plan Chapter 10, Policy 1

**"Policy 1: Protection of Visual and Scenic Resources**

Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved protected, and in visually degraded areas restored where feasible. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]"

(Coastal Plan Chapter 10, Policy 1)

The Project is inconsistent with Policy 1, which requires protecting views of scenic vistas and sensitive habitats. According to the CCC, the RDEIR apparently failed properly map vegetation in order to identify ESHA.[22] (FEIR at 4.4-31 and 4.4-39) The FEIR identifies 20.88 acres of sensitive communities which qualify as ESHA, and which would be removed by the Project if approved and built. (FEIR at 4.4-31 and 4.4-39) Therefore the Project does not preserve and protect views of this sensitive habitat.

### vi. Energy and Industrial Land Use

The FEIR evaluates the Project's consistency with the following policy for the maintenance of a buffer between industrial uses and neighboring properties, but the analysis and conclusion is incorrect and not supported by substantial evidence in the record. Instead, substantial evidence supports a finding that the Project is inconsistent with Area Plan Chapter 6, as discussed below.

#### a. Area Plan Chapter 6

**"Industrial**

The large industrial area west and south of Highway 1 is currently occupied by the Santa Maria Oil Refinery (operated by Union Oil Company of California) and the Santa Maria Chemical Plant operated by the Union Chemical Division,

[22] CCC letter to Murry Wilson, *supra,* at pp. 2 – 3.

> Carbon Group. These uses occupy only a portion of the total area, and the large vacant areas provide a desirable buffer from adjacent uses and an area where wind-carried pollutants can be deposited on-site, 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 and coke ovens should be subject to Development Plan approval covering the entire property to designate buildable and open space areas. No major expansion or alterations to these operations are envisioned at this time. Proposed offshore oil and gas lease sales, however, may generate the need for onshore partial oil and gas processing facilities. The siting of such facilities may be appropriate in this area due to similarities in scale and use, adequate vacant lands, and proximity to areas being considered for lease. (LCP)"
>
> (Area Plan Chapter 6)

Area Plan Chapter 6 describes the existing desirable buffer between the industrial operation at and near the Project site and neighboring properties' land uses. The buffer allows for deposition of air pollutants, which the policy finds particularly important for agricultural land uses. (FEIR at G-78) The FEIR finds the Project potentially inconsistent with this policy due to the fact that the Project is not driven by increasing *offshore* oil and gas production as envisioned in the policy, but by other factors. (FEIR at G-78) Our clients agree with this finding of inconsistency. In addition to the FEIR's reasoning for finding a potential policy inconsistency with this language in Area Plan Chapter 6, the planned expansion of industrial uses into this buffer as described at FEIR G-78 also renders the Project inconsistent with this policy. (*See also* Staff Report Exhibit A at 7)

### vii. Odors

The FEIR evaluates the Project's consistency with the following policy for the reduction of noxious odors, but the analysis and conclusion is incorrect and not supported by substantial evidence in the record. Instead, substantial evidence supports a finding that the Project is inconsistent with CZLUO section 23.06.084, as discussed below.

#### a. CZLUO Section 23.06.084

CZLUO section 23.06.084 applies to projects within 0.5 miles of an urban or village reserve line and requires that "[a]ny non-agricultural land use conducted in, or within one-half mile of an urban or village reserve line is to be so operated as not to emit matter causing noxious odors which are perceptible at the points of determination identified in the following table:...Industrial: At or beyond the boundary of the Industrial category."

The FEIR finds the Project consistent with this section (FEIR at G-63) but fails to analyze the odor impacts associated with accidental releases of odiferous gases or liquids, e.g., an oil spill, which are identified and disclosed on page 4.3-79 of the FEIR. The FEIR considers the impacts of spills in other sections. (*See e.g.*, FEIR Chapter 4.7) Therefore the FEIR must also consider the Project's consistency with CZLUO Section 23.06.084 in the context of an

accidental release or spill. Absent such analysis, the Project appears inconsistent with CZLUO Section 23.06.084.

## II. The Project Should Be Denied

### A. The EIR Is Inadequate

"[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public with the information about the project that is required by CEQA."[23]

The Project should be denied because, among other concerns, the FEIR is clearly inadequate and cannot be certified. As discussed above, the FEIR: (1) fails to include LCP policies that are applicable to the Project, and with which the Project is inconsistent; and (2) inappropriately concludes that the Project is potentially consistent with other LCP policies. For this reason alone the Project cannot be approved.

### B. The Project Is Inconsistent with LCP Policies

A project in the Coastal Zone may not be approved unless it is consistent with the applicable LCP.[24] A project's consistency with Coastal Act policies is "essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone."[25] The proposed Project is inconsistent with numerous County LCP policies, as evidenced by the inconsistencies identified in the Staff Report, the potential inconsistencies identified in Appendix G of the FEIR, and the remaining inconsistencies discussed in sections I(A) and (B) above. For this reason the Project cannot be approved.

#### i. Inconsistencies Identified by Staff

In the Staff Report for the Project, the County Planning and Building Department recommends denial of the Project because it would be inconsistent with many of the LCP policies identified in this letter. (Staff Report at 5) The Project therefore cannot be approved because of these numerous inconsistencies with LCP policies identified by County staff:

##### a. Biological Resources

As discussed in the FEIR and Staff Report, the Project would displace 20.88 acres of sensitive terrestrial native plant communities on the Project site, and would result in the potential for oil spills which could harm sensitive terrestrial and aquatic biological resources both at and near the Project site, and along the mainline within the County. (Staff Report at 16 – 17; Staff Report Exhibit C at 2 – 5; *see also* FEIR at 4.4-39, G-2, G-6, G-10 – 13, and G-66 – 68) This area qualifies as ESHA. (FEIR at 4.4-31)[26] Spills could harm one of thirteen lakes and seven

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[23] *Santiago Cnty. Water Dist. v. Cnty. of Orange*, 118 Cal. App. 3d 818, 829 (Ct. App. 1981).
[24] Cal. Pub. Res. Code §§ 30600.5(c); 30604(b).
[25] *Id.* § 30001(d).
[26] *See also* Lawrence Hunt letter to County Planning Commission, *supra.*

creeks and rivers in the County near the mainline, and could require cleanup efforts requiring removal of oil-soaked vegetation. (FEIR at 4.4-47 and 4.13-14) Project construction would likely impact the federally- and state-endangered Nipomo Mesa lupine, four State Species of Concern (burrowing owl, American badger, silvery legless lizard, and coast horned lizard), and five special-status plant species. (FEIR at 4.4-31 – 49)

As a result, the Staff Report correctly finds the Project inconsistent with the following LCP policies for the protection of biological resources: Framework for Planning Strategic Growth Goal 1; Framework for Planning Combining Designations SRA – Sensitive Resource Area General Objective 1; Coastal Plan Chapter 6, Policies 1, 20 (for the mainline), 29 and 36; and CZLUO Section 23.07.170.

**b. Agricultural Resources**

As discussed in the FEIR and the Staff Report, the Project has the potential to result in oil spills and fires that could cause significant impacts to agricultural land and resources along the mainline rail routes. (Staff Report Exhibit B at 1, 2; Staff Report Exhibit C at 4 – 5; *see also* FEIR at G-2, G-3 – 4, G-6, and G-14) Although trains would utilize an existing transportation corridor that is currently used to transport oil and other hazardous materials through the County, the FEIR acknowledges that the Project would increase the overall probability of a crude oil spill of over 100 gallons occurring along the mainline to one in 126 years. (FEIR at G-2, G-3 – 4, G-6, and G-14)

Given this potential for an oil spill to occur in agricultural areas along the mainline, the Staff Report correctly concludes that the Project would be inconsistent with Framework for Planning Strategic Growth Goal 1; Framework for Planning Strategic Growth Goal 1, Objective 4; Framework for Planning Chapter 6, Goal 2; and Coastal Plan Chapter 7, Policy 1. (Staff Report Exhibit B at 1, 2; Staff Report Exhibit C at 4 – 5)

**c. Air Quality**

As identified in the Staff Report, the Project is inconsistent with the Area Plan's Industrial Air Pollution Standards, which provide that "[a]ny 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. (LCP)." As the Staff Report explains, the Project does not comply with this requirement because it "exceeds the minimum threshold for cancer risk and the daily threshold associated with diesel particulate matter." (Staff Report Exhibit A at 7 – 8) The toxic air emissions from the Project would not meet APCD standards, resulting in inconsistencies with this Area Plan policy. While the use of Tier 4 locomotives could otherwise mitigate both of these impacts, the County would likely be preempted from imposing such a requirement and the emissions would thus remain above APCD thresholds. (Staff Report at 14 – 15, AQ.2, AQ.4; FEIR at G-80, 4.3-54 – 4.3-55)

The Staff Report further correctly finds the Project inconsistent with Framework for Planning Strategic Growth Goal 1, Objective 2, which requires the County to "preserve, protect and improve the air quality of the County" by taking certain actions, including "[s]eeking to exceed or at least maintain the minimum state and federal ambient air quality standards . . .

[m]itigating to the extent feasible, potential adverse air quality impacts from new development using the best available technology . . . [and] [e]ncouraging the use of alternative energy sources such as solar, wind, and wave technology to reduce the use of non-renewable resources." With respect to the Project site, the Staff Report explains that the Project is inconsistent with this goal because the Project's toxic air emissions would exceed APCD health risk thresholds and APCD's threshold for DPM emissions. (Staff Report at 14; Staff Report Exhibit A at 4, AQ.2, AQ.4) As explained above, these impacts could not be feasibly mitigated due to preemption of the County's ability to require the use of Tier 4 locomotives.

With respect to mainline emissions, the Staff Report correctly explains that the Project is inconsistent with Objective 2 for additional reasons. The Project's toxic air emissions would exceed the health risk threshold for areas where speeds are limited to 30 miles per hour. The Project would also exceed APCD standards for NOx, ROG, and DPM, resulting in potential state and/or federal ambient air quality exceedances. (Staff Report at 15 – 16, AQ.2, AQ.5; Staff Report Exhibit B at 1) As the Staff Report notes, the County may be preempted from requiring emissions reduction credits on the mainline for NOx, ROG, and DPM emissions, or the use of Tier 4 locomotives. (Staff Report at 15 – 16) Without such requirements, the Project would result in emissions that exceed APCD standards, and the Project is therefore inconsistent with Objective 2.

In addition to these inconsistencies with Objective 2 identified in the Staff Report and FEIR, the Project is also inconsistent with this policy for additional reasons. As the Staff Report explains, the Project's GHG emissions would exceed APCD thresholds, and the County may be preempted from requiring mainline GHG emission reduction credits. (Staff Report at 16, AQ.6) Appendix G of the FEIR includes GHG emissions exceedances in its analysis of inconsistency with this policy. (FEIR at G-2) This exceedance provides yet another reason that the Project is inconsistent with Objective 2. Moreover, the FEIR does not include an alternative that would power the locomotives or fuel the refinery using non-fossil fuel options, (FEIR at 5-2), which is inconsistent with Objective 2, requiring the County to encourage the use of alternative energy. Instead, the Project encourages the increased use of fossil fuels and associated significant air quality impacts in order to transport crude. Therefore, the Project is inconsistent with the Framework for Planning, Strategic Growth Goal 1, Objective 2.

**d. Land Use; Energy and Industrial Land Use; and Open Space**

The FEIR and Staff Report correctly find the Project inconsistent with Framework for Planning Land Use Goal 4 because the Project would result in air pollution emissions including particulate matter that would threaten public health. (Staff Report Exhibit C at 8 – 12; Staff Report Exhibit A at 7; *see also* FEIR at G-6)

The Staff Report further finds the Project inconsistent with the language in Area Plan Chapter 6 for Industrial uses on the Union Oil Site. (Staff Report Exhibit C at 5 – 6; *see also* FEIR at G-78) Under this policy, expansion of the SMR facility is only envisioned to support offshore oil development. However, the proposed Project's expansion is for onshore oil. In addition, as noted in the Staff Report, expansion into the "desirable buffer" is also inconsistent

with this policy. (Staff Report Exhibit C at 5 – 6; *see also* FEIR at G-78) Thus the Staff Report correctly finds the Project inconsistent with Area Plan Chapter 6.

The Staff Report also correctly finds the Project inconsistent with Framework for Planning Land Use Element Strategic Growth Goal 1 due to the potential for oil spills affecting various land uses. (Staff Report Exhibit C at 4 – 5)

**e. Cultural and Historic Resources**

As discussed in the FEIR and Staff Report, the Project is inconsistent with Coastal Plan Chapter 12, Policy 1 with regard to archaeological resource protection along the mainline. (Staff Report Exhibit C at 5) An oil spill along the mainline could significantly impact archeological sites, and "[g]iven the potential significant impacts that could occur to archeological resources in the case of an oil spill, rail transport of crude oil along the mainline would be potentially inconsistent with this policy." (FEIR at G-21) "Impacts to archeological resources could occur as a result of an oil spill and resulting cleanup actions along the mainline routes." (Staff Report Exhibit C at 5) Thus the Staff Report correctly finds the Project in conflict with this policy.

**ii. Potential Inconsistencies Identified in FEIR Appendix G**

In addition to the inconsistencies with LCP policies identified in the Staff Report, Appendix G of the FEIR correctly concludes that the Project would be potentially inconsistent with numerous other LCP policies not discussed in the Staff Report. Although the Staff Report highlighted certain policy conflicts, the additional inconsistencies with LCP policies identified in Appendix G of the FEIR likewise mandate denial of the Project.

**a. Biological Resources**

As discussed in the FEIR, the Project would displace 20.88 acres of ESHA and pose oil spill threats to waterbodies and ESHA along the mainline and on and near the Project site. As a result, the FEIR correctly finds the Project to be potentially inconsistent with CZLUO Section 23.07.174 for the mainline. (FEIR at G-68)

**b. Safety/Fire**

FEIR Appendix G correctly finds the Project potentially inconsistent with CZLUO section 23.05.086 for the mainline because "[t]he transportation of crude by rail would have to meet the fire safety standard of the Federal Railroad Administration (FRA) and other DOT agencies." (FEIR at G-61 – 62)

**c. Land Use**

The FEIR correctly finds the Project potentially inconsistent with Coastal Plan Chapter 8, Policy 1 because the Project does not reflect "that it is the environmentally superior alternative." (FEIR at G-16 – 17)

### d. Water Resources

The Project may cause an oil spill which could impair groundwater in the County along the mainline. (FEIR at G-17) As a result the FEIR correctly identifies a potential inconsistency with Coastal Plan Chapter 9, Policy 1. (FEIR at G-17)

### iii. Other Inconsistencies

As discussed in section I(A) above, the Project would be inconsistent with numerous other LCP policies not identified in the Staff Report or FEIR. Furthermore, the FEIR incorrectly concludes that the Project would be consistent with several important LCP policies, as discussed in section I(B) above. Although the Staff Report provides analysis of numerous LCP policy inconsistencies to form the basis of the recommendation to deny the Project, the following inconsistencies (discussed in detail in section I above) further support denying the Project.

### a. Biological Resources

The FEIR and Staff Report omit discussion of several relevant biological policies with which the Project is inconsistent, as discussed in detail in section I above:

- Coastal Plan Chapter 4, Policy 7
- Coastal Plan Chapter 6, Policies 30 and 35
- CZLUO Sections 23.07.170(a)(5) and 23.07.176
- Framework for Planning Strategic Growth Goal 1, Objective 1(a)

Furthermore, as discussed in section I above, the Project would place a rail spur and crude oil unloading facility, including new oil pipelines, in sensitive native plant communities that qualify as ESHA and unmapped ESHA pursuant to the CZLUO. (FEIR at 4.4-31)[27] Since the Project would be located in sensitive communities, no buffer would be included between the Project and these sensitive communities. In addition, the FEIR notes the possibility for an oil spill to impact sensitive biological resources near the Project site and along the mainline in SLO County. Despite this, the FEIR incorrectly finds the Project potentially consistent with:

- Coastal Plan Chapter 4 Policy 8
- Coastal Plan Chapter 6 Policies 2, 20 (for the Project site) and 21
- CZLUO Section 23.07.174 (for the Project site)
- CZLUO Section 23.05.034.c

These FEIR findings are not supported by substantial evidence in the record. The finding of potential consistency with Coastal Plan Chapter 4 Policy 8 is based on an inadequate analysis of the feasibility of pipeline transport of crude to the SMR. As noted above, this analysis does not include an evaluation of the feasibility of re-routing the pipeline to avoid environmentally sensitive vegetation. The finding of potential consistency with Coastal Plan Chapter 6, Policy 2 is based on the proposed mitigation to replace the sensitive habitats to be removed, but ignores the CZLUO requirement that only resource-dependent uses are allowed in ESHA. As discussed

[27] *See also* Lawrence Hunt letter County Planning Commission, *supra.*

above, the finding of potential consistency with and CZLUO Section 23.07.174 and Coastal Plan Chapter 6 Policy 20 on the Project site overlooks the potential for an oil spill from the Project site to reach Little Oso Creek. The finding of potential consistency with Coastal Plan Chapter 6 Policy 21 fails to consider that an oil spill may not be compatible with the continuation of the stream habitat areas that may be affected by a spill. The FEIR preliminary finding of consistency with CZLUO Section 23.05.034(c) is in error and not based on evidence in the record: grading and construction are proposed within the sensitive vegetation communities, and therefore there will not be a 100-foot buffer between grading and the communities as required under CZLUO Section 23.05.034(c).

**b. Agricultural Resources**

As discussed in section I above, the Project would result in the disturbance of approximately 22.3 acres of Farmland of Statewide Importance in areas currently used for grazing and with the potential for more intensive agricultural use such as strawberries. (FEIR at 4.2-33 – 34) Due to the adverse impacts the Project would have on these areas currently used for agriculture, and with the potential for more intensive agricultural use, the Project is inconsistent with Coastal Plan Chapter 7, Policy 1; Coastal Plan an Chapter 9, Policy 6; Area Plan Chapter 6; Framework for Planning Strategic Growth Goal 1; Framework for Planning Strategic Growth Goal 1 Objective 3(d); and Framework for Planning Strategic Growth Goal 1 Objective 4.

**c. Air Quality**

As discussed in section I above, the Project would be inconsistent with Coastal Plan Chapter 13, Policy 1, which requires the County to provide adequate administration and enforcement so as to be consistent with the APCD. However, the Project would result in exceedances of APCD standards with respect to health risk thresholds and DPM emissions at the Project site. (FEIR at 4.3-50, 4.3-64 ) With respect to the mainline, the Project would also exceed health risk thresholds and APCD standards for ROG, NOx, DPM and GHG emissions. (FEIR at 4.3-50 – 76) The Project may also be inconsistent with the APCD's Clean Air Plan. Because the Project results in numerous exceedances of APCD standards, it may also violate the rules and regulations set forth in the Clean Air Plan, and therefore be inconsistent with Chapter 13, Policy 1.

**d. Safety/Fire**

The Project has a preliminary Fire Safety Plan (FEIR Appendix E) but this plan lacks specific details required pursuant to the CZLUO, including information related to fuel reduction/defensible space, turnaround requirements for fire trucks, and the locations of all water sources and flammable or combustible liquids or gases. The Fire Safety Plan will not be finalized unless the Project is approved. Additionally, as discussed above, the FEIR does not ensure that chemicals will not be released into the environment. Thus, as discussed in section I above, the Project is inconsistent with the CZLUO Sections 23.05.082 and 23.06.108, both of which were omitted from the FEIR.

### e. Visual

The FEIR includes mitigation measures for visual resource impacts. As discussed in section I above, the Project will nonetheless impact scenic vistas of sensitive habitats, and will result in major vegetation removal. Thus, the FEIR incorrectly concludes that the Project is potentially consistent with Coastal Plan Chapter 10, Policy 1. Furthermore, any discussion of Coastal Plan Chapter 10, Policy 5 is completely omitted from the FEIR's Policy Consistency Analysis in Appendix G. The Project is inconsistent with both of these policies due to residual visual impacts after mitigation, including impacts to views of ESHA (Policy 1) and due to the Project's major vegetation removal (Policy 5).

### f. Energy and Industrial Land Use

The Project is inconsistent with the Framework for Planning Strategic Growth Goal 1, Objective 5 because, as discussed in section I above, the Project would encourage long-distance rail haul and related use of energy, so would not conserve energy resources. Furthermore, the Project is inconsistent with Objective 5 because it is not intended to minimize rail haul distance compared to current importation of crude oil; the Project is not a result of land use planning to increase energy efficiency; and the Project increases reliance on environmentally costly fossil fuels to transport crude and process it at the SMR.

### g. Open Space

The Project is inconsistent with Framework for Planning Goal 1 Objective 3 because, as discussed in section I above, the Project fails to "preserve urban and rural open space as an irreplaceable resource for future generations."

### h. Odors

As described above, FEIR does not analyze the Project's consistency with CZLUO Section 23.06.084 insofar as the Project may, according to the FEIR, result in oil spills and or accidental releases. Since the Project may result in oil spills and subsequent odors, the Project is not consistent with CZLUO Section 23.06.084.

## Conclusion

EDC and our clients support the staff recommendation for denial of the proposed Project. The Project must be denied because it would violate critical LCP policies protecting air quality and public health, environmentally sensitive habitat, agriculture, groundwater and water resources, cultural resources, scenic views, public safety, land use compatibility, and open space. The Project also violates County policies promoting conservation and clean energy, and discouraging reliance on environmentally costly energy sources. Finally, the Project cannot be approved because the FEIR fails to adequately analyze and disclose all of the potential impacts that would result if the Project is allowed to proceed.

Thank you for your consideration of these comments.

Sincerely,

Linda Krop,
Chief Counsel

Maggie Hall,
Staff Attorney

Cameron Goodman,
Legal Fellow

Brian Trautwein,
Environmental Analyst

cc: Sierra Club
ForestEthics
Center for Biological Diversity
California Coastal Commission

Attachments:

Letter from Lawrence Hunt and Associates, Biological Consultants to San Luis Obispo County Planning Commission, January 26, 2016

**Lawrence E. Hunt**
**Consulting Biologist**

Planning Commission
San Luis Obispo County
Dept. of Planning & Building
976 Los Osos Street, Room 200
San Luis Obispo, CA 93408-2040

30 January 2016

**Subject: Comments on Adequacy of Phillips 66 Santa Maria Refinery Rail Project Final EIR Concerning Presence of "Unmapped ESHA", San Luis Obispo County, California.**

Dear Commissioners,

I am a consulting wildlife biologist with over 30 years of field experience in central and southern California. I hold advanced degrees in evolutionary ecology, with an emphasis in herpetology. Much of the field work for my Ph.D. dissertation was conducted in the dune systems of the Santa Maria Basin in western Santa Barbara County and southwestern San Luis Obispo County. I am thoroughly familiar with the project area because several of my field study sites were located in dune habitats immediately adjacent to the SMR facility.

I have reviewed the findings of the Final EIR (FEIR, 2015) as well as comment letters prepared by the California Coastal Commission (CCC, 2014; 2015) on the conclusions contained in this document. The FEIR concludes that approximately 21 acres of dune scrub habitat in the project area "appears" to meet the County of SLO and CCC definitions for Unmapped ESHA. I wish to state the project area unequivocally supports at least 21 acres, and probably more, of Unmapped ESHA.

As noted in the FEIR, the California Coastal Commission provides guidance in evaluating whether or not habitats meet ESHA status: *"Environmentally Sensitive Area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."*

The FEIR concludes that approximately 20.88 acres of "environmentally sensitive vegetation" would be disturbed by the proposed project. This use of semantics obscures that fact that 'vegetation' should more appropriately be called 'habitat' and should be considered Unmapped ESHA because it is geologically unique, supports a number of special-status plants, wildlife, and specialized habitats, and is highly susceptible to anthropogenic disturbance and development.

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The FEIR states that, *"It is important to also consider that the Rail Spur Project area has been highly disturbed and degraded from agricultural, industrial, and human activities for several decades and does not appear to contain features that have an equivalent characteristic or natural function as other mapped ESHA. This conclusion is based on a qualitative comparison with ESHA habitat that is located to the west of the UPRR mainline, which contains a high habitat value and supports numerous special-status species."* (FEIR, p. 4.4-31). I disagree with this highly subjective assessment. Although it is true that the project area has been subjected to various anthropogenic disturbances over the past decades, including a fire in the late 1980s after which veldt grass (*Ehrharta calycina*) significantly colonized dune habitats in the project area, it has not been uniformly subjected to such disturbance. More importantly, the subdued dune topography on which the project area lies is physically and functionally connected to dune habitats west of the UPRR tracks that the FEIR authors somehow consider to be more 'valuable'.

The FEIR completely misses the fact that the project area, and the larger SMR facility, are situated on one of the last intact series of coastal dune features remaining in California (Cooper, 1967; Hunt, 1993). Extending from the beach to up to 20 miles inland, these recurring windblown dune features get progressively older to the southeast. The dunes in the project area are late Pleistocene/early Holocene in age; their characteristic parabolic shapes are clearly visible on Figure 4.4-5 in the FEIR and are largely unchanged from aerial photographs taken in 1930 (Plate 12, Fig. 1 in Cooper, 1967). These windblown features were deposited during times of rising and falling sea levels 2,000-6,000 years BP (Orme and Tchakerian, 1986). The 'noses' of these parabolic dunes stabilized, i.e, stopped moving southeastward, at least 3,000-4,200 yrs BP due to declining sand budgets and encroaching dune scrub vegetation (Orme, 1990). The dune mass in the project area mantles the southwestern flank of Nipomo Mesa, which itself is a much older sheet of subdued transverse paleodunes that are at least 10,000 years, and as much as 125,000 years, old (Johnson, 1983; Orme and Tchakerian, 1986). The 'valuable' habitats found in the dunes west of the UPRR tracks that the FEIR authors consider worthy of ESHA protection are physically and geomorphically connected to the dune scrub habitats in the project area. They differ only in age, i.e., dunes in the project area are older than those to the west. I consider the entire project area, including the SMR facility, to be part of an unmapped ESHA of statewide geological and biological importance. If mapped in its functional entirety, the ESHA should extend from the beach, through the project area, and onto Nipomo Mesa in order to capture the full spectrum of recurring dune emplacement and vegetative succession in this region.

It is highly likely that all of the special-status species found in dune habitats west of the UPRR tracks occurred in the project area, at least historically. This is certainly true for ground-dwelling wildlife, such as silvery legless lizards (*Anniella pulchra*), which are present in the project area habitats in high numbers. It should be noted that recent genetic analyses of this species have uncovered a high degree of genetic subdivision among populations. Indeed, the species inhabiting dunes in the project area have a much more restricted geographic distribution than previously thought. Finer-scale genetic and morphological studies may also reveal population-level differences in legless lizards in this area concordant with dune age. In addition to direct loss and fragmentation of habitat for these and other species, collateral impacts in the form of soil (sand) disturbance promotes veldt grass invasion that will degrade adjacent dune scrub vegetation for this and other special-status species.

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The 20.88 acres of 'environmentally sensitive vegetation' mapped in the FEIR exceeds the criteria used by the CCC and the County of San Luis Obispo to define Unmapped ESHA.

Sincerely,

*Lawrence Hunt*

Lawrence E. Hunt

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