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August 15, 2016

VIA EMAIL
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Ryan Hostetter
Department of Planning and Building
County Government Center
976 Osos Street, Room 200
San Luis Obispo, CA 93408

Re: Phillips 66 Rail Spur Extension Project / Coastal Development Permit DRC2012-00095

Dear Ryan:

This letter responds to your email to Jim Anderson dated May 23, 2016, requesting additional information. Your request covered three categories: mitigation measures, project description, and statement of overriding considerations. The information on mitigation measures and project description is primarily a compilation of prior comments and correspondence rather than new information. The information regarding the statement of overriding considerations consists of both information previously submitted to the County as well as additional information.

Mitigation Measures

You requested that we put together a list of all the mitigation measures in the Final EIR and sort the measures into categories. Among other things, you requested that we identify the measures we consider preempted by federal law, and applicant-proposed measures. Attachment A to this letter is the complete set of mitigation measures from the Final EIR, together with our responses to the measures. For completeness and ease of comparison to the EIR, Attachment A presents all the proposed measures in the order they are found in Chapter 7 of the Final EIR.

The Final EIR contains nearly 250 separately identified requirements, including numbered mitigation measures and their separately designated subsections. Phillips 66 does not object to the vast majority of these requirements. Table 1 below summarizes Attachment A and Phillips 66's response to the mitigation measures proposed in the Final EIR.

TABLE 1: SUMMARY OF ATTACHMENT A

Category	Mitigation Measures in Final EIR
No objection/no comment (Approx. 201 separately identified requirements)	AV-1a §§ a-d; AV-1b § a; AV-1c § a; AV-3a §§ a-h; AV-3b; AV-4; AR-3; AQ-1a §§ a, b, c.2), d-k; AQ-1e; AQ-1f §§ a-k, m-q; AQ-1g; AQ-1h; AQ-1i; AQ-2a (other than locomotives); AQ-4a (other than preempted portions of AQ-2a); AQ-4b; AQ-6 (other than locomotives); AQ-7; AQ-8 (other than locomotives); BIO-3; BIO-4 §§ 1-4; BIO 5a §§ a-i; BIO-5b; BIO-5c; BIO-5d; BIO-5e; BIO-6a §§ a-e; BIO-6b §§ a-c; BIO-7 §§ a-l; BIO-8a §§ a-c; BIO-8b; BIO-9 §§ a-d; CR-1a; CR-1b §§ a-h; CR-1c; CR-1d; CR-2a §§ a-h; CR-2b §§ a-f; CR-2c; CR-3; CR-5; GR-1a; GR-1b; GR-1c; GR-1d §§ a-f; GR-1e; GR-1f; GR-1g; GR-1h; GR-1i; GR-2 §§ a-c; GR-3; HM-2d; N-1; N-2b; N-2c; PS-1 §§ a-j; PS-3a; PS-3b; PS-3c; PS-3d; PS-3e; PS-3f; PS-3g; PS-3h; PS-3i; PS-5; TR-1 §§ a-e; WR-1 §§ a-f; WR-2.
No objection/minor comment (typos, timing, etc.) (Approx. 6 separately identified requirements)	AQ-1b; AQ-1d; AQ-4c; BIO-2; BIO-5f; BIO-6b § d; BIO-7.
Substantive change requested (Approx. 11 separately identified requirements)	AV-3c §§ a-c (lighting mitigation should not be applied to existing refinery); AQ-1a § c.2) (requirement for Tier 4 construction equipment should be “to extent feasible”); AQ-1c (documentation for construction equipment); AQ-1f § l (watering frequency and use of soil binders); AQ-2b (clarify that idling restrictions apply to locomotives under Phillips 66 control); BIO-1 (“normal” rainfall required for preconstruction surveys). WR-6
Preempted by federal law (Approx. 23 separately identified requirements)	AQ-2a (as it pertains to locomotives); AQ-3; AQ-4a (as it incorporates preempted portions of AQ-2a); AQ-5; AQ-6 (as it pertains to locomotives); AQ-8 (as it pertains to locomotives); BIO-11; CR-6; HM-2a (requirement for Option 1 tank cars is preempted, but Phillips 66 proposes alternative measure);

TABLE 1: SUMMARY OF ATTACHMENT A	
Category	Mitigation Measures in Final EIR
	HM-2b (measure is preempted but federal law requires railroads to do this anyway); HM-2c (County requirement for positive train control is preempted, but record shows nearly all UPRR track in CA has already been converted); N-2a (Phillips 66 proposes alternative measure for N-2a § 2); PS-4a (County requirement that Phillips 66 provide notice and train routing information is preempted but federal law requires railroads to do this); PS-4b (proposed measure requiring Option 1 tank cars is preempted, but Phillips 66 proposes alternative measure); PS-4c; PS-4d; PS-4e; TR-4; WR-3 (referencing preempted measures BIO-11 and PS-4a through PS-4e).

Applicant-proposed mitigation measures fall into two categories. Where Phillips 66 proposes minor wording changes to a mitigation measure identified in the Final EIR, the change is described in Attachment A. (Edits are suggested in Attachment A for some of the mitigation measures listed in the “no objection/minor comment” and “substantive change” categories in the table above.) The second category of applicant-proposed mitigation measures results from the project changes the company has made. There are two of these.

First, by letter dated February 4, 2016, Bill Schroll, Site Manager of the Santa Maria Refinery, informed the Planning Commission that the company committed to the three trains per week/150 trains per year alternative reviewed in the Final EIR, in place of the five trains per week/250 trains per year scenario in the original project description. To make the limit on trains enforceable, Phillips 66 proposes the following condition:

No more than three crude oil unit trains per calendar week shall be unloaded at the unloading facility. If a fourth crude oil unit train arrives at the facility within a calendar week, it shall be pulled off the UPRR track and onto the refinery site for safety reasons, and then it shall be shut down until the beginning of the following calendar week, when unloading may commence. No more than 150 crude oil unit trains per calendar year shall be unloaded at the unloading facility.

Second, by letter dated April 14, 2016, Darin Grandfield, Site Manager of the Santa Maria Refinery, informed the Planning Commission that -- by the time Project construction is completed -- the company expects that its fleet of upgraded rail tank cars will be large enough that only the upgraded cars will be used in unit trains delivering crude oil to the refinery. Mr. Grandfield proposed the following mitigation measure, in lieu of Mitigation Measure HM-2a in the Final EIR:

Crude oil unit trains shall not be allowed to unload crude oil at the Santa Maria Refinery unless all the tank cars in the train are designed or retrofit to meet or exceed the DOT 117, 117P or 117R standards set forth in 49 CFR § 179.202 (as published May 8, 2015 at 80 Fed. Reg. 26644); except that ECP brakes shall not be required prior to the compliance date for such equipment as enforced by the Federal Railroad Administration and the federal Pipeline and Hazardous Materials Safety Administration.

Project Description

As described above, Phillips 66 modified its project description in two ways. First, it embraced the three trains per week scenario, reviewed as an alternative in the Final EIR, as its proposed project. Second, Phillips 66 committed that only upgraded rail tank cars would be used in crude oil unit trains received at the unloading facility. Chapter 2 of the Final EIR contains a comprehensive, detailed description of the proposed project. While the two project modifications will accomplish a lot in reducing environmental impacts, they change very little in Chapter 2. (As noted at page 5-15 of the Final EIR, the three trains per week alternative limits the maximum number of trains per week and per year, but “[a]ll other aspects of this alternative would be the same as the Rail Spur Project” as originally proposed.) Table 2 below identifies the pages in Chapter 2, Project Description that are affected by the two project modifications. For your convenience, Attachment B includes mark-ups of the affected pages.

TABLE 2: MODIFICATIONS TO PROJECT DESCRIPTION		
FEIR Page	FEIR Section	Nature of Change
2-8	2.3.1	First paragraph, third sentence, change “five” to “three”.
2-11	2.3.3	Fourth paragraph, first sentence, change “five” to “three”.
2-22	2.5	First paragraph, first sentence, change “five” to “three” and change “250” to “150”.

2-22 to 2-23	2.5	Delete the third paragraph (describing CPC-1232 rail tank cars) and replace it with the following: "Phillips 66 will use upgraded rail tank cars meeting DOT-117, DOT 117P or DOT 117R standards for rail tank cars used in high hazard flammable trains, as set forth in 49 CFR § 179.202 (as published May 8, 2015 at 80 Fed. Reg. 26644), except that ECP brakes shall not be required prior to the compliance date for such equipment as enforced by the Federal Railroad Administration and the federal Pipeline and Hazardous Materials Safety Administration.
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In all other respects, the 38 pages of detailed project description, tables and figures contained in Chapter 2 are unchanged by the project modifications.

Statement of Overriding Considerations

Attachment C is a draft Statement of Overriding Considerations. For your convenience, we also are providing the draft as a Word document.

Please let us know if you require additional information, or would like to discuss the attachments.

Very truly yours,



Jocelyn Thompson
ALSTON & BIRD LLP

JT:amm

Attachments (A, B, C)

cc: James O. Anderson (w/attachments, via email)

ATTACHMENT A

ATTACHMENT A TO LETTER OF AUGUST 15, 2016
MITIGATION MEASURES IN FINAL EIR AND PHILLIPS 66 RESPONSE

FEIR #	FEIR Text	Phillips 66 Response
AV-1a	<p>Prior to issuance of grading and construction permits, the applicant shall submit a revised site-grading plan to the Department of Planning and Building for review and approval showing the following:</p> <p>a. An earthen berm shall be constructed around the eastern perimeter of the rail spur. The berm shall be a minimum of 10 feet tall and a maximum of 20 feet tall above the existing grade and as shown on the Berm Location Concept Map shown below (Figure 4.1-11) for the purpose of reducing views of the rail spur and trains from State Route 1 and the California Coastal Trail / De Anza Trail.</p> <p>b. The berm shall be designed and constructed to appear as a natural dune landform and shall have gradually undulated horizontal and vertical dimensions (consistent with Policy 5: Landform Alterations).</p> <p>c. No other existing landforms which would provide visual screening of the facility shall be used as source of borrow material for the required berm.</p> <p>d. The berm shall be revegetated with native grasses and shrubs to match the surrounding natural landcover and plant community. No disturbance shall occur outside of the identified area of disturbance shown on the site-grading plan.</p>	<p>Phillips 66 does not object to Mitigation Measure AV-1a or its subsections a through d.</p>
AV-1b	<p>Prior to issuance of grading and construction permits, the applicant shall submit a revised site-grading plan to the Department of Planning and Building for review and approval showing the following:</p> <p>a. All new cut and fill slopes shall include slope-rounding and landform grading techniques to avoid an engineered appearance (consistent with Policy 5: Landform Alterations).</p>	<p>Phillips 66 does not object to Mitigation Measure AV-1b or its subsection a.</p>
AV-1c	<p>Prior to issuance of grading and construction permits, the applicant shall submit a Habitat/Landscape Revegetation Plan to the Department of Planning and Building for review and approval showing the following:</p> <p>a. All new slopes shall be revegetated with native grasses and shrubs to match the surrounding natural landcover and plant community.</p>	<p>Phillips 66 does not object to Mitigation Measure AV-1c or its subsection a.</p>
AV-3a	<p>Prior to issuance of grading and construction permits, the applicant shall submit a</p>	<p>Phillips 66 does not object to Mitigation Measure AV-3a or its</p>

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FEIR #	FEIR Text	Phillips 66 Response
	<p>comprehensive lighting plan to the Department of Planning and Building for review and approval showing the following:</p> <p>a. The Lighting Plan shall be based on a photometric study prepared by a qualified engineer who is an active member of the Illuminating Engineering Society of North America (IESNA).</p> <p>b. The Lighting Plan shall be prepared by a qualified engineer who is an active member of the IESNA using guidance and best practices endorsed by the International Dark Sky Association.</p> <p>c. The applicant shall provide the specific technical data and performance criteria required by the applicable safety policy used as the basis for the Lighting Plan.</p> <p>d. As part of the Lighting Plan, illumination levels shall be the minimum required by the specifically defined public safety policy and ordinances.</p> <p>e. As part of the Lighting Plan, direct views of all lighting sources shall be directed downward and shielded from view from public roads.</p> <p>f. As part of the Lighting Plan, lights shall be designed and constructed to reduce illumination of the adjacent slopes and dunes where applicable.</p> <p>g. As part of the Lighting Plan, no lights shall be placed east of any portion of the screening berm required in mitigation measure AV-1a.</p> <p>h. As part of the Lighting Plan, lighting for all rail spur perimeter fencing shall be equipped with motion sensors for activation rather than left on continuously.</p>	<p>subsections a through h.</p>
AV-3b	<p>Within six months following completion of construction, a Lighting Evaluation Report shall be submitted to the Department of Planning and Building for review and approval. The purpose of the Lighting Evaluation Report shall be to assess and correct any unexpected or residual lighting impacts following project completion. The report shall be prepared by a qualified engineer who is an active member of the IESNA who was not associated with the preparation of the Lighting Plan described in mitigation measure AV-3a. Preparation of the Lighting Evaluation Report shall be by a qualified engineer retained by the County of San Luis Obispo and funded by the project applicant. The Lighting Evaluation Report shall</p>	<p>Phillips 66 does not object to Mitigation Measure AV-3b.</p>

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	<p>include the following at a minimum:</p> <p>a. A comprehensive assessment of the lighting resulting from the rail spur project and project operations as seen from State Route 1, Oso Flaco Road, the California Coastal Trail, De Anza Trail and public viewing areas to the east. The Lighting Evaluation Report shall assess the completed project during a variety of operational conditions including all typical procedures such as unloading, moving of trains, multiple trains present, etc. The Report shall evaluate and identify where, if any unexpected light impacts occur, such as but not limited to reflection off trains, adjacent landforms, buildings, unexpected sources, etc.</p> <p>b. The Lighting Evaluation Report shall make specific recommendations to reduce the effects of any unexpected or excessive residual lighting impacts identified in the report. Recommendations may include but not be limited to: repositioning lights, lowering heights, increasing sizes of cut-off shields, reducing types of luminaires, reducing wattage, and modifying operational procedures.</p>	
AV-3c	<p>Existing Facility and Operations Lighting Evaluation. Prior to issuance of grading and construction permits, the applicant shall submit a comprehensive evaluation of the existing refinery facility and operations lighting to the Department of Planning and Building for review and approval showing the following:</p> <p>a. The Existing Facility and Operations Lighting Evaluation shall be prepared by a qualified engineer who is an active member of the Illuminating Engineering Society of North America (IESNA).</p> <p>b. The Existing Facility and Operations Lighting Evaluation shall assess the sources and levels of all existing lighting associated with the refinery operations, and shall determine if any lighting levels exceeds the minimum required by applicable County of San Luis Obispo, state and federal safety regulations.</p> <p>c. If lighting levels exceed the applicable regulations, the Existing Facility and Operations Lighting Evaluation shall make specific recommendations to reduce the lighting levels to the minimum required. The Existing Facility and Operations Lighting Evaluation shall also identify and make recommendations to eliminate visibility</p>	<p>Phillips 66 does not object to Mitigation Measure AV-3c or its subsections a through c as applied to the Project.</p> <p>As written, Measure AV-3c also would require mitigation for the existing refinery, which is part of the baseline. CEQA and the EIR provide no basis for requiring evaluation and mitigation of the lighting of the existing refinery. See Attachment 22 to Letter from Jocelyn Thompson to the Planning Commission dated February 1, 2016. Throughout Measure AV-3c, the term "Existing Facility and Operations Lighting Evaluation" should be replaced with "Project Operations Lighting Evaluation". In addition, subsection b should be deleted in its entirety because it is focused exclusively on the existing refinery, which is part of the existing environmental setting.</p>

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	of all point source lighting as seen from public roadways. The project applicant shall implement all recommendations made by the Lighting Evaluation Report and required by the Department of Planning and Building.	
AV-4	Implementation of mitigation measures AV-1a through AV-1c required for Impact AV.1 and mitigation measure AV-3b required for Impact AV.3 would also reduce potential impacts caused by trains operating on the rail spur.	Phillips 66 does not object to Mitigation Measure AV-4.
AR-3	Implement WR-1, WR-2; AQ-1f, and BIO-9.	Phillips 66 does not object to Mitigation Measure AR-3.
AQ-1a	<p>Prior to issuance of grading and construction permits, and throughout project construction, as applicable, the Applicant shall implement the following construction emission reduction measures:</p> <p>a. Properly maintain all construction equipment according to manufacturer's specifications;</p> <p>b. Fuel all off-road and portable diesel powered equipment with CARB-certified motor vehicle diesel fuel (non-taxed version suitable for use off-road);</p> <p>c. Applicant shall include the following, in addition to complying with state Off-Road Regulations, in order to reduce peak daily/quarter ROG+NOx emissions:</p> <p>1) Use CARB Tier 4 certified diesel construction equipment off-road heavy-duty diesel engines and</p> <p>2) Stagger the construction schedule to prevent peak day/quarter emissions from exceeding the threshold (for example, no site preparation during grading and soil transport);</p> <p>d. Use CARB 2010 or cleaner certified on-road heavy-duty diesel trucks to the extent feasible and comply with state On-Road Regulations;</p> <p>e. If construction or trucking companies that are awarded the bid or are subcontractors for the project do not have equipment to meet the above two measures, the impacts from the dirtier equipment shall be addressed through SLOCAPCD approved off-site or other mitigation measures;</p> <p>f. All on- and off-road diesel equipment shall not idle for more than 5 minutes. Signs shall be posted in the designated queuing areas and job sites to remind drivers and operators of the 5</p>	<p>Phillips 66 does not object to Mitigation Measure AQ-1a subsections a, b, c.2), or d through k.</p> <p>Subsection c.1) would require all construction equipment with off-road diesel engines to be equipped with engines meeting Tier 4 standards. There is limited availability of equipment with Tier 4 engines. Scheduling the required equipment will be even more difficult in light of c.2), which requires construction to be staggered to reduce peak day/quarter emissions. Accordingly, this condition should require use of "Tier 3 or Tier 4, to the extent feasible". See Attachment 22 to Letter from Jocelyn Thompson to the Planning Commission dated February 1, 2016.</p>

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	<p>minute idling limit;</p> <p>g. Diesel idling within 1,000 feet of sensitive receptors is not permitted (Sensitive receptors are defined in the SLOCAPCD Handbook as people that have an increased sensitivity to air pollution or environmental contaminants. Sensitive receptor locations include schools, parks and playgrounds, day care centers, nursing homes, hospitals, and residential dwelling units);</p> <p>h. Staging and queuing areas shall not be located within 1,000 feet of sensitive receptors;</p> <p>i. Equipment shall be electrified when feasible;</p> <p>j. Substitute gasoline-powered or diesel hybrids in place of diesel-powered equipment, where feasible; and</p> <p>k. Use alternatively fueled construction equipment on-site where feasible, such as compressed natural gas (CNG), liquefied natural gas (LNG), propane, or biodiesel.</p>	
AQ-1b	<p>Prior to issuance of grading and construction permit, the Applicant shall ensure SLOCAPCD regulations that prohibit developmental burning of vegetative material within San Luis Obispo County are followed for the life of the project.</p>	<p>Phillips 66 does not object to Mitigation Measure AQ-1b.</p> <p>In the first sentence of the measure, "permit" should be "permits".</p>
AQ-1c	<p>Prior to issuance of grading and construction permit, the Applicant shall ensure that portable equipment and engines 50 horsepower or greater, used during grading and construction activities must have a California portable equipment registration (issued by the ARB) or a SLOCAPCD permit. Proof of registration must be provided to the SLOCAPCD prior to the start of grading or construction or a permit secured from the SLOCAPCD prior to the start of grading or construction. The following list is as a guide to equipment and operations that may have permitting requirements, but it is not exclusive:</p> <p>a. Power screens, conveyors, diesel engines, and/or crushers;</p> <p>b. Portable generators and equipment with 50-horsepower or greater engines;</p> <p>c. Internal combustion engines;</p> <p>d. Unconfined abrasive blasting operations;</p> <p>e. Concrete batch plants;</p> <p>f. Rock and pavement crushing;</p> <p>g. Tub grinders; and</p>	<p>Phillips 66 agrees that construction equipment should have proper registrations or permits.</p> <p>Phillips 66 requests the condition be revised to specify that the documentation be available on-site and be made available upon request. As written, the condition is unnecessarily burdensome. The substantive requirement of the condition is merely a restatement of the law. Yet, the documentation requirements are not workable. It is not practical to have proof of PERP registration or SLO permits for all relevant equipment prior to start of grading or construction. Different equipment is on-site during different phases of the 9-10 month construction. (See FEIR p. 2-20 to 2-21.) If submission to the</p>

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	h. Trommel screens.	<p>Air District is required, Phillips 66 requests that the timing of submission of documentation should be prior to bringing each piece of equipment onsite. See Attachment 22 to Letter from Jocelyn Thompson to the Planning Commission dated February 1, 2016.</p> <p>In the first sentence of the measure, "permit" should be "permits".</p>
AQ-1d	<p>Prior to issuance of grading and construction permit, the Applicant shall ensure that all grading and construction equipment greater than 100 bhp be equipped with CARB Level 3 diesel particulate filters (DPF), or equivalent, to achieve an 85 percent reduction in diesel particulate emissions from an uncontrolled engine. If CARB verified Level 3 DPFs cannot be secured for all of the equipment greater than 100 hp then the applicant will offset the added DPM with measures including but not limited to schedule modifications, implementation of no idling requirement, or other applicable measures providing a total reduction equivalent to an 85 percent reduction from uncontrolled engines as approved by the SLOCAPCD.</p>	<p>Phillips 66 does not object to the fundamental emission control requirements of Mitigation Measure AQ-1d.</p> <p>Phillips 66 requests that the timing of the demonstration be changed. Phillips 66 proposes that the required demonstration be made <u>prior to bringing each piece of equipment onsite</u>, rather than <u>prior to issuance of grading and construction permit</u>. See Attachment 22 to Letter from Jocelyn Thompson to the Planning Commission dated February 1, 2016.</p> <p>In the second sentence, "100 hp" should be "100 bhp."</p>
AQ-1e	<p>Prior to issuance of grading and construction permits, or during construction, if emissions of ROG+NOx with the above mitigations still exceed the thresholds, the Applicant shall secure SLOCAPCD-approved onsite or off-site reductions in ROG + NOx emissions to ensure that ROG + NOx emissions do not exceed the SLOCAPCD quarterly thresholds. Coordination with the SLOCAPCD should begin at least six (6) months prior to issuance of grading and/or construction permits for the Project to allow time for refining calculations and for the SLOCAPCD to review and approve the Construction Activity Management Plan (CAMP) and on-site or off-site mitigation</p>	<p>Phillips 66 does not object to Mitigation Measure AQ-1e.</p>

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FEIR #	FEIR Text	Phillips 66 Response
	approach.	
AQ-1f	<p>Prior to issuance of applicable grading permit, the Applicant shall prepare a Dust Control Plan to be approved by the APCD and County Health and include requirements in the SLOCAPCD CEQA Handbook identified as fugitive dust mitigation measures and shall include a combination of the following, as approved by the SLOCAPCD and County Health:</p> <p>a. Reduce the amount of the disturbed area where possible.</p> <p>b. Use of water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. An adequate water supply source must be identified. Increased watering frequency would be required whenever wind speeds exceed 15 mph. Reclaimed (non-potable) water should be used whenever possible.</p> <p>c. All dirt stockpile areas should be sprayed daily as needed, covered, or a SLOCAPCD-approved alternative method will be used. (90 percent reduction from no dust control).</p> <p>d. Permanent dust control measures identified in the approved Project revegetation and landscape plans should be implemented as soon as possible following completion of any soil disturbing activities and shall use native species that have been shown to reduce particulate emissions to the extent feasible.</p> <p>e. Exposed ground areas that will be reworked at dates greater than one month after initial grading should be sown with a fast-germinating non-invasive grass seed and watered until vegetation is established.</p> <p>f. All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by the SLOCAPCD.</p> <p>g. All roadways, driveways, etc. to be paved should be completed as soon as possible. In addition, equipment pads should be laid as soon as possible after grading unless seeding or soil binders are used.</p> <p>h. Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site.</p> <p>i. All trucks hauling dirt, sand, soil, or other loose</p>	<p>Phillips 66 does not object to Mitigation Measure AQ-1f or its subsections a through k or m through q.</p> <p>With respect to subsection I, Phillips 66 does not object to a requirement to apply water every 3 hours to areas within the construction site that are actively being worked. However, the way the condition is worded also imposes a 61 percent reduction in PM as an enforceable performance standard, when we believe it was intended to reflect an assumption about the reduction expected from applying water at the required frequency. There is no way to demonstrate compliance with 61% control, and that requirement should be deleted.</p> <p>Also with respect to subsection I, impacts to water supply are evaluated in the Water Resources analysis in Chapter 4, with respect to cumulative impacts. It concludes that P66 does not contribute to cumulative impacts. So there is no CEQA or EIR basis for requiring soil binders instead of watering.</p> <p>To address both comments, we request that subsection I be edited as follows:</p> <p><i>Apply water every 3 hours <u>during the workday to disturbed areas being actively worked within the construction site in order to achieve a 61 percent reduction in particulate emissions. In addition, when drought conditions are present, fugitive dust control measures need to be modified by utilizing soil binders or other</u></i></p>

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	<p>materials are to be covered or should maintain at least 2 feet of freeboard (minimum vertical distance between top of load and top of trailer) in accordance with CVC Section 23114.</p> <p>j. Install wheel washers where vehicles enter and exit unpaved roads onto streets, or wash off trucks and equipment leaving the site.</p> <p>k. Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible.</p> <p>l. Apply water every 3 hours to disturbed areas within the construction site in order to achieve a 61 percent reduction in particulate emissions. In addition, when drought conditions are present, fugitive dust control measures need to be modified by utilizing soil binders or other equivalent measures, to conserve water resources while still providing the necessary emission reductions.</p> <p>m. In support of APCD standard fugitive dust mitigation measures, the applicant shall designate a Visible Emission Evaluation certified person or persons to monitor the fugitive dust emissions and enhance the implementation of the measures as necessary to minimize nuisance violations from dust complaints (Rule 402) and to reduce visible emissions below the APCD's Rule 401 requirement that opacity not exceed 20% for greater than 3 minutes in any 60 minute period. Their duties shall include holidays and weekend periods when work may not be in progress. The name and telephone number of the designated monitor shall be provided to the SLOCAPCD Compliance Division and the Department of Planning and Building prior to the start of any grading, earthwork, or demolition.</p> <p>n. All PM10 mitigation measures required shall be shown on grading and building plans.</p> <p>o. Between June 1 and November 30, when Valley Fever rates of infection are the highest, additional dust suppression measures (such as additional water or the application of additional soil stabilizer) will be implemented prior to and immediately following ground disturbing activities if wind speeds exceed 15 miles per hour (mph) or temperatures exceed 95 degrees Fahrenheit for three consecutive days. The additional dust suppression will continue until winds are 10 mph</p>	<p>equivalent measures, to conserve water resources while still providing the necessary emission reductions.</p> <p>See Attachment 22 to Letter from Jocelyn Thompson to the Planning Commission dated February 1, 2016.</p>

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	<p>or lower and outdoor air temperatures are below 90 degrees for at least two consecutive days. The additional dust suppression measures will be incorporated into the Final Dust Control Plan. The Plan will be submitted to the County for review and approval.</p> <p>p. The primary project construction contractor will prepare and implement a worker training program that describes potential health hazards associated with Valley Fever, common symptoms, proper safety procedures to minimize health hazards, and notification procedures if suspected work-related symptoms are identified during construction. The worker training program will identify safety measures to be implemented by construction contractors during construction. Safety measures will include: 1) Providing HEPA-filtered air-conditioned enclosed cabs on heavy equipment. 2) Train workers on proper use of cabs, such as turning on air conditioning prior to using the equipment. 3) Providing communication methods, such as two-way radios, for use by workers in enclosed cabs. 4) Providing personal protective equipment (PPE), such as half-mask and/or full-mask respirators equipped with particulate filtration, to workers active in dusty work areas. 5) Providing separate, clean eating areas with hand-washing facilities for construction workers. 6) Cleaning equipment, vehicles, and other items before they are moved offsite to other work locations. 7) Providing training for construction workers so they can recognize the symptoms of Valley Fever and promptly report suspected symptoms of work-related Valley Fever to a supervisor. 8) Directing workers that exhibit Valley Fever symptoms to immediately seek a medical evaluation.</p> <p>q. Construction activities that will generate dust shall be limited to periods when good air quality is forecasted to the maximum extent feasible. The 6 day forecast for the CDF forecast zone shall be utilized as available from the APCD website slocleanair.org. This information should be used by all on-site workers to plan construction activities for days when the air quality is forecast to be good.</p>	
AQ-1g	Prior to issuance of applicable grading permit, the Applicant shall submit a geologic evaluation under	Phillips 66 does not object to Mitigation Measure AQ-1g.

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	<p>the CARB ATCM for Construction, Grading, Quarrying, and Surface Mining Operations, to determine if Naturally Occurring Asbestos (NOA) is present within the area that will be disturbed. NOA has been identified as a toxic air contaminant by the CARB. If NOA is not present, an exemption request must be filed with the SLOCAPCD. If NOA is found at the site, the Applicant must 1) comply with all requirements outlined in the Asbestos ATCM. This may include development of an Asbestos Dust Mitigation Plan and an Asbestos Health and Safety Program for approval by the SLOCAPCD; and 2) conduct a geological evaluation prior to any grading. Technical Appendix 4.4 of the SLOCAPCD CEQA Handbook includes a map of zones throughout the County where NOA has been found. More information on NOA is available at http://www.slocleanair.org/business/asbestos.php.</p>	
AQ-1h	<p>Prior to issuance of demolition permits, if required, the Applicant shall comply with asbestos containing material (ACM) requirements. Demolition activities can have potential negative air quality impacts, including issues surrounding proper handling, demolition, and disposal of ACM. ACM could be encountered during demolition or remodeling of existing buildings. Asbestos can also be found in utility pipes and pipelines (transite pipes or insulation on pipes). If utility pipelines are scheduled for removal or relocation or a building(s) is proposed to be removed or renovated, various regulatory requirements may apply, including the requirements stipulated in the National Emission Standard for Hazardous Air Pollutants (40CFR61, Subpart M - asbestos NESHAP). These requirements include but are not limited to: (1) notification to the SLOCAPCD; (2) an asbestos survey conducted by a Certified Asbestos Inspector; and (3) applicable removal and disposal requirements of identified ACM. More information on asbestos is available at http://www.slocleanair.org/business/asbestos.php.</p>	<p>Phillips 66 does not object to Mitigation Measure AQ-1h.</p>
AQ-1i	<p>Should hydrocarbon contaminated soil be encountered during construction activities, the SLOCAPCD must be notified as soon as possible and no later than 48 hours after affected material is discovered to determine if an SLOCAPCD</p>	<p>Phillips 66 does not object to Mitigation Measure AQ-1i.</p>

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	<p>Permit will be required. In addition, the following measures shall be implemented immediately after contaminated soil is discovered: 1) Covers on storage piles shall be maintained in place at all times in areas not actively involved in soil addition or removal; 2) Contaminated soil shall be covered with at least six inches of packed uncontaminated soil or other TPH –non-permeable barrier such as plastic tarp. No headspace shall be allowed where vapors could accumulate; 3) Covered piles shall be designed in such a way to eliminate erosion due to wind or water. No openings in the covers are permitted; 4) During soil excavation, odors shall not be evident to such a degree as to cause a public nuisance; and, 5) Clean soil must be segregated from contaminated soil. The notification and permitting determination requirements shall be directed to the SLOCAPCD Enforcement Division.</p>	
AQ-2a	<p>Prior to issuance of Notice to Proceed, the Applicant shall provide a mitigation, monitoring and reporting plan updated annually. The plan shall investigate methods for reducing the onsite and offsite emissions, both from fugitive components and from locomotives or from other SMR activities (such as the diesel pumps, trucks, and compressors to reduce DPM). In addition, locomotive emissions shall be mitigated to the extent feasible through contracting arrangements that require the use of Tier 4 locomotives or equivalent emission levels. The plan shall indicate that, on an annual basis, if emissions of ROG+NOx and DPM with the above mitigations still exceed the thresholds, as measured and confirmed by the SLOCAPCD, the Applicant shall secure SLOCAPCD approved onsite and/or offsite emission reductions in ROG + NOx emissions or contribute to new or existing programs to ensure that project-related ROG + NOx emissions within SLO County do not exceed the SLOCAPCD thresholds. Coordination with the SLOCAPCD should begin at least six (6) months prior to issuance of the Notice to Proceed for the Project to allow time for refining calculations and for the SLOCAPCD to review and approve any required ROG+NOx emission reductions.</p>	<p>Phillips 66 does not object to the requirements of Measure AQ-2a as applied to air emissions from project components other than locomotives.</p> <p>The highlighted portions of Measure AQ-2a are legally infeasible as CEQA mitigation. They would (1) mandate investigation of methods of reducing mainline locomotive emissions; (2) require mitigation of mainline locomotive emissions; (3) specify terms of contract between P66 and UPRR for carriage of goods on railroads in interstate commerce; (4) specify the type of equipment (i.e., locomotive engines) allowed to haul goods on railroads in interstate commerce; and (5) require air emissions offsets for mainline locomotive emissions in SLO County.</p> <p>ICCTA expressly preempts the County from requiring a contract between the railroad and its customer, or specifying contract</p>

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		<p>terms. ICCTA deregulated terms of rail service. Under ICCTA, railroads are expressly authorized but not required to negotiate a contract with a purchaser of rail services. If there is a contract, the railroad has no duty to provide services other than as specified in the terms of the contract. 49 USC § 10709. Where there is no contract for services, ICCTA mandates that a rail carrier must provide transportation services upon reasonable request, at the carrier's standard rates and other service terms as published. 49 USC § 11101. ICTTA expressly gives Surface Transportation Board exclusive jurisdiction to decide disputes regarding service requests and terms. Therefore, County lacks authority to require a contract that specifies the use of Tier 4 locomotives or equivalent emission levels.</p> <p>A County requirement for a contract with the specified terms is also preempted by implication because it would unreasonably interfere with UPRR's operations. Otherwise, UPRR could be subject to countless different equipment requirements and emission reduction programs across different jurisdictions, contrary to Congress' intent behind ICCTA.</p> <p>County requirement of Tier 4 locomotives, equivalent emission levels, or mitigating offsets also is preempted by the federal Clean Air Act. States and their subdivisions are prohibited from adopting or enforcing "any standard or other requirement relating to the control of emissions" from new locomotives and new locomotive</p>

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		<p>engines. 42 USC 7543. "New" includes 133% of the locomotive's or engine's useful life. 40 CFR 1074.12. A requirement for Tier 4 engines is a standard relating to the control of emissions from locomotives engines and so is preempted. Compliance options of equivalent emissions or offsetting reductions do not change the fundamental, preempted nature of the requirement. <i>Pacific Merchant Shipping Ass'n v. Goldstene</i> (9th Cir. 2008) 517 F.3d 1108. State standards and requirements for other non-road engines are prohibited without EPA approval of a waiver. 42 USC 7543(e)(2). California has no waiver for locomotive engine requirements. https://www3.epa.gov/otaq/cafr.htm</p> <p>The definition of "standards and requirements" can mean commitments to mitigate air emissions identified in an environmental preclearance report (e.g. NEPA) as contributing to violations of ambient air quality standards. <i>Coalition Against Columbus Circle v. City of New York</i> (2nd Cir., 1992) 967 F.2d 764.</p> <p>See the Final EIR, Comment AB-03 for extensive discussion of why these provisions are preempted by federal law. See the Final EIR, Comment UPRR-04 for an explanation of why local agencies cannot escape the limits of federal preemption by imposing mitigation measures on rail customers rather than on the railroad directly.</p>
AQ-2b	<p>Prior to issuance of Notice to Proceed, the Applicant shall implement a program, including training and procedures, to limit all locomotive onsite idling to no more than 15 consecutive minutes except when idling is required for safety purposes. Locomotive idling records shall be</p>	<p>Phillips 66 does not object to Mitigation Measure AQ-2b as it applies to locomotives under Phillips 66's control.</p> <p>Trains are under the control of</p>

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	<p>maintained and provided to the SLOCAPCD on an annual basis, along with training materials and training records.</p>	<p>UPRR while on the mainline and as they enter the refinery. As noted in the Final EIR at page 2-26, "Once the train is on the refinery site, operation of the train would be turned over to Phillips 66..." Phillips 66 can control locomotive idling and recordkeeping only while the locomotives are under its control. Phillips 66 requests that the condition be revised to clarify that it applies only to locomotives under its control.</p>
AQ-3	<p>Prior to issuance of the Notice to Proceed, the Applicant shall provide a mitigation, monitoring and reporting plan. The plan shall investigate methods for reducing the locomotive emissions through contracting arrangements that require the use of Tier 4 locomotives or equivalent emission levels. The plan shall indicate that, on an annual basis, if the mainline rail emissions of ROG+NOx with the above mitigations still exceed the applicable Air District thresholds, the Applicant shall secure emission reductions in ROG + NOx emissions or contribute to new or existing programs within each applicable Air District, similar to the emission reduction program utilized by the SLOCAPCD, to ensure that the main line rail ROG + NOx emissions do not exceed the Air District thresholds for the life of the project. The Applicant shall provide documentation from each Air District to the San Luis Obispo County Planning and Building Department that emissions reductions have been secured for the life of the project prior to issuance of the Notice to Proceed.</p>	<p>The highlighted portion of Measure AQ-3 is legally infeasible as CEQA mitigation. The measure is similar to Measure AQ-2a, but with a different geographic scope. (The geographic scope of Measure AQ-3 is vague, but clearly extends beyond SLO County.) Measure AQ-3 is preempted for the same reasons set forth above for Mitigation Measure AQ-2a.</p> <p>This measure also is contrary to the requirement in CEQA Guidelines § 15041 that mitigation be consistent with the constitutional requirements of "nexus" and "rough proportionality" established in <i>Nollan v. California Coastal Commission</i> (1987) 483 U.S. 825, <i>Dolan v. City of Tigard</i> (1994) 512 U.S. 374, and similar cases. Per FEIR Table 4.3-18, to calculate emissions in each air district, the analysis assumed that all trains per year pass through every listed air district, even though this is impossible. Also, since ERCs usually cover peak daily emissions every day of the year, the measure would require offsets as though a train traverses every listed air district every day. Mitigation would far exceed project</p>

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		emissions.
AQ-4a	Implement measures AQ-2a and AQ-2b.	Portions of AQ-2a are legally infeasible as CEQA mitigation because they are preempted for the reasons described above.
AQ-4b	All trucks under contract to the SMR for moving coke and sulfur shall meet EPA 2010 model year NOx and PM emission requirements and a preference for the use of rail over trucks for the transportation of coke shall be implemented to the extent feasible in order to reduce offsite emissions. Annual truck trips associated with refinery operations and their associated model year and emissions shall be submitted to the SLOCAPCD annually.	Phillips 66 does not object to Mitigation Measure AQ-4b.
AQ-4c	If mitigation measure AQ-2a (the use of Tier 4 locomotives only) is not implemented, then crude oil train unloading and switching activities at the SMR shall be limited to the period of 7 a.m. to 7 p.m. to reduce the emissions during periods of calm meteorological conditions. Reports shall be submitted to the County and APCD indicating the time of arrival, the start and end time of train switching break-apart and unloading and departure time. These time limits do not apply to pull-in of the unit trains from the mainline. When a unit train is pulled in between 7 p.m. and 7 a.m., the locomotives shall shut down until the allowed unloading time starting at 7 a.m. No switching or breaking apart of trains or any other locomotive activity is allowed between 7 p.m. and 7 a.m. except for the minimum activity needed to move the unit train onto the SMR property.	Phillips 66 does not object to the substance of Mitigation Measure AQ-4c. The portion of AQ-2a requiring use of Tier 4 locomotives is legally infeasible because it is preempted by federal law. However, over time Tier 4 engines will become more common in the UP locomotive fleet. Therefore, for clarity, we recommend that the first sentence of AQ-4c be edited as follows: "If mitigation measure AQ-2a (the use of Tier 4 locomotives only) is not implemented <u>locomotives delivering crude oil to the Project are not exclusively locomotives with Tier 4 or better engines</u> , then crude oil train unloading ..."
AQ-5	Implement measure AQ-3.	Measure AQ-5 is legally infeasible as CEQA mitigation because it is completely preempted by federal law for the reasons described under AQ-3.
AQ-6	Prior to issuance of the Notice to Proceed, the Applicant shall provide a GHG mitigation, monitoring and reporting plan. The plan shall indicate that, on an annual basis, if GHG emissions exceed the thresholds, the Applicant shall provide GHG emission reduction credits for	The highlighted language is expressly preempted by ICCTA to the extent it requires GHG emission reduction credits for emissions from mainline rail operations because it is aimed at

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	<p>all of the project GHG emissions. Coordination with the San Luis Obispo Planning and Building Department should begin at least six (6) months prior to issuance of operational permits for the Project to allow time for refining calculations and for the San Luis Obispo Planning and Building to review and approve the emission reduction credits.</p>	<p>and defined exclusively by rail transportation, railroad operations and impacts therefrom. It is also impliedly preempted by ICCTA because it would unreasonably burden UPRR's transportation of cargo to the Project. Subjecting UPRR's operations to varying GHG emission reduction requirements across different jurisdictions would conflict with Congress' intent to promote uniform regulations of rail operations. Requiring offsetting emission reductions is also preempted because it would merely circumvent the limitations of ICCTA by making Phillips 66 responsible for carrying out measures that the County is not allowed to impose directly on the railroad, i.e., mitigation aimed at reducing impacts associated with rail transportation and railroad operations.</p> <p>The highlighted language also is preempted by the federal Clean Air Act to the extent it requires GHG emission reduction credits for emissions from mainline rail operations. States and their subdivisions are prohibited from adopting or enforcing "any standard or other requirement relating to the control of emissions" from new locomotives and new locomotive engines. 42 USC 7543. See discussion under Measure AQ-2a, above. The preemptive effect of Section 7543 applies to GHG emissions. <i>Central Valley Chrysler-Jeep v. Witherspoon</i> (E.D. CA 2006) 456 F. Supp.2d 1160.</p> <p>In addition to being preempted, the measure is vague. It is not clear what thresholds are referenced in</p>

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		this condition. The geographic scope also is vague.
AQ-7	<p>Prior to issuance of Notice to Proceed, the Applicant shall ensure that any new odor sources be added to the existing Refinery Odor Control Plan and submitted to the SLOCAPCD for review and approval before the start of construction. Mitigation shall include carbon canisters on all vacuum trucks, arrival and pre-departure inspection of all rail cars for fugitive leaks, monitoring of rail car top vents during unloading, and methods to reduce and eliminate odors associated with maintenance activities. Monitoring of odors from the rail facility and the other portions of the SMR potentially affected by a change in crude oil slate, shall be included in the Plan and shall be conducted by an independent third party monitor, retained by the County of San Luis Obispo Department of Planning, for the first three months of operation during each unit train visit. The APCD shall be notified of monitoring and unit train activity. Monitoring activities can be reduced, in coordination and agreement with the APCD, after the facility startup if odors are not determined to affect areas offsite. In addition to monitoring, the amended Odor Control Plan shall also detail control measures and/or operating procedures that will be implemented to reduce odor impacts if odors are a concern. The Plan shall also include an implementation schedule for incorporating additional measures if needed. The Plan measures shall include leak detection (if not already implemented), lower leak detection and repair threshold limits (to 100 ppm), increased component monitoring frequency (monthly), component replacement with lower leak levels and improved vapor control systems and these measures shall be discussed in the Odor Control Plan.</p>	Phillips 66 does not object to Mitigation Measure AQ-7.
AQ-8	<p>Prior to issuance of the Notice to Proceed, the Applicant shall provide a GHG mitigation, monitoring and reporting plan. The plan shall investigate methods to bring the Rail Spur Project GHG emissions at the refinery to zero for the entire project each year. The plan shall indicate that, on an annual basis, if after all onsite mitigations are implemented, the GHG emissions</p>	Mitigation measure AQ-8 requires clarification. The first highlighted portion suggests that it is limited to Project emissions at the refinery itself. The second highlighted portion refers to the GHG emissions from the entire Project, although read in context it could be

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	<p>from the Rail Spur Project still exceed zero, then SLOCAPCD approved off-site mitigation will be required. Methods could include the contracting arrangement that increases the use of more efficient locomotives, or through other, onsite measures. Coordination with the SLOCAPCD should begin at least six (6) months prior to issuance of operational permits for the Project to allow time for refining calculations and for the SLOCAPCD to review and approve the mitigation approach.</p>	<p>limited by the prior sentence to Project GHG emissions at the refinery. If it is intended to require mitigation of GHG emissions from mainline rail operations, then it is preempted for the reasons described above under Mitigation Measure AQ-6.</p>
BIO-1	<p>Prior to initiation of project activities, a floristic survey shall be conducted within the Rail Spur Project area in accordance with the California Department of Fish and Wildlife (CDFW) Protocol for surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (2009) and the Guidelines for Conducting and Reporting Botanical Inventories for Federally listed, Proposed, and Candidate Species (USFWS 2000). The survey shall specifically focus on the presence/absence of Nipomo Mesa lupine and, if normal rainfall conditions are present during the survey, the findings would be only valid for a period of two years.</p> <p>The floristic survey shall be conducted during a blooming period with normal rainfall. A 'normal' rainfall period is equivalent to the monthly or annual average of precipitation over a 30 year time period for the area. The results of this survey shall be submitted to the County, United States Fish and Wildlife Service, and California Department of Fish and Wildlife within 30 days of completing the survey.</p> <p>If 'normal' rainfall conditions have occurred prior to the initiation of the survey, and the results of this survey effort determine that Nipomo Mesa lupine is absent from the Rail Spur Project area, no further mitigation for this species shall be required at this time. Because it is well documented that Nipomo Mesa lupine may occur as a result of site disturbance, floristic surveys shall be conducted on an annual basis until there is no further disturbance to the native soil as a result of construction activities. Should Nipomo Mesa lupine be identified during construction, or if Nipomo Mesa lupine is identified prior to the</p>	<p>Phillips 66 does not object to the requirement to conduct a floristic survey in accordance with the specified protocols and guidelines.</p> <p>To be clear, the first sentence should begin with "Prior to beginning grading activities", rather than, "Prior to initiation of project activities." There are many project activities (engineering, planning, demonstration of compliance with pre-construction conditions) that have no impact on biological resources.</p> <p>Phillips 66 requests that the measure be edited to remove the requirement that a pre-construction floristic survey for Nipomo lupine occur during a normal rainfall period. Instead, the measure should require that, for the survey findings to be valid, the existing known populations of Nipomo lupine on the Phillips 66 property must be surveyed at the same time as a reference population to document that the annual species is in recognizable condition onsite at the time of the survey. California has suffered severe drought conditions for the past five years, as summarized by drought declarations issued by Governor Brown. Given the current drought, it is unclear when California will</p>

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	<p>initiation of activities during 'normal' rainfall conditions, the project shall avoid the individual or population to the extent feasible. If avoidance is not feasible then the applicant would be required by law to coordinate with California Department of Fish and Wildlife to acquire a 2081 Incidental Take Permit for this species and comply with any conditions imposed by that permit. At a minimum, the applicant shall implement BIO-5a (Dune Habitat Restoration Plan) and include Conservation Measures to establish and monitor Nipomo Mesa lupine population(s) within the identified on-site mitigation area at a ratio of 3:1 for individuals. The mitigation area for Nipomo Mesa lupine may overlap with the mitigation area for sensitive community impacts, which shall be protected from any grazing activities in perpetuity.</p>	<p>again enjoy a "normal rainfall season," and if it will enjoy such a season before commencement of project construction. Therefore, this mitigation measure may be infeasible in a "reasonable period of time", and may cause indefinite delay in commencement of the project.</p> <p>In comments on the Recirculated Draft EIR, Phillips 66 requested that this measure be revised. See Phillips 66's comments on the RDEIR submitted November 24, 2014, and page 7 of the Comment Summary Table attached thereto, identified as Comment No. P66-20 by the FEIR. See also Attachment 22 to Letter from Jocelyn Thompson to the Planning Commission dated February 1, 2016. The FEIR's response to comment P66-20 states: "The commenter's concern over project delays related to unknown weather conditions is included in the FEIR for the decision-makers' consideration as part of the County's deliberations on the proposed project. The impact classification would not change as a result of this comment. Impacts to Nipomo Mesa lupine would be less than significant with mitigation." We request that the decision-makers delete the requirement that a survey be conducted during a "normal rainfall year", and the alternative requirement to survey the onsite reference population be included instead.</p>
BIO-2	<p>Prior to project activities, the total number of California spineflower (<i>Mucronea californica</i>), sand almond (<i>Prunus fasciculata</i> var. <i>punctata</i>), Blochman's groundsel (<i>Senecio blochmaniae</i>), Blochman's leafy daisy (<i>Erigeron blochmaniae</i>),</p>	<p>Phillips 66 does not object to the substance of Mitigation Measure BIO-2.</p> <p>To be clear, the first sentence</p>

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	<p>and dune larkspur (<i>Delphinium parryi</i> ssp. <i>blochmaniae</i>) shall be accurately estimated during the implementation of BIO-1. These population estimates shall be utilized as the basis for the in-kind replacement of these species described in Mitigation Measure BIO-5e. Should any additional populations of sensitive plant species that are considered rare by the California Native Plant Society (and not formally listed under the Endangered Species Act) be identified during the implementation of BIO-1 that were not previously observed in 2013, these species will also be replaced in-kind as part of the Dune Habitat Restoration Program and replacement success would be held to the same performance standards.</p>	<p>should begin with "Prior to beginning grading activities", rather than, "Prior to initiation of project activities." There are many project activities (engineering, planning, demonstration of compliance with pre-construction conditions) that have no impact on biological resources.</p> <p>The reference to BIO-5e appears to be a typo; it should refer to Measure BIO-5a.</p>
BIO-3	<p>Prior to issuance of grading and construction permits, a qualified wildlife biologist shall prepare a Sensitive Species Management Plan, which outlines the procedures and protocols for capturing and relocating sensitive animal species including coast horned lizard and silvery legless lizard during all phases of grading. This plan shall be approved by the County and California Department of Fish and Wildlife. Implementation of the Plan is required where impacts to sensitive animal species and their habitats are unavoidable and located within a minimum of 100 feet of the Disturbance Area (or greater as determined by the California Department of Fish and Wildlife). Within 30 days prior to mobilization, grading or construction, a qualified wildlife biologist shall conduct a pre-construction survey of the area of impact to determine the presence of sensitive wildlife species. Individuals will be searched and captured using techniques appropriate to the species of concern and approved by the appropriate resource agencies. All captured individuals will be released as soon as possible into nearby suitable habitat that has been previously identified by the qualified wildlife biologist in consultation with the County and California Department of Fish and Wildlife. The size or age-class, location of capture, and the relocation site shall be recorded for each individual relocated from the site.</p>	<p>Phillips 66 does not object to Mitigation Measure BIO-3.</p>
BIO-4	<p>At a minimum, the following measures shall be</p>	<p>Phillips 66 does not object to</p>

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	<p>incorporated in the Sensitive Species Management Plan:</p> <ol style="list-style-type: none"> 1. Prior to grading activities, a County-approved biologist shall conduct a survey to identify whether badgers are using any portion of the site near the area in which disturbance is proposed. The survey shall be conducted no less than 14 days and no more than 30 days prior to construction. The survey shall cover the boundaries of proposed disturbance and 100 feet beyond, including all access roads, and shall examine both old and new dens. If potential badgers dens are found, they shall be inspected to determine whether they are occupied by badgers. Occupation of the den shall be determined by one or more of the following methods: <ol style="list-style-type: none"> a. Use of a fiber-optic scope to examine the den to the end; b. Partially obstruct the den entrance with sticks, grass, and leaves for three consecutive nights and examine for signs that animals are entering or leaving the den; c. Dust the den entrance with a fine layer of dust or tracking medium for three consecutive nights and examine the following mornings for tracks. 2. Inactive dens within construction areas shall be excavated by hand with a shovel to prevent re-use of dens during construction. 3. If badgers are found in dens between August and January, a qualified biologist shall establish a 50 foot diameter exclusion zone around the entrance. To avoid disturbance and the possibility of direct take of badgers, no construction, grading, or staging of equipment shall be conducted within the buffer area until the biologist has determined that the badger(s) have vacated the den. 4. If badgers are found in dens between February and July, nursing young may be present. Therefore, a County-approved biologist shall establish a 200-foot diameter buffer around the den. No construction, grading, or staging of equipment shall be conducted within the buffer area until the biologist has determined that the badgers have vacated the den. 	<p>Mitigation Measure BIO-4 or its subsections 1 through 4.</p>
BIO-5a	<p>Prior to issuance of any grading permits, the applicant shall retain a qualified biologist and/or botanist acceptable to the County to prepare a Dune Habitat Restoration Plan (DHRP) for review</p>	<p>Phillips 66 does not object to Mitigation Measure BIO-5a or its subsections a through i.</p>

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	<p>and approval by the County in consultation with the California Department of Fish and Wildlife (CDFW) and the United States Fish and Wildlife Service (USFWS). The DHRP shall be signed by the retained qualified biologist and/or botanist and shall detail the methods for restoring or enhancing a minimum of 41.76 acres (2:1 for permanent impacts) of vegetation types considered to be sensitive communities by CDFW, with an emphasis on restoring known rare plant associations found within the BSA and those associations considered locally rare to the Guadalupe-Nipomo Dunes. The restoration area(s) shall be located within the Phillips 66 property boundary and protected from any grazing activity. The DHRP shall focus on restoring and enhancing sensitive communities, known rare plant associations, and species of locally rare plant associations, by removing invasive species (iceplant, veldt grass, and other invasive species) and planting appropriate native species, including but not limited to: mock heather, purple nightshade, Blochman's ragwort, Blochman's leafy daisy, California spineflower, sand almond and suffrutescent wallflower.</p> <p>Should Nipomo Mesa lupine be identified within the Rail Spur Project area as a result of BIO-1, and avoidance of this species is not feasible, the DHRP shall also include methods of restoring and enhancing Nipomo Mesa lupine at a ratio of 3:1 for permanent impacts to individuals. Regardless of whether Nipomo Mesa lupine is identified on-site as part of BIO-1, the DHRP shall also focus on restoring and enhancing sensitive communities and rare plant associations immediately adjacent to known Nipomo Mesa lupine populations in order to promote expansion of the existing population.</p> <p>At a minimum, the DHRP shall include the following elements:</p> <ol style="list-style-type: none"> a. Identification of locations, amounts, size and types of plants to be replanted, as well as any other necessary components (e.g., temporary irrigation, amendments, etc.) to ensure successful reestablishment. b. Provide for a native seed collection effort prior to ground disturbing activities. Collection of native seed shall be propagated by a County-approved 	

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	<p>contractor. Plants shall include but not be limited to California Native Plant Society (CNPS) listed plant species that may be affected.</p> <p>c. Quantification of impact based on “as-built plans” and quantification of mitigation areas such that the replacement criteria are met (2:1 acreage ratio, or 3:1 for Nipomo Mesa lupine individuals).</p> <p>d. A program schedule and success criteria for a minimum five year monitoring and reporting program that is structured to ensure the success of the DHRP.</p> <p>e. Provide for the in-kind replacement of the following sensitive species that occur within the Rail Spur Project area, which may include: California spineflower (<i>Mucronea californica</i>), sand almond (<i>Prunus fasciculata</i> var. <i>punctata</i>), Blochman’s groundsel (<i>Senecio blochmaniae</i>), Blochman’s leafy daisy (<i>Erigeron blochmaniae</i>) and dune larkspur (<i>Delphinium parryi</i> ssp. <i>blochmaniae</i>). Should Nipomo Mesa lupine be identified onsite, in-kind replacement of this species shall also be included. Individuals that are removed or damaged shall be replaced in-kind at a 3:1 ratio (based on square feet cover) within the designated restoration area with 100% success in 5 years.</p> <p>f. Identification of access and methods of materials transport to the restoration area, including personnel, vehicles, tools, plants, irrigation equipment, water, and all other similar supplies. Access shall not result in new or additional impacts to habitat and special-status species.</p> <p>g. The required Dune Habitat Restoration Program shall incorporate an invasive species control program and be implemented by qualified personnel to ensure that the invasive species control program does not result in any additional impacts to Nipomo Mesa lupine, or other rare species.</p> <p>h. The restoration area shall be protected in perpetuity by an easement. The easement shall either be an open space easement, or a conservation easement if required by the California Department of Fish and Wildlife and United States Fish and Wildlife Service, or if chosen by the Applicant. The easement shall be in a form approved by County Counsel and CDFW</p>	

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	<p>and/or USFWS if required by those agencies.</p> <p>i. Upon successful completion of the Dune Habitat Restoration Program and subsequent approval by the permitting resource agencies, the applicant shall consider providing non-profit organizations such as California Native Plant Society and The Land Conservancy with long term access to the restoration site for the purposes of education, and long-term maintenance of the restoration site. Long-term maintenance activities would only occur if permitted by the applicant, and would require coordination with California Department of Fish and Wildlife and United States Fish and Wildlife Service. Access to the site is not guaranteed as a result of this measure. Funding for any future long-term maintenance activities shall be facilitated by the non-profit organization.</p>	
BIO-5b	<p>Prior to initiation of construction, the applicant shall retain a qualified biologist or botanist acceptable to the County to supervise the implementation of the DHRP. The qualified biologist or botanist shall supervise plant salvage and/or seed collection (prior to construction), plant propagation, site preparation, implementation timing, species selected for planting, planting installation, maintenance, monitoring, and reporting of the restoration efforts. The qualified biologist or botanist shall prepare and submit four annual reports and one final monitoring report to the County for review and approval in consultation with California Department of Fish and Wildlife and United States Fish and Wildlife Service. The annual and final monitoring reports shall include discussions of the restoration activities, project photographs, an assessment of success criteria attainment, and any remediation actions that may have been required in order to achieve the success criteria.</p>	Phillips 66 does not object to Measure BIO-5b.
BIO-5c	<p>Prior to issuance of grading and construction permits, the applicant shall define and clearly mark construction zone boundaries adjacent to known sensitive species occurrences with high visibility construction fencing, and shall mark groups of individual plants located within potential disturbance areas with highly visible flagging or fencing.</p>	Phillips 66 does not object to Measure BIO-5c.
BIO-5d	<p>Prior to construction (within 48 hours), the</p>	Phillips 66 does not object to

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	<p>applicant's retained biologist or botanist shall provide instruction to construction personnel regarding avoidance of sensitive habitats and special-status plants located in the vicinities of areas experiencing ground disturbance. The training shall include presentation of photos of sensitive plant species and habitat, summary of regulations and conditions applicable to protection of the species, identification of areas where removal of the species is permitted pursuant to the final conditions of approval and DHRP, and any ramifications for non-compliance.</p>	<p>Measure BIO-5d.</p>
BIO-5e	<p>During construction, where disturbance to sensitive habitat and sensitive plant species is unavoidable (and permitted by the County upon approval of the project), the top four inches of surface material shall be salvaged and stockpiled for restoration use in consultation with the County, California Department of Fish and Wildlife and United States Fish and Wildlife Service. Existing native vegetation shall also be removed and included as mulch in order to capture any existing native seed material. The salvaged material shall be used as the finish layer on fill slopes and other disturbed areas that will not require regular vegetation maintenance.</p>	<p>Phillips 66 does not object to Measure BIO 5e.</p>
BIO-5f	<p>During construction, the use of heavy equipment shall be restricted to within the identified work areas throughout the duration of construction activities and all construction personnel shall be advised of the importance of limiting ground disturbance and construction activities to within the identified work areas. A fulltime biological monitor shall monitor shall map any populations or individual sensitive species that may bloom within, or directly adjacent to, areas of ground disturbance. Should Nipomo Mesa lupine be identified at any time during construction, the species shall be completely avoided and the County shall be contacted immediately. If avoidance is not feasible, or the species was inadvertently impacted during construction before identification by the biological monitor, the County and the applicant shall coordinate directly with the California Department of Fish and Wildlife and United States Fish and Wildlife Service. At a minimum, the impacts to any sensitive plant</p>	<p>Phillips 66 does not object to the bulk of Measure BIO-5f.</p> <p>The second sentence requires a full-time biological monitor during construction. This should be limited to periods of ground-disturbing activities such as clearing and grading.</p> <p>The second sentence has a typo ("shall monitor shall map"). Likely this should be "shall monitor and map."</p> <p>The measure is internally inconsistent. The 3rd sentence mandates complete avoidance of Nipomo Mesa lupine, but the 4th sentence says what to do if complete avoidance is not feasible.</p>

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	<p>species shall be mitigated though implementation of BIO-5a.</p>	<p>We suggest the following edit: <i>"Should Nipomo Mesa lupine be identified at any time during construction, the species shall be completely avoided and the County shall be contacted immediately. <u>The species shall be completely avoided if feasible, but if #</u> avoidance is not feasible, or the species was inadvertently impacted during construction before identification by the biological monitor, the County and the applicant shall coordinate directly with the California Department of Fish and Wildlife and United States Fish and Wildlife Service."</i></p> <p>See Attachment 22 to Letter from Jocelyn Thompson to the Planning Commission dated February 1, 2016.</p>
BIO-6a	<p>At the time of application for grading and/or construction permits, the applicant shall prepare an Oak Tree Inventory, Avoidance, and Protection Plan as outlined herein. The plan shall be reviewed by a County-approved arborist prior to approval of grading and/or construction permits, and shall include the following items:</p> <p>a. Construction plans shall clearly delineate all trees within 50 feet of areas where soil disturbance would occur, and shall show which trees are to be impacted, and which trees are to remain unharmed. All inventoried trees shall be shown on maps. The species, diameter at breast height, location, and condition of these trees shall be documented in data tables.</p> <p>b. Prior to any grading or grubbing, all trees that are within fifty feet of construction or grading activities shall be marked for protection and their root zone shall be fenced. The outer edge of the tree root zone to be fenced shall be outside of the canopy 1/2 again the distance as measured between the tree trunk and outer edge of the canopy (i.e., 1-1/2 times the distance from the trunk to the drip line of the tree), unless otherwise shown on the approved construction plans.</p>	<p>Phillips 66 does not object to Measure BIO-6a or its subsections a through e.</p>

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	<p>c. Prior to any grading or grubbing, a certified arborist shall be retained by the applicant to identify at risk limbs and perform all necessary trimming of oak tree limbs that could be damaged by project activities. Pruning shall be conducted as needed along all access roads and construction areas, including paved portions of County roads used for project equipment access. All pruning shall be conducted prior to construction equipment passage to minimize the potential for inadvertent damage to oak tree limbs. Removal of larger lower branches should be minimized to 1) avoid making tree top heavy and more susceptible to "blowovers", 2) reduce having larger limb cuts that take longer to heal and are much more susceptible to disease and infestation, 3) retain wildlife habitat values associated with the lower branches, 4) retain shade to keep summer temperatures cooler and 5) retain the natural shape of the tree. The certified arborist shall document all pruning impacts in a report submitted to the County San Luis Obispo.</p> <p>d. A certified arborist shall be retained by the applicant to supervise all construction activities in areas containing oak trees in order to minimize disturbance to identified trees and their root zones wherever possible. The certified arborist will document all construction-related impacts to oak trees in an "as-built" report submitted to the County San Luis Obispo.</p> <p>e. Immediately following submittal of the oak tree impact "as-built" report to the County San Luis Obispo, the applicant shall implement mitigation for all identified pruning and construction-related oak impacts per current County San Luis Obispo ratios and methods for oak tree mitigation and replacement. County oak tree replacement standards require a project proponent to prepare and implement an oak tree replacement plan. The plan shall provide for the in-kind replacement, at a 4:1 ratio, of all oak trees removed as a result of the project. In addition, the plan must provide for the in-kind planting, at a 2:1 ratio, of all oak trees impacted but not removed. The replacement trees must be monitored for seven years after planting.</p>	
BIO-6b	Upon application for grading and construction permits, the applicant shall submit an Oak Tree Replacement, Monitoring, and Conservation Plan	Phillips 66 does not object to the requirement for an Oak Tree Replacement, Monitoring, and

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	<p>to the County Department of Planning and Building. The Plan shall include the following:</p> <p>a. The County-approved arborist shall provide or submit approval of an oak tree replacement plan at a minimum 4:1 ratio for oak trees removed and a minimum replacement ration of 2:1 ratio for oak trees impacted (i.e., disturbance within the root zone area).</p> <p>b. Replacement oak trees shall be from regionally or locally collected seed stock grown in vertical tubes or deep one-gallon tree pots. Four-foot diameter shelters shall be placed over each oak tree to protect it from deer and other herbivores, and shall consist of 54-inch tall welded wire cattle panels (or equivalent material) and be staked using T-posts. Wire mesh baskets, at least two feet in diameter and two feet deep, shall be use below ground. Planting during the warmest, driest months (June through September) shall be avoided. The plan shall provide a species-specific planting schedule. If planting occurs outside this time period, an irrigation plan shall be submitted prior to permit issuance and implemented upon approval by the county.</p> <p>c. Replacement oak trees shall be planted no closer than 20 feet on center and shall average no more than four planted per 2,000 square feet. Trees shall be planted in random and clustered patterns to create a natural appearance. As feasible, replacement trees shall be planted in a natural setting on the north side of and at the canopy/dripline edge of existing mature native oak trees (if present); on north-facing slopes; within drainage swales (except when riparian habitat present); where topsoil is present; and away from continuously wet areas (e.g., lawns, irrigated areas, etc). Replanting areas shall be either in native topsoil or areas where native topsoil has been reapplied. A seasonally timed maintenance program, which includes regular weeding (hand removal at a minimum of once early fall and once early spring within at least a three-foot radius from the tree or installation of a staked "weed mat" or weed-free mulch) and a temporary watering program, shall be developed for all oak tree planting areas. A qualified arborist/botanist shall be retained to monitor the acquisition, installation, and maintenance of all oak trees to be replaced.</p>	<p>Conservation Plan, or to the content specified in subsections a., b., or c.</p> <p>The restoration standard specified in subsection d. is vague, confusing and unpredictable. BIO-6b, subsections a through c, address replacement of individual plants, not restoration of habitat. It's not clear whether the requirement in subsection d could be achieved consistent with the requirements specified in other subsections, of what performance standard is even required by subsection d. Phillips 66 requests that subsection d. be deleted.</p> <p>See Attachment 22 to Letter from Jocelyn Thompson to the Planning Commission dated February 1, 2016.</p>

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	<p>Replacement trees shall be monitored and maintained by a qualified arborist/botanist for at least seven years or until the trees have successfully established as determined by the County Environmental Coordinator. Annual monitoring reports will be prepared by a qualified arborist/botanist and submitted to the County by October 15 each year.</p> <p>d. The restored area shall be at a minimum equal in size to the area of oak habitat lost or disturbed.</p>	
BIO-7	<p>Prior to issuance of grading and construction permits, the existing Santa Maria Refinery Spill Prevention, Control and Countermeasure Plan (SPCCP) shall be amended and submitted for review and approval to the County Planning and Building Department and the California Department of Fish and Wildlife, Office of Spill Prevention and Response . The Plan shall address protection of sensitive biological resources and revegetation of any areas disturbed during an oil spill or cleanup activities. The Plan shall incorporate, at a minimum, the following:</p> <p>a. An estimate of the worst case spill volume associated with the rail unloading operations.</p> <p>b. A description of the spill containment equipment for the facility that clearly demonstrates that the worst case spill can be contained within the rail facility boundaries.</p> <p>c. A description of the operating procedures for the rail unloading facilities that sever to prevent an oil spill.</p> <p>d. Measures taken to assure that the crude oil pipeline shall be designed such that any spill from the pipeline shall drain back to rail unloading area or shall otherwise be contained within the access roadway.</p> <p>e. Provide a list of onsite oil spill response equipment that is adequate to handle the worst case spill volume.</p> <p>f. Identify training requirement for oil spill response personnel, which includes annual spill drills.</p> <p>g. Identification and communication protocols and agreements for responsible parties tasked with emergency response, cleanup, and rehabilitation efforts of any wildlife species and habitat that may be impacted.</p> <p>h. Identification of known sensitive resources within any area that may be impacted by a</p>	<p>Phillips 66 does not object to the substance of Measure BIO-7 or its subsections a through l.</p> <p>For consistency with Measures PS-3c and WR-2, and to avoid confusion from describing facilities in the SPCCP that do not yet exist, Phillips 66 requests that the first sentence state, "Prior to the County's issuance of a Notice to Proceed for the rail unloading facility", instead of "Prior to issuance of grading and construction permits."</p>

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	<p>potential oil spill or cleanup activities, and identification of staging areas and predetermined access and egress routes that pose little or no threat to sensitive biological resources.</p> <p>i. Identification of oil spill cost recovery procedures for state and local government agencies.</p> <p>j. Specific measures to avoid impacts to native vegetation and wildlife habitats, plant and animal species, and environmentally sensitive habitat areas during oil spill response and cleanup operations. For Rail Spur construction and operation, the Plan shall specifically address measures to 1) prevent oil spills from entering the adjacent property which includes a tributary to Oso Flaco Creek, and 2) in case a spill does enter any of these water features, shall include measures to prevent a spill from reaching the waters of Oso Flaco Lake. The plan shall describe the worst case scenario for maximum oil spill volume.</p> <p>k. When habitat disturbance cannot be avoided, the Plan shall provide protocol and methodologies for removing contaminated vegetation from sensitive areas. Low-impact site-specific techniques such as hand-cutting contaminated vegetation, hand raking, and shoveling of contaminated soils shall be specified to remove spilled material from particularly sensitive wildlife habitats.</p> <p>l. When habitat disturbance cannot be avoided, the Plan shall provide stipulations for development and implementation of site-specific habitat restoration plans and to restore native plant communities to pre-spill conditions. Procedures for timely re-establishment of vegetation that replicates the habitats disturbed (or, in the case of disturbed habitats dominated by non-native species, replaces them with suitable native species) shall also be included.</p>	
BIO-8a	<p>Prior to and during construction, the applicant shall avoid disturbance of bird breeding and nesting activities if construction activities are scheduled to occur during the typical bird nesting season (February 15 and September 1). A qualified biologist shall also be retained to conduct a pre-construction survey on a weekly basis throughout the breeding season only during construction for the purpose of identifying potential</p>	<p>Phillips 66 does not object to Measure BIO-8a or its subsections a through c.</p>

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	<p>bird nesting activity. Should construction continue to occur beyond September 1, a qualified biologist shall conduct a bi-weekly survey during the wintering season for overwintering use by burrowing owl. If no nesting activities or overwintering burrowing owl are detected within the proposed work area, noise-producing construction activities may proceed and no further mitigation is required. If nesting activity or overwintering burrowing owl are detected during pre-construction nesting surveys or at any time during the monitoring of construction activities, the following shall occur:</p> <p>a. Work activities within 300 feet (500 feet if raptors) shall be delayed. CDFW and/or USFWS shall be contacted to determine the appropriate biological buffer distance around active nest sites.</p> <p>b. Construction activities will be prohibited within the buffer zone until a biologist determines that the young birds have fledged and left the nest, or overwintering burrowing owl is no longer utilizing the burrow. The results of the surveys shall be immediately submitted to the CDFW and the County, demonstrating compliance with the Migratory Bird Treaty Act of 1918.</p> <p>c. If destruction of occupied burrows is unavoidable during the non-breeding season, or if burrowing owls must be translocated during the non-breeding season, a Burrowing Owl Exclusion Plan shall be developed by a qualified biologist following the guidance of the CDFW Staff Report on Burrowing Owl Mitigation (2012).</p>	
BIO-8b	<p>To mitigate for the loss of burrowing owl habitat, a minimum of 26.5 acres of suitable burrowing owl foraging and nesting habitat shall be provided in perpetuity through an easement prior to any project construction activities. If feasible, the protected lands shall occur within the boundaries of the Phillips 66 property or lands immediately adjacent to any known burrow site. At a minimum, the mitigation lands shall include similar vegetative attributes as the impact area, be of sufficiently large acreage and include the presence of fossorial mammals. Mitigation lands for burrowing owl may overlap with lands which are designated for restoration under the Dune Habitat Restoration Plan. Should there be any overlap, neither mitigation effort should negatively</p>	<p>Phillips 66 does not object to Measure BIO-8b.</p>

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	affect the goals and success criteria of the other. The location of the protected lands shall be determined in coordination with CDFW.	
BIO-9	<p>Prior to issuance of grading and construction permits, the following measures shall be included on applicable plan sheets and the Dune Habitat Restoration Plan:</p> <p>a. During construction, the applicant will make all reasonable efforts to limit the use of imported soils for fill. Soils currently existing on-site should be used for fill material. If the use of imported fill material is necessary, the imported material must be obtained from a source that is known to be free of invasive plant species; or the material must consist of purchased clean material such as crushed aggregate, sorted rock, or similar.</p> <p>b. During construction, the contractor shall stockpile topsoil and redeposit the stockpiled soil within disturbed areas onsite after construction of the Rail Spur is complete, or transport the topsoil to a certified landfill or other allowable location for disposal if soil cannot be used within disturbed areas onsite.</p> <p>c. All erosion control materials including straw bales, straw wattles, or mulch used on-site must be free of invasive species seed.</p> <p>d. The required Dune Habitat Restoration Program shall incorporate an invasive species control program.</p>	Phillips 66 does not object to Measure BIO-9 or its subsections a through d.
BIO-11	<p>The Applicant's contract with UPRR shall include a provision to provide that UPRR has an Oil Spill Contingency Plan in place for all mainline rail routes in California that could be used for transporting crude oil to the SMR. The Oil Spill Contingency Plan shall at a minimum include the following:</p> <p>1. A set of notification procedures that includes a list of immediate contacts to call in the event of a threatened or actual spill. This shall include a rated oil spill response organization, the California Office of Emergency Services, California Department of Fish and Wildlife, Oil Spill Prevention and Response, and appropriate local emergency responders.</p> <p>2. Identification of the resources that could be at risk from an oil spill equal to 20% of the train volume. The resources that shall be identified in</p>	<p>BIO-11 is legally infeasible as CEQA mitigation because it is completely preempted by federal law. This measure attempts to specify the terms of a contract between Phillips 66 and UPRR for the carriage of goods on the railroad in interstate commerce, and the content of plans within the control of UPRR. The measure attempts to regulate UPRR indirectly by mandating Phillips 66 have a contract with UPRR that imposes these obligations on UPRR.</p> <p>ICCTA expressly preempts the County from requiring a contract</p>

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	<p>the plan, and shown on route maps, include but are not limited to the following: a. Habitat types, shoreline types, and associated wildlife resources in those locations; b. The presence of state or federally-listed rare, threatened or endangered species; c. The presence of aquatic resources including state fish, invertebrates, and plants including important spawning, migratory, nursery and foraging areas; d. The presence of terrestrial animal and plant resources; e. The presence of migratory and resident state bird and mammal migration routes, and breeding, nursery, stopover, haul-out, and population concentration areas by season; f. The presence of commercial and recreational fisheries including aquaculture sites, kelp leases and other harvest areas. g. Public beaches, parks, marinas, boat ramps and diving areas; h. Industrial and drinking water intakes, power plants, salt pond intakes, and important underwater structures; i. Areas of known historical and archaeological sites (but not their specific description or location); j. Areas of cultural or economic significance to Native Americans (but not their specific description or location). k. A description of the response strategies to protect the identified site and resources at risk. l. A list of available oil spill response equipment and staging locations along the mainline tracks and shall include. m. A program for oil spill training of response staff and a requirement for annual oil spill drillings.</p> <p>3. The oil spill contingency plan must be able to demonstrate that response resources are adequate for containment and recovery of 20% of the train's volume within 24 hours. In addition, within six hours of the spill the response resources shall be adequate for containment and recovery of 50% of the spill, and 75% of the spill within 12 hours.</p> <p>The Applicant's contract with UPRR, shall include provision that UPRR's Oil Spill Contingency Plan shall be reviewed and approved by California Department of Fish and Wildlife, Office of Spill Prevention and Response prior to delivery of crude oil by rail to the Santa Maria Refinery.</p> <p>In addition, the Applicant's contract with UPRR, shall include provisions to provide a copy of UPRR's Oil Spill Contingency Plan to all first response agencies along the mainline rail routes in California that could be used by trains carrying crude oil to the Santa Maria Refinery for the life of the project. Only first response agencies that are</p>	<p>between the railroad and its customer, or specifying contract terms. ICCTA deregulated terms of rail service. Under ICCTA, railroads are expressly authorized but not required to negotiate a contract with a purchaser of rail services. If there is a contract, the railroad has no duty to provide services other than as specified in the terms of the contract. 49 USC § 10709. Where there is no contract for services, ICCTA mandates that a rail carrier provide transportation services upon reasonable request, at the carrier's standard rates and other service terms as published. 49 USC § 11101. ICTTA expressly gives Surface Transportation Board exclusive jurisdiction to decide disputes regarding service requests and terms. Therefore, the County is expressly preempted from requiring a contract between Phillips 66 and UPRR and from specifying the terms of any contract.</p> <p>Mitigation measures that require a contract or specific contract terms between a rail carrier and a customer are also preempted by implication because they unreasonably interfere with UPRR's operations. Otherwise, UPRR could essentially be required to enter contracts with different requirements for every customer across all jurisdictions, a result that is contrary to Congress' intent behind ICCTA.</p> <p>In addition to being preempted, many aspects of Measure BIO-11 are duplicative of existing state or federal law, and the EIR does not identify any environmental benefit</p>

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	<p>able to receive security sensitive information as identified pursuant to Section 15.5 of Part 15 of Title 49 of the Code of Federal Regulations, shall be provided this information.</p>	<p>of this measure beyond what already exists by virtue of state or federal law.</p> <p>Also note:</p> <ul style="list-style-type: none"> • Subsection 2.I. is incomplete. • Subsection 3 is unclear. The percent recovery and time periods are not consistent. The amount of recovery required in 6 hours (50%) and 12 hours (75%) is more than the amount of recovery required in 24 hours (20%). • The paragraph following subsection 3 prohibits Phillips 66 receiving crude oil by rail until CDFW reviews and approves the Oil Spill Contingency Plan, but there is no legal requirement for the CDFW to make such a review, and so no way to compel the agency to do so.
CR-1a	<p>Prior to issuance of grading and construction permits, the Applicant shall submit plans showing a modified road alignment for the Emergency Vehicle Access (EVA) road to the Department of Planning and Building for review and approval. Grading and construction of the EVA shall avoid all ground disturbing activities within the previously identified boundary of CA-SLO-1190. The plans shall note the boundaries of the site as an Environmentally Sensitive Area (ESA) and shall include a 50-foot buffer around the ESA. No grading, storage of materials or equipment, or use of equipment shall occur within the ESA.</p>	<p>Phillips 66 does not object to Measure CR-1a.</p>
CR-1b	<p>Prior to issuance of grading and construction permits, the Applicant shall submit an Archaeological Monitoring Plan to the Department of Planning and Building for review and approval. The plan shall include, at minimum:</p> <ol style="list-style-type: none"> a. List of personnel involved in the monitoring activities including a Native American monitor; b. Clear identification of what portions of the project area in relation to CA-SLO-1190 shall be monitored; 	<p>Phillips 66 does not object to Measure CR-1b or its subsections a through h.</p>

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	<p>c. Description of how the monitoring shall occur; d. Description of monitoring frequency; e. Description of resources expected to be encountered; f. Description of circumstances that would result in the "work diversion," in the case of discovery, at the project site; g. Description of procedures for diverting work on the site and notification procedures; and h. Description of monitoring reporting procedures.</p>	
CR-1c	<p>A County approved archaeological monitor shall be present during all ground disturbing construction activities within intact native soil (i.e., undisturbed soils) within 300 feet of the previously identified boundary of CA-SLO-1190, and as noted in the approved Archaeological Monitoring Plan.</p>	<p>Phillips 66 does not object to Measure CR-1c.</p>
CR-1d	<p>Upon completion of all monitoring and mitigation activities required by CR-1 through CR-5, and prior to final inspection or occupancy, whichever occurs first, the Applicant shall submit to the Department of Planning and Building a report summarizing all monitoring and mitigation activities and confirming that all recommended mitigation measures have been met.</p>	<p>Phillips 66 does not object to Measure CR-1d.</p>
CR-2a	<p>Prior to any grading or construction, contractors involved in grading and grubbing activities shall receive training from a County-qualified archeologist. The training shall address the following issues: a. Review the types of archaeological artifacts that may be uncovered; b. Provide examples of common archaeological artifacts to examine; c. Review what makes an archaeological resource significant to archaeologists and local native Americans; d. Describe procedures for notifying involved or interested parties in case of a new discovery; e. Describe reporting requirements and responsibilities of construction personnel; f. Review procedures that shall be used to record, evaluate, and mitigate new discoveries; g. Describe procedures that would be followed in the case of discovery of disturbed as well as intact human burials and burial-associated artifacts; and</p>	<p>Phillips 66 does not object to Measure CR-2a or its subsections a through h.</p>

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	h. Employees completing this training shall be given a special helmet sticker or card to show they have completed the training, where the sticker/card shall be kept with them at all times while at the work site.	
CR-2b	<p>Prior to issuance of grading and construction permits, the Applicant shall submit an Archaeological Monitoring Plan to the Department of Planning and Building for review and approval. The plan shall include, at minimum:</p> <ul style="list-style-type: none"> a. List of personnel involved in the monitoring activities including a Native American monitor; b. Description of how the monitoring shall occur; c. Description of monitoring frequency; d. Description of circumstances that would result in the "work diversion," in the case of discovery, at the project site; e. Description of procedures for diverting work on the site and notification procedures; and f. Description of monitoring reporting procedures. 	Phillips 66 does not object to Measure CR-2b or its subsections a through f.
CR-2c	A County approved archaeological monitor shall be present during all ground disturbing construction activities within intact native soil (i.e., undisturbed soils) as noted in the approved Archaeological Monitoring Plan.	Phillips 66 does not object to Measure CR-2c.
CR-3	If human remains are exposed during construction, the Applicant shall notify the County Environmental Coordinator immediately and comply with State Health and Safety Code Section 7050.5, which states that no further disturbance shall occur until the County Coroner has been notified and can make the necessary findings as to origin and disposition of the remains pursuant to Public Resources Code 5097.98. Construction shall halt in the area of the discovery of human remains, the area shall be protected, and consultation and treatment shall occur as prescribed by law.	Phillips 66 does not object to Measure CR-3.
CR-5	If any paleontological resources are encountered during ground-disturbing activities, activities in the immediate area of the find shall be halted and the discovery assessed. A qualified paleontologist shall be retained to evaluate the discovery and recommend appropriate treatment options pursuant to guidelines developed by the Society of Vertebrate Paleontology. A paleontological	Phillips 66 does not object to Measure CR-5.

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	resource impact mitigation program for treatment of the resources shall be developed and implemented if paleontological resources are encountered.	
CR-6	As part of the Applicant's contract with UPRR, it shall require that a qualified archaeologist, architectural historian, and paleontologist who meet the Secretary of the Interior's Professional Qualification Standards prepare an Emergency Contingency and Treatment Plan for Cultural and Historic Resources along the rail routes in California that could be used to transport crude oil to the SMR. The treatment plan shall include, but not be limited to, the following components: a. Protocols for determining the cultural resources regulatory setting of the incident site; b. Provide various methodologies for identifying cultural resources, as needed, within the incident site (e.g., California Historical Resources Information System records search, agency contact, field survey); and c. If cultural resources are present, identify measures for their avoidance, protection, and treatment. The Treatment Plan shall be in place prior to delivery of crude by rail to the Santa Maria Refinery.	Measure CR-6 is legally infeasible as CEQA mitigation because it is completely preempted by federal law. This mitigation measure requires a contract between the applicant and the railroad for carriage of goods on the railroad in interstate commerce, and attempts to specify the terms of that contract, as well as the qualifications of consultants and the content of plans within the control of UPRR. The County is expressly and impliedly preempted from requiring a contract between Phillips 66 and UPRR, and from specifying contract terms, for the reasons described under Measures AQ-2a and BIO-11, above.
GR-1a	At the time of application for grading and construction permits, the proposed rail spur, unloading facility, and oil pipeline infrastructure shall be designed and constructed to withstand anticipated horizontal and vertical ground acceleration in the Project area, based on the California Building Code. The calculated design base ground motion for project components shall consider the soil type, potential for liquefaction, and the most current and applicable seismic attenuation methods that are available.	Phillips 66 does not object to Measure GR-1a.
GR-1b	At the time of application for construction permits, all surface facilities and equipment shall have suitable foundations and anchoring design, surface restraints, and moment-limiting supports to withstand seismically induced groundshaking.	Phillips 66 does not object to Measure GR-1b.
GR-1c	A Registered Civil Engineer and Certified Engineering Geologist shall complete an updated geotechnical investigation specific to the proposed rail spur and oil pipeline site, as previous on-site geotechnical investigations were completed in	Phillips 66 does not object to Measure GR-1c.

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	<p>other areas of the refinery. All geotechnical recommendations provided in the report shall be followed during grading and construction at the Project Site. The updated geotechnical evaluation shall include, but not be limited to, an estimation of both vertical and horizontal anticipated peak ground accelerations, as well as an updated liquefaction analysis.</p>	
GR-1d	<p>The geotechnical report shall be completed prior to completion of the final Project design and shall be submitted to the County of San Luis Obispo Building Division for review and approval. The Project design must conform to the recommendations within the updated geotechnical evaluation. The geotechnical recommendations would likely include, but not be limited, to the following:</p> <ul style="list-style-type: none"> a. Proposed structures shall be designed and constructed to withstand anticipated horizontal and vertical ground acceleration in the Project area, based on the California Building Code. b. Proposed structures shall be designed and constructed to withstand the effects of liquefaction, as applicable, based on the California Building Code. c. The Project Site shall be cleared of unsuitable materials and graded to provide a firm base for compacted fill, as applicable. Ground surfaces to receive compacted fill shall be prepared by removing organics, rubble, debris, existing disturbed fill, artificial fill, unconsolidated materials, and soft or disturbed soils. Removal of unconsolidated materials would likely include several feet of overexcavation. d. All fill material shall be placed in uniform lifts not exceeding 8 inches in its loose state and compacted to a minimum of 90 percent relative compaction, as determined by the latest ASTM Test Designation D-1557. e. Due to the low cohesion of the onsite soils (i.e., dune sands), the potential need for mechanical stabilization of fill slopes shall be evaluated and implemented, as applicable, to attain the acceptable factors of safety for stability. Mechanical stabilization may include Mechanically Stabilized Earth (MSE), which includes use of engineered geogrids placed at 2-foot vertical spacing within fill slopes. Cut slopes may similarly 	<p>Phillips 66 does not object to Measure GR-1d or its subsections a through f.</p>

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	<p>require construction of overlying stability fills, using MSE.</p> <p>f. Surface runoff shall be directed away from slopes and foundations and collected in lined ditches or drainage swales, via non-erodible engineered drainage devices. Fill slopes and stability fills, as applicable, shall be provided with subsurface drainage for stability.</p>	
GR-1e	<p>At the time of application for grading and construction permits, all proposed slope, building pad, and rail track bed construction shall be properly engineered, with fill placed in accordance with requirements of the current County of San Luis Obispo Building and Construction Ordinance (Title 19 of the San Luis Obispo County Code), and California Building Code.</p>	<p>Phillips 66 does not object to Measure GR-1e.</p>
GR-1f	<p>During construction, the proposed aboveground oil pipeline shall be anchored to prevent pipeline movement, as determined by a California Registered Civil Engineer, in accordance with California Building Code, San Luis Obispo County requirements, and the American Public Works Association Greenbook.</p>	<p>Phillips 66 does not object to Measure GR-1f.</p>
GR-1g	<p>At the time of application for construction permits, the facilities and equipment, including spill containment vaults and Project-related pipelines, shall be designed for predicted, site-specific seismic loading in accordance with applicable codes, including the California Building Code.</p>	<p>Phillips 66 does not object to Measure GR-1g.</p>
GR-1h	<p>The Applicant shall cease rail car unloading and pipeline oil conveyance following any perceptible (i.e., felt by humans) seismic event and inspect all project-related facilities, equipment, and pipelines for damage prior to restarting operations.</p>	<p>Phillips 66 does not object to Measure GR-1h.</p>
GR-1i	<p>Consistent with California Building Code Section 3401.2, all project-related facilities, equipment, and pipelines shall be maintained in conformance with the California Building Code edition under which it was installed. Annual inspections shall be completed by a California Registered Civil Engineer to verify that project components have not been damaged or compromised by seismic induced ground shaking, corrosion, soil erosion, soil settlement, or other geologic hazards.</p>	<p>Phillips 66 does not object to Measure GR-1i.</p>
GR-2	<p>During construction and operations, the Applicant</p>	<p>Phillips 66 does not object to</p>

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	<p>shall implement a Storm Water Pollution Prevention Plan using Best Management Practices and monitor and maintain stormwater pollution control facilities identified in the Storm Water Pollution Prevention Plan, in a manner consistent with the provisions of the Federal Water Pollution Control Act (National Pollutant Discharge Elimination System Program). Stormwater management protection measures and wet weather measures shall be designed by a California registered, Qualified Storm Water Pollution Prevention Plan Developer. In addition, a California registered, Qualified Storm Water Pollution Prevention Plan Practitioner shall oversee and monitor construction and operational Best Management Practices and stormwater management, in accordance with the State General Construction Permit and the Central Coast Regional Water Quality Control Board. Conventional measures typically recommended by the State Water Resource Board and the California Department of Transportation include the following:</p> <p>a. Implement permanent erosion and sediment control measures:</p> <ul style="list-style-type: none"> - Minimize grading, clearing, and grubbing to preserve existing vegetation; - Use mulches and hydroseed, free of invasive plants, to protect exposed soils; - Use geotextiles and mats to stabilize soils; - Use drainage swales and dissipation devices; and - Use erosion control measures outlined in the California Stormwater Quality Association Best Management Practice Handbook. <p>b. Implement temporary Best Management Practice mitigation measures:</p> <ul style="list-style-type: none"> - Use silt fences, sandbags, and straw wattles; - Use temporary sediment basins and check dams; and - Use temporary Best Management Practices outlined in the California Stormwater Quality Association Best Management Practice Handbook. <p>c. Implement tracking control Best Management Practices to reduce tracking sediment offsite.</p> <ul style="list-style-type: none"> - Use stabilized construction entrance and exit with steel shakers; 	<p>Measure GR-2 or its subsections a through c.</p>

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	<p>- Use tire wash areas; and</p> <p>- Use tracking control Best Management Practices outlined in the California Stormwater Quality Association Best Management Practice Handbook.</p> <p>Personnel at the site shall be trained in equipment use and containment and cleanup of an oil spill. Dry cleanup methods, such as absorbents, shall be used on paved and impermeable surfaces. Spills in dirt areas shall be immediately contained with an earthen dike and the contaminated soil shall be dug up and discarded in accordance with local and state regulations.</p>	
GR-3	Implement Mitigation Measure GR-1c to confirm the absence of expansive soil.	Phillips 66 does not object to Measure GR-3.
HM-2a	Only rail cars designed to FRA, July 23, 2014 Proposed Rulemaking Option 1: PHMSA and FRA Designed Tank Car as listed in Table 4.7.6, shall be allowed to unload crude oil at the Santa Maria Refinery.	<p>As proposed, HM-2a is legally infeasible as CEQA mitigation because it is preempted by federal law. Measure HM-2a attempts to regulate UPRR's method of rail transportation, and ICCTA expressly preempts state or local regulation of transportation by rail carriers. Specifying which cars may be unloaded is no different than specifying which ones are allowed for mainline transport, because the cars being unloaded must first travel to the site.</p> <p>Measure HM-2a is also preempted by the Hazardous Materials Transportation Act, which directs the Secretary of Transportation to adopt standards for packaging, including rail cars. PHMSA carries out this responsibility. 49 CFR 1.97(b). PHMSA regulations specify requirements for rail cars transporting crude oil. 49 CFR Part 179, adopted May 8, 2015 (80 Fed. Reg. 26644). Congress expressly confirmed the PHMSA standards and set deadlines for phase-in in the FAST Act § 7304. Where PHMSA has adopted standards on packaging, state standards are</p>

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		<p>preempted unless substantially the same. 49 USC § 5125. Measure HN-2a would require rail car design inconsistent with the federal standards and it is therefore preempted.</p> <p>See Phillips 66's comment letter of November 24, 2014, and pages 9-10 of the Comment Summary Table attached thereto, for additional objections to this measure.</p> <p>However, Phillips 66 expects that, by the time it has completed permitting and construction of the Rail Spur Extension Project, it will have sufficient cars meeting the federal requirements adopted in May 2015 so that only upgraded cars will be used in unit trains delivering crude to the Project. See letter from Darin Grandfield, Phillips 66 site manager, to the Planning Commission dated April 14, 2016. Accordingly, Phillips 66 proposes the following measure in lieu of Measure HM-2a. Phillips 66 would not object to this alternative measure on preemption grounds because the it is consistent with Phillips 66's proposed operations:</p> <p><i>Crude oil unit trains shall not be allowed to unload crude oil at the Santa Maria Refinery unless all the tank cars in the train are designed or retrofit to meet or exceed the DOT 117, 117P or 117R standards set forth in 49 CFR § 179.202 (as published May 8, 2015 at 80 Fed. Reg. 26644); except that ECP brakes shall not be required prior to the compliance date for such equipment as enforced by the Federal Railroad Administration and the federal Pipeline and</i></p>

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		<i>Hazardous Materials Safety Administration.</i>
HM-2b	For crude oil shipments via rail to the SMR a rail transportation route analysis shall be conducted annually. The rail transportation route analysis shall be prepared following the requirements in 49 CFR 172.820. The route with the lowest level of safety and security risk shall be used to transport the crude oil to the Santa Maria Refinery	<p>Measure HM-2b is legally infeasible as CEQA mitigation because it is completely preempted by federal law. ICCTA expressly preempts the authority of state and local governments to regulate rail routes. 49 USC § 10501(b)(1).</p> <p>The Federal Railroad Safety Act regulates routes from perspective of rail safety, and the Federal Railroad Administrative carries out this responsibility. 49 CFR § 1.89. Routing requirements for hazardous materials are specified in 49 CFR 172.820. The Railroad Safety Act requires national uniformity to the extent practicable. State standards are preempted unless necessary to address a local safety hazard, not incompatible with the federal standard, and not an unreasonable burden on interstate commerce. 49 USC 20106. Citing § 20106, the regulations specify that no state or local government may prohibit use of a rail line for the transportation of materials regulated by the federal route requirements set out in 49 CFR 172.820. See 49 CFR 172.822. Moreover, the County has not demonstrated that there is a local safety hazard that merits unique state or local routing standards.</p> <p>In addition, if this measure is intended to be imposed on Phillips 66, it is infeasible because Phillips 66 does not have access to the information required to perform the analysis. Section 172.820(i)(2) requires a rail carrier to restrict the distribution of routing information to specified persons with a need to</p>

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		<p>know sensitive security information. Phillips 66 does not qualify under the regulation as a person who needs to know; therefore, UPRR is forbidden from providing the information to Phillips 66. Requiring Phillips 66 to conduct the analysis as a prerequisite to receiving crude shipments would create a legal and practical barrier to interstate commerce.</p> <p>This measure also serves no purpose as CEQA mitigation. The EIR does not identify any environmental benefit of this measure beyond what already exists by virtue of federal law.</p>
HM-2c	<p>The Applicant's contract with UPRR, shall include a provision to require that Positive Train Control (PTC) be in place for all mainline rail routes in California that could be used for transporting crude oil to the SMR.</p>	<p>Measure CR-6 is legally infeasible as CEQA mitigation because it is completely preempted by federal law. This mitigation measure requires a contract between the applicant and the railroad for carriage of goods on the railroad in interstate commerce, and attempts to specify the terms of that contract. The County is expressly and impliedly preempted by ICCTA from requiring a contract between Phillips 66 and UPRR, and from specifying contract terms, for the reasons described under Measures AQ-2a and BIO-11, above.</p> <p>In addition, Measure HM-2c is preempted by the Federal Rail Safety Act, as amended, which establishes requirements and deadlines for implementation of Positive Train Control. See 49 USC § 20157, as amended by the Positive Train Control Enforcement and Implementation Act of 2015, Pub. Law 114-73, Sec. 1302. Section 20157 sets a deadline of December 31, 2018 for Class I</p>

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		railroad carriers to implement positive train control. State and local governments are preempted from establishing additional or more stringent requirements unless they are (1) required to eliminate an essentially local safety hazard, (2) not incompatible with federal law, and (3) not an unreasonable burden on interstate commerce. 49 USC § 20106. The County has not demonstrated that positive train control is necessary to address an essentially local safety hazard; and acceleration of the deadline established by Congress less than 12 months ago would be incompatible with federal law and unreasonably burdensome.
HM-2d	The refinery shall not accept or unload at the rail unloading facility any crude oil or petroleum product with an API Gravity of 30° or greater	Ordinarily, Measure HM-2d would be preempted because it attempts to limit the materials that may be transported via the railroad by limiting the materials that may be unloaded. Here, however, this mitigation measure merely reiterates the applicant's own project description. Therefore, Phillips 66 does not object to Measure HM-2d.
---	The unnumbered text following HM-2d states: Implement mitigation measures PS-4a through PS-4e.	This mitigation measure is legally infeasible as CEQA mitigation because it is preempted by federal law, for the reasons stated in PS-4a through PS-4e, below.
N-1	The Applicant shall ensure that all construction activity at the Project Site is limited to the hours of 7:00 A.M. to 9:00 P.M., Monday through Friday, and 8:00 A.M. to 5:00 P.M. on Saturdays and Sundays. This restriction shall be a note placed on all construction plans.	Phillips 66 does not object to Measure N-1.
N-2a	Prior to issuance of the Notice to Proceed, the Applicant shall develop for review and approved by the County Department of Building and Planning a Rail Unloading and Management Plan that addresses procedures to minimize noise	Items 2 through 6 are legally infeasible as CEQA mitigation because they are preempted by federal law. Items 2 through 4 place restrictions on the arrival of

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	<p>levels at the rail spur, including but not limited to the following:</p> <p>1) All locomotives operating to the east of the unloading rack area between the hours of 10 P.M. and 7 A.M. shall be limited to a combined total of 100 locomotive-minutes (e.g. 2 locomotives for 50 minutes each or 1 locomotive for 100 minutes, etc. including switching and idling);</p> <p>2) Arriving trains that enter the refinery between the hours of 10 P.M. and 7 A.M. and are not being immediately unloaded shall shutdown all locomotives once the train is on the refinery property;</p> <p>3) No horns, annunciators or other signaling devices are allowed unless it is an emergency. If horns and annunciators are needed for worker safety, then warning devices shall be developed, to CPUC standards, to alert the safety of plant personnel when trains are in motion without an audible warning device;</p> <p>4) No horns are to be used on the mainline siding track adjacent to the refinery unless it is an emergency;</p> <p>5) Any trains repairs shall be conducted only between the hours of 7 A.M. and 7 P.M.; and</p> <p>(6) The Plan shall include a copy of the agreement between the Applicant and UPRR demonstrating the two parties have entered into a legally binding contractual arrangement ensuring implementation of the above requirements.</p>	<p>trains and their movement and use of horns, etc., without regard to requirements of federal and CPUC law and regulations governing railroads operations.</p> <p>Although Item 2 is preempted, a portion of that item is already contemplated by the Project Description. Therefore, Phillips 66 does not object to Item 2 if modified as follows: <i>“Arriving trains that enter the refinery between the hours of 10 P.M. and 7 A.M. and are not being immediately unloaded shall shutdown all locomotives once the train is on the refinery property <u>and it is safe to do so.</u>”</i></p> <p>With respect to Item 5, Phillips 66 will not own or control the locomotives, and there may be times when UPRR needs to service or repair one of its locomotives upon arrival in order to ensure that it meets federal equipment and maintenance standards when it exits the refinery and returns to the mainline track.</p> <p>Item 6 attempts to control the operations of UPRR by requiring a contract between Phillips 66 and UPRR, and specifying contract terms that constrain the railroad's use and operation of its equipment in ways that may conflict with federal requirements or interfere with its mainline operations. Item 6 is infeasible as CEQA mitigation because the County is expressly and impliedly preempted from requiring a contract between Phillips 66 and UPRR, and from specifying contract terms, for the reasons described under Measures AQ-2a and BIO-11, above.</p>

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N-2b	<p>Prior to issuance of the Notice to Proceed, the Applicant shall provide to the County Department of Planning and Building evidence that each unloading pump and associated electric motor can achieve a noise level no greater than 71 dBA at 50 feet, including the installation of pump enclosures, or similar devices if necessary.</p>	<p>Phillips 66's comments on the RDEIR submitted November 24, 2014 objected to the timing of this measure, because it appeared to require a demonstration of noise levels before the equipment is installed. (See page 13 of the Comment Summary Table, and the portion designated Comment No. P66-26 by the FEIR.)</p> <p>The FEIR's response to Comment P66-26 explained that the "evidence" required by the condition will most likely take the form of manufacturer's information or design specifics. With this clarification, Phillips 66 no longer objects to Mitigation Measure N-2b. However, we urge the County to add the clarification to the condition itself.</p>
N-2c	<p>Prior to issuance of the Notice to Proceed, the Applicant shall submit to the County Department of Planning and Building for review and approval a Noise Monitoring Plan that outlines procedures for regular noise monitoring of the operational aspect of the Rail Spur facility. The Plan shall specify at a minimum the duration and location of monitoring activities with and without trains present at the SMR site. The monitoring locations shall include at least one location within 100 to 200 feet of the unloading activities and a monitoring location located at the property line of the nearest noise-sensitive receptor. The noise monitoring shall be conducted within one month of rail spur operations commencing. The results of the monitoring shall be reported to the County within one month of monitoring completion. If the results of the noise monitoring indicate that noise levels are above the thresholds, then the Applicant shall amend the Rail Unloading and Management Plan with additional mitigation measures that would reduce noise levels below County thresholds. Additional mitigation could include, but not be limited to, additional limits on the times of unloading activities.</p>	<p>Phillips 66 does not object to Measure N-2c.</p>

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PS-1	<p>Prior to issuance of grading permits, the Applicant shall submit a Solid Waste Management Plan (SWMP) for approval by San Luis Obispo County to maintain a diversion rate of at least 50 percent of construction waste from reaching the landfill. The SWMP shall consist of information regarding, but not limited to:</p> <ul style="list-style-type: none"> a. The name and contact information of who will be responsible for implementing the recycling plan; b. A brief description of the Project wastes to be generated, including types and estimated quantities of each material to be salvaged, reused, or recycled during the construction phase of this Project; c. Waste sorting/recycling and/or collection areas shall be clearly indicated on the Site Map; d. A description of the means of transportation and destination of recyclable materials and waste, and a description of where recyclable materials and waste will be sorted (whether materials will be site-separated and hauled to designated recycling or landfill facilities, or whether mixed materials will be removed from the site to be processed at a mixed waste sorting facility); e. The name of the landfill(s) where trash will be disposed of and a projected amount of material that will be landfilled; f. A description of meetings to be held between Applicant and contractor to ensure compliance with the recycling plan; g. A contingency plan shall identify an alternate location to recycle and/or stockpile construction debris in the event of local recycling facilities becoming unable to accept material (for example: all local recycling facilities reaching the maximum tons per day due to a time period of unusually large volume); h. Disposal information including quantity of material landfilled, which landfill was used, total landfill tipping fees paid, and copies of weight tickets, manifests, receipts, and invoices; i. Recycling information including quantity of material recycled, receiving party, and copies of weight tickets, manifests, receipts, and invoices; and j. Reuse and salvage information including quantities of salvage materials, storage locations if 	<p>Phillips 66 does not object to Measure PS-1 or its subparts a through j.</p>

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	they are to be used on-site, or receiving party if resold/used off-site.	
PS-3a	Prior to issuance of construction permits, the Applicant shall submit to Cal Fire/County Fire for review and approval a final Fire Protection Plan for the Rail Spur Project that meets all the applicable requirements of API, NFPA, UFC, and Cal Fire/County Fire.	Phillips 66 does not object to Measure PS-3a.
PS-3b	Prior to notice to proceed for the rail unloading facility, the Applicant shall update the SMR Emergency Response Plan to include the rail unloading facilities and operations.	Phillips 66 does not object to Measure PS-3b.
PS-3c	Prior to notice to proceed for the rail unloading facility, the Applicant shall update the existing SMR Spill Prevention Control and Countermeasure Plan to include the rail unloading facilities and operations.	Phillips 66 does not object to Measure PS-3c.
PS-3d	Prior to notice to proceed for the rail unloading facilities, the Applicant shall assure that the existing SMR fire brigade meets all the requirements outlined in Occupational Safety and Health Administration 29 CFR 1910.156, and NFPA 600 & 1081.	Phillips 66 does not object to Measure PS-3d.
PS-3e	Prior to issuance of grading permits, the Applicant shall have an executed operational Memorandum of Understanding (MOU) (now called the Operating Plan) with Cal Fire/County Fire that includes fire brigade staffing/training requirements and Cal Fire/County Fire funding requirements. This MOU shall be reviewed and updated annually by Cal Fire and the Applicant.	Phillips 66 does not object to Measure PS-3e.
PS-3f	Prior to issuance of grading permits, the Applicant shall have an agreement to reimburse Cal Fire/County Fire for time spent by a qualified fire inspector to conduct the annual fire inspections at the SMR including all structures, and support facilities consistent with Cal Fire/County Fire's authority and jurisdiction. The Applicant shall reimburse all costs associated with travel time, inspections, inspection training, and documentation completion. The reimbursement rate shall be according to the most recent fee schedule adopted by the San Luis County Board of Supervisors.	Phillips 66 does not object to Measure PS-3f.
PS-3g	Prior to issuance of grading permits, the Applicant	Phillips 66 does not object to

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	<p>shall have an agreement to reimburse Cal Fire/County Fire for offsite training for emergency responders to railcar emergencies, such as the 40 hour course offered by Security and Emergency Response Training Center Railroad Incident Coordination and Safety (RICS) meeting Department of Homeland security, NIIMS, OSHA 29CFR 1910.120 compliance. Initial training shall be two members of the Interagency Hazardous materials Response Team, two members of the interagency Urban Search and Rescue Team, and two members annually from Cal Fire/County Fire or fire districts in San Luis Obispo that have automatic aid agreements with Cal Fire/County Fire for a total of six slots per year for the life of the project.</p>	<p>Measure PS-3g.</p>
<p>PS-3h</p>	<p>Prior to issuance of grading permits, the Applicant shall have an agreement to reimburse Cal Fire/County Fire for Fire Chief Officer attendance such as the 40 hour course offered by Security and Emergency Response Training Center; Leadership & Management of Surface Transportation Incidents. Funding shall be for two Fire Chief Officers annually for the life of the project.</p>	<p>Phillips 66 does not object to Measure PS-3h.</p>
<p>PS-3i</p>	<p>Prior to issuance of grading permits, the Applicant shall have an agreement with Cal Fire/County Fire to conduct annual emergency response scenario/field based training including Emergency Operations Center Training activations with the Applicant, Cal Fire/County Fire, UPRR, and other San Luis Obispo County First response agencies that have mutual aid agreements with Cal Fire/County Fire. These annual emergency response drills shall occur for the life of the project.</p>	<p>Phillips 66 does not object to Measure PS-3i.</p>
<p>PS-4a</p>	<p>The Applicant shall provide advanced notice of all crude oil shipments to the Santa Maria Refinery, and quarterly hazardous commodity flow information documents to all first response agencies along the mainline rail routes within California that could be used by trains carrying crude oil to the Santa Maria Refinery for the life of the project. Only first response agencies that are able to receive security sensitive information as identified pursuant to Section 15.5 of Part 15 of Title 49 of the Code of Federal Regulations, shall</p>	<p>Measure PS-4a is legally infeasible as CEQA mitigation because it is completely preempted by federal law. This measure attempts to require Phillips 66 to provide first response agencies with certain information regarding timing and routes for rail transportation of crude oil. Federal law specifies information that the railroads must collect and give to first responders,</p>

ATTACHMENT A TO LETTER OF AUGUST 15, 2016
MITIGATION MEASURES IN FINAL EIR AND PHILLIPS 66 RESPONSE

FEIR #	FEIR Text	Phillips 66 Response
	<p>be provided this information. The plan for providing notice to first response agencies shall be in place and verified by the County Department of Planning and Building prior to delivery of crude by rail to the Santa Maria Refinery.</p>	<p>and the applicant does not have this information because it is not qualified under the federal program to receive it. See 49 CFR § 172.820(i)(2) and 49 CFR Parts 15 and 1520 dealing with sensitive security information.</p> <p>In addition, this measure serves no practical purpose and would do nothing to reduce significant effects of the Project. The information requirements of this measure duplicate federal law, and the EIR does not identify any environmental benefit from the measure beyond what already exists by virtue of federal law.</p>
PS-4b	<p>Only rail cars designed to FRA, July 23, 2014 Proposed Rulemaking Option 1: PHMSA and FRA Designed Tank Car shall be allowed to unload crude oil at the Santa Maria Refinery.</p>	<p>Measure PS-4b is legally infeasible as CEQA mitigation because it is completely preempted by federal law. See explanation under HM-2a, above, and Phillips 66 comments designated Comment No. P66-27 in the FEIR. A requirement for so-called Option 1 cars conflicts with the federal standards for rail cars adopted in May 2015. However, as described in response to HM-2a, Phillips 66 would not object to a condition requiring use of DOT 117, 117P or 117R tank cars in unit trains, because the company expects to have a sufficient number of these upgraded cars by the time permitting and construction are completed, so that only upgraded cars will be used in unit trains delivering crude to the Project</p>
PS-4c	<p>The Applicant shall provide annual funding for first response agencies along the mainline rail routes within California that could be used by the trains carrying crude oil to the Santa Maria Refinery to attend certified offsite training for emergency responders to railcar emergencies, such as the 40 hour course offered by Security and Emergency</p>	<p>Measure PS-4c is legally infeasible as CEQA mitigation because it is preempted by federal law. In order to be allowed to receive goods transported by rail in interstate commerce, this measure would require the applicant to bear the</p>

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FEIR #	FEIR Text	Phillips 66 Response
	<p>Response Training Center Railroad Incident Coordination and Safety (RICS) meeting Department of Homeland security, NIIMS, OSHA 29 CFR 1910.120 compliance. The Applicant shall fund a minimum of 20 annual slots per year for the life of the project. The plan for funding the emergency response training shall be in place and verified by the Cal Fire/County Fire prior to delivery of crude by rail to the Santa Maria Refinery.</p>	<p>cost of training response agencies all along the mainline track for the life of the project. The RDEIR version required the applicant to enter into a contract with UPRR for UPRR to cover these costs. The FEIR version would impose these costs directly on the customer, Phillips 66. Requiring Phillips 66 to bear the costs associated with UPRR's operations is preempted by ICCTA, since this requirement is equivalent to and merely an attempt to circumvent imposing direct requirements on how UPRR conducts its operations.</p> <p>See Comment UPRR-04 in the FEIR for an explanation regarding why imposing such costs on a rail customer is preempted.</p>
PS-4d	<p>As part of the Applicant's contract with UPRR, it shall require annual emergency responses scenario/field based training including Emergency Operations Center Training activations with local emergency response agencies along the mainline rail routes within California that could be used by the crude oil trains traveling to the Santa Maria Refinery for the life of the project. A total of four training sessions shall be conducted per year at various locations along the rail routes. This contract provision shall be in place and verified by the Cal Fire/County Fire prior to delivery of crude by rail to the Santa Maria Refinery.</p>	<p>Measure PS-4d is legally infeasible as CEQA mitigation because it is completely preempted by federal law. In order to be allowed to receive goods transported by rail in interstate commerce, this measure would require the applicant enter into a contract with UPRR requiring the railroad to conduct certain training for agencies all along the mainline rail routes. The County is expressly and impliedly preempted from requiring a contract between Phillips 66 and UPRR, and from specifying contract terms, for the reasons described under Measures AQ-2a and BIO-11, above.</p> <p>Also, federal and state law establish training requirements and impose fees on the railroads and the owner of the oil to fund the training. The FEIR does not describe these existing training programs and fees as inadequate, and does not describe any environmental benefits of the</p>

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MITIGATION MEASURES IN FINAL EIR AND PHILLIPS 66 RESPONSE

FEIR #	FEIR Text	Phillips 66 Response
		mitigation measure beyond those already required.
PS-4e	As part of the Applicant's contract with UPRR, it shall require that all first response agencies along the mainline rail routes within California that could be used by trains carrying crude oil traveling to the Santa Maria Refinery be provided with a contact number that can provide real-time information in the event of an oil train derailment or accident. The information that would need to be provided would include, but not be limited to crude oil shipping papers that detail the type of crude oil, and information that can assist in the safe containment and removal of any crude oil spill. This contract provision shall be in place and verified by the Cal Fire/County Fire prior to delivery of crude by rail to the Santa Maria Refinery.	Measure PS-4e is legally infeasible as CEQA mitigation because it is completely preempted by federal law. This mitigation measure attempts to specify the terms of a contract between applicant and UPRR for carriage of goods on the railroad in interstate commerce. It attempts to regulate UPRR indirectly by mandating Phillips 66 to have a contract with UPRR that imposes these obligations on UPRR. The County is expressly and impliedly preempted from requiring a contract between Phillips 66 and UPRR, and from specifying contract terms, for the reasons described under Measures AQ-2a and BIO-11, above.
PS-5	Prior to notice to proceed for the rail unloading facility, the Applicant shall update their existing Security Plan to include the Rail Spur Project.	Phillips 66 does not object to Measure PS-5.
TR-1	Prior to issuance of grading permits, the Applicant shall develop a Construction Traffic Management Plan for review and approval by the County Public Works Department and CalTrans. The plans shall include at least the following items: a. A scheduling plan showing operational schedules to minimize traffic congestion during peak hours. The plan shall limit project related traffic to and from the refinery during the peak AM and PM hours. This plan shall note the schedule for completing various construction activities, and to the extent feasible avoid an overlap of the construction of the rail spur/unloading area and pipeline construction. The plan shall show the hours of operation to minimize traffic congestion during peak hours. b. Willow Road shall be use for truck deliveries to and from the refinery. c. Monitoring program for street surface conditions so that damage or debris resulting from construction of the Project can be identified and corrected by the Applicant. d. A traffic control plan showing proposed	Phillips 66 does not object to Measure TR-1 or its subsections a through e.

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MITIGATION MEASURES IN FINAL EIR AND PHILLIPS 66 RESPONSE

FEIR #	FEIR Text	Phillips 66 Response
	<p>temporary traffic control measures, if any.</p> <p>e. A delivery schedule for construction materials, including an evaluation of the feasibility of transporting construction materials to the site by rail.</p>	
TR-4	<p>The Applicant shall work with UPRR to schedule unit trains serving the Santa Maria Refinery so that they do not interfere with passenger trains traveling the Coast Rail Route.</p>	<p>Measure TR-4 is legally infeasible as CEQA mitigation because it is completely preempted. Federal law establishes the priority between passenger trains and freight trains (49 USC § 24308(c)), which is implemented using specified metrics and standards (Passenger Rail Investment and Improvement Act, § 207). See <i>Department of Transportation v. Association of American Railroads</i>, 135 S.Ct. 1225 (2015). Local agencies do not have authority to regulate schedules for the transport of goods or passengers on the railroad network, or establish priority for passenger trains.</p>
WR-1	<p>During construction, oil and other chemical spills shall be contained and cleaned according to measures outlined in the California Stormwater Quality Association Best Management Practice Handbook. Best Management Practices would likely include, but not be limited, to the following:</p> <p>a. Ensure minor spill containment and clean up equipment is readily available in areas of demolition, construction, and operations.</p> <p>b. Store petroleum products in covered areas with secondary containment dikes.</p> <p>c. If vehicle maintenance and fueling occur onsite, use a designated area and/or secondary containment, located away from drainage courses, to prevent the runoff of storm water and the runoff of spills.</p> <p>d. Regularly inspect onsite vehicles and equipment for leaks, and repair immediately.</p> <p>e. Always use secondary containment, such as a drain pan or drop cloth, to catch spills or leaks when removing or changing fluids.</p> <p>f. Use absorbent materials on small spills.</p>	<p>Phillips 66 does not object to Measure WR-1 or its subsections a through f.</p>
WR-2	<p>Prior to the County's issuance of a Notice to Proceed, the existing Santa Maria Refinery Spill</p>	<p>Phillips 66 does not object to Measure WR-2.</p>

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MITIGATION MEASURES IN FINAL EIR AND PHILLIPS 66 RESPONSE

FEIR #	FEIR Text	Phillips 66 Response
	Prevention Control and Countermeasure Plan (SPCCP) shall be amended to reflect operation of the rail car unloading facility and associated oil pipeline. See mitigation measure BIO-7 for the detailed SPCCP requirements for the rail unloading operations.	
WR-3	Implement mitigation measures BIO-11 and PS-4a through PS-4e.	The referenced mitigation measures are legally infeasible as CEQA mitigation because they are preempted for the reasons described above.
WR-6	If possible, the Applicant shall use recycled water for construction and operational activities to reduce impacts to local groundwater supplies. Recycled water could be generated onsite and/or secured via truck transport or water pipeline from the South San Luis Obispo County Sanitation District.	<p>See Phillips 66's comments on the RDEIR submitted November 24, 2014, and page 13 of the Comment Summary Table attached thereto, identified as Comment No. P66-28 by the FEIR.</p> <p>The Revised DEIR concludes that the Project will not significantly impact the quantity or movement of available ground water or adversely affect a community water service provider. Revised DEIR, pp. 4.13-29-31. Therefore, there is no CEQA basis for imposing this mitigation measure, and it should be removed from the Final EIR. In addition, this mitigation measure is not feasible, as recycled water is not suitable for land application. Further, the EIR does not account for the increase in diesel emissions caused by the truck transport of any recycled water that cannot be generated onsite.</p> <p>The measure should be deleted. If it is retained, then the first line should be edited by replacing "If possible" with "If feasible", which is the proper standard for CEQA mitigation.</p>

ATTACHMENT B

2.0 Project Description

The proposed project would consist of the following components:

- Rail Spur Modifications,
- Mainline Turnout,
- Unloading Facility,
- Unloading System,
- Fire Protection and Safety System,
- Pipelines
- Access Roads,
- Secondary Emergency Vehicle Access,
- Security Fence,
- Spill Containment and Response Facilities, and
- Support Buildings.

Each of these is described below.

2.3.1 Rail Spur Modifications

The unloading facility would be designed around “train slots” (a track that can contain an entire unit train). Union Pacific bases the number of slots on the number of trains arriving per day and/or the yearly tonnage, and the ‘dwell period’ (the hours that the train would be at the facility.) Phillips 66 would unload up to five trains per week. Phillips 66 estimates that a complete 80-car train would be unloaded within 10 to 12 hours, including time for positioning and preparing the train for departure. The proposed two-slot facility (Tracks 1/2 and Track 3) would allow adequate capacity unloading.

Modification of the existing rail spur would include constructing five parallel tracks (as the tracks extend east, some rail tracks would merge). In addition, two new coke rail loading tracks (Coke Track 1 [CT1] and Coke Track 2 [CT2]) would be installed north of the new crude oil unloading tracks to allow for easier and shorter access to the coke storage area. Additionally, the two existing coke rail storage tracks (Track 765 and the end of Track 764), south of the crude oil unloading tracks, would have new rails installed and would no longer be used for loading coke, but would be used as part of the rail unloading facilities as described below. A line diagram of the rail tracks at the SMR is shown in Figure 2-4.

The existing rail spur (Track 764) on the southern portion of the property will have its track replaced. Track 764 currently provides rail access to the coke storage area (end of Track 764 and Track 765) and would provide a common entry point for the new tracks. Two tracks would surround an unloading rack and then would come together to form a common track that extends to the east of the loading area to allow for the entire train to be parked off of the mainline track and unloaded. Three additional tracks would extend the full length of the rail spur and run parallel to the unloading area.

and for rail cars requiring inspection and/or repair before continued use, as needed. The rails on this existing track would be replaced as part of this project.

Detailed track diagrams are included in Appendix A (pages A-1 through A-5).

2.3.2 Mainline Turnout (Siding)

Unit train service would not require substantial changes to the turnout from the Union Pacific mainline running north-south adjacent to the refinery since this track is adequately built for the anticipated weight. The turnout guides north- and southbound trains off the mainline onto the siding and then into the refineries rail spur. Trains going south can move directly onto the siding and into the refinery rail spur. Trains coming north must pass the mainline siding and then back onto the mainline siding for access to the refinery rail spur.

Union Pacific may require a small change in the angle of the turnout; however, if required, the construction of the new turnout would be a minor change from the current configuration and the construction would occur entirely within the existing disturbed track area on UPRR right-of-way. Because other trains continually pass through the Arroyo Grande/Santa Maria area on the Union Pacific mainline, the turnout must allow a unit train to clear the mainline without stopping.

2.3.3 Unloading Facility

The unloading facility would include an access platform and a system of pumps and meters, suction lines from the railcars, carbon beds for vapor treatment, steam lines and steam condensate vessel, and a common pipeline leading to the refinery's existing tank farm. Figure 2-5 provides a simplified block flow diagram of the unloading facilities. Figure 2-6 provides a plot plan of the unloading facility that shows the location of the major components (the carbon beds would be located on the metering pad shown in Figure 2-6). Appendix A provides plan and cross-section views of the proposed rail unloading facility (see pages A-6 through A-8).

The access platform would run parallel to the railcar unloading tracks, with an individual gangway and safety cage at each rail car unloading station.

The access platform and tracks would be supported by reinforced concrete construction. This area would provide structural support, spill containment (see Section 2.3.10 below), and a clear, solid work surface for the operators.

Phillips 66 would unload up to ~~five~~ ^{three} trains per week. Phillips 66 estimates that a complete 80-car train would be unloaded within 10 to 12 hours, including time for positioning and preparing the train for departure. The proposed two-slot facility (Tracks 1/2 and Track 3) would allow adequate capacity unloading.

2.0 Project Description

2.4.3 Construction Vehicles

Equipment and materials would need to be transported to and from the site, as well as employee vehicles. Trucks would be used to deliver piping, railroad track, ties, and ballast as well as the equipment to be installed and the construction equipment. Peak daily trips are summarized in Table 2.4 below. Appendix A shows the details of the work and truck trip estimates (pages A-29 and A-30).

Table 2.4 Vehicle Trips, Peak Day, One-Way Trips

Phase Name	Worker Trip Number	Truck Trip Number	Total Trip Number
Demolition/Removal of Existing Track	16	36	52
Turnout Track Replacement	18	18	36
Grading	40	66	106
Unloading Area and Pipeline Construction	320	110	430
Construction of Rail	24	218	242
Commissioning	40	8	48

1. Peak vehicle trip estimates do not account for vehicle movements that are confined to the project site.
2. See Appendix A for details on Vehicle Trips.

Source: Developed by MRS from Phillips 66 Land Use Application and Phillips 66 comments on Project Description.

2.5 Operations

Project operations would include unloading of up to ^{three} ~~five~~ trains per week, with an annual maximum number of trains expected to be approximately ¹⁵⁰ ~~250~~. Trains would arrive from different oilfields and/or crude oil loading points depending on market availability. Trains could arrive at the Phillips 66 site from the north or the south. The refinery feedstock definition (meaning the materials that could be transported by train into the proposed facility) excludes gaseous feeds, natural gas liquids (NGL), liquefied petroleum gas (LPG), finished refined products, and Bakken crude. The feedstock would be sourced from oilfields throughout North America based on market economics and other factors.

^{DOT 117, 117P or 117R tank cars.}
Crude oil would be shipped to the refinery in ~~non-jacketed CPC 1232 tank cars (i.e., post October 1, 2011 tank cars)~~. Appendix A provides the specification for the tanks cars (pages A-31 and A-32). These cars have a capacity of approximately 31,808 gallons per car. Each car has a weight limit of 210,700 pounds of crude oil. Each tank car would be approximately 60 feet long. The total length of a unit train would be about 5,190 feet long (three locomotives at 90 feet, two buffer cars at 60 feet, and 80 tank cars at 60 feet).

^{See letter of 8-15-16 for substitute language.}
~~Phillips 66 proposes to use CPC 1232 tank cars. In August 2011, the AAR Tank Car Committee adopted new industry construction specifications for tank cars and the CPC 1232 design became the standard for all tank cars built after October 2011. The rail cars would be designed to meet DOT Packing Group I requirements, which is the highest rating. The tank cars would be equipped with half height head shields, double couplers, and all stainless steel valves. The relief valve would be designed for high flow.~~

ATTACHMENT C

STATEMENT OF OVERRIDING CONSIDERATIONS [DRAFT]

I. Legal Background and Project Impacts

A. Legal background

The California Environmental Quality Act ("CEQA") requires a public agency to balance the benefits of a proposed project against its significant, unavoidable adverse environmental impacts in determining whether to approve the project.

Section 15093 of the State CEQA Guidelines provides the following:

(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the Final Environmental Impact Report (Final EIR) but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the Final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

B. Project significant impacts

The Santa Maria Refinery Rail Spur Extension Project (Project) will result in environmental effects that, although mitigated to the maximum extent feasible by the implementation of mitigation measures required for the Project, will remain significant and unavoidable, as discussed in the Final Environmental Impact Report (EIR) and CEQA Findings. The significant, unavoidable environmental effects of the Project are associated with mainline rail transportation of crude oil. These impacts are summarized in the CEQA Findings and constitute the impacts for which this Statement of Overriding Considerations is made. There are no significant, unavoidable adverse environmental impacts from project construction or operations on the refinery site, or from truck and passenger vehicle transportation associated with the Project.

II. Overriding Considerations

The Planning Commission finds and determines in approving the Project that the Final EIR has disclosed the significant effects of the Project, and identified means of avoiding or lessening those significant effects. The Planning Commission recognizes that, notwithstanding the incorporation of mitigation, significant and unavoidable impacts will result from implementation of the Project. However, the Project also offers numerous benefits. Having (1) adopted all feasible mitigation measures and environmental controls, (2) recognized all significant, unavoidable impacts, and (3) balanced the benefits of the Project against the Project's significant and unavoidable impacts, the Planning Commission finds that specific overriding economic, legal, social, technological, or other benefits of the Project outweigh the significant, unavoidable impacts associated with mainline transportation of crude oil and provide sufficient reasons for approving the Project.

The following benefits and considerations outweigh the significant and unavoidable adverse environmental impacts, and such benefits override, outweigh, and make "acceptable" any remaining environmental impacts of the project (CEQA Guidelines Section 15092(b)). All of these benefits and considerations are based on the facts set forth in the Findings, the Final EIR, and the record of proceedings for the Project. Each of these benefits and considerations is a separate and independent basis that justifies approval of the Project, so that if a court were to set aside the determination that any particular benefit or consideration will occur and justifies Project approval, this Planning Commission determines that it would stand by its determination that the remaining benefit(s) or consideration(s) is or are sufficient to warrant Project approval.

A. Economic Benefits

1. The existing refinery benefits the local and regional economy.

The Project consists of a modification of the existing Santa Maria Refinery. Accordingly, to understand the benefits of the Project, it is first necessary to identify the benefits of the existing refinery. The existing refinery is an important contributor to the economy of San Luis Obispo County, through direct employment, indirect and multiplier employment, local purchases and taxes, and other contributions. The project will enhance and sustain the refinery's ability to contribute in this manner.

The refinery currently employs approximately 200 workers. This number includes approximately 130 permanent, full-time workers directly employed by Phillips 66, and approximately 70 regular employees of Phillips 66's contractors. For 2013, the estimated local payroll associated with direct employment at the refinery totaled \$44,299,000, consisting of approximately \$17,879,000 paid to Phillips 66 employees (including benefits) and a contractor payroll of approximately \$26,420,000. These employees live in the region and a substantial portion of the direct employment payroll is spent in the region as well.

In addition to direct employment, the existing refinery contributes to the local and regional economy through indirect employment. In an economic impact analysis conducted under contract to the Western States Petroleum Association, Purvin & Gertz Inc. evaluated the indirect effects of refinery employment using multipliers that are provided by the U.S. Census Bureau, categorized by NAICS code and region. For California, Purvin and Gertz found that the multiplier for employment at a refinery is 9.0343 and the multiplier for earnings is 3.4558. These multipliers are applied to the direct impacts provided by a given industry to estimate the total economic impact to the region. Thus, Purvin and Gertz found that each direct job in a California petroleum refinery actually results in nine jobs within the region: the direct employment from the refinery job, plus eight additional jobs in the surrounding community. (Purvin & Gertz Inc., *Assessment of Petroleum Industry Economic Impact to the State of California*, 2011.) Applying this benchmark to the Santa Maria Refinery, approximately 1,660 additional jobs in the community are supported by the refinery's continued operation, and approximately \$108,789,000 of indirect earnings in the region are realized from the refinery's continued operation.

The existing refinery also results in substantial and ongoing tax payments to state and local governments. For example, in 2013, Phillips 66 paid approximately \$2,236,000 per year in state and local taxes associated with the operation of the Santa Maria Refinery. Below is a summary to the taxes paid in 2013 related to the existing refinery:

- Property tax: \$1,555,000
- Local sales tax: \$80,000
- Sales tax paid to state of California: \$518,000
- Miscellaneous \$83,000

The 2013 contributions above are representative of the Santa Maria Refinery taxes paid by Phillips 66 on an annual basis.

The refinery also supports the local and regional economy through its purchasing demands. In 2013 alone, \$29,712,000 worth of goods and services were purchased from vendors. These vendors are generally located within the state of California (including many within the region). By supporting these vendors, the refinery is increasing the economic vitality of the region and the state, which ultimately benefits the County.

The refinery and its employees also support important community and charitable services. The company also encourages its employees to be involved and supportive of community activities and to make charitable donations, some of which are matched by the company.

2. The Project will provide additional benefits to the County's economy.

The Project will benefit the local and regional economy in several ways: direct expenditures for project construction; increased employment opportunities; added tax revenue; increased stability and certainty of continued operation of the existing refinery.

a. Direct Expenditures for Project Construction.

The project involves a capital investment of approximately \$40,000,000 – \$60,000,000 dollars in the refinery in equipment and materials. This includes direct purchases of equipment and materials, and payments to construction contractors that cover equipment, materials, and other costs. This estimate does not include construction labor payroll.

b. Increased Employment

At its peak, construction of the project will create up to 200 prevailing wage jobs for construction workers. Given current employment patterns in the County, it is expected that a large majority (up to 90%) of the construction workers will come from the local work force. Accordingly, it is likely that a large portion of the construction payroll will be spent in the local economy.

Project operations will create 8 to 12 new permanent, full-time jobs. These new jobs would increase the payroll beyond the current level of approximately \$44,299,000, with a corresponding increase in employee expenditures in the local economy. Applying the indirect employment multiplier factor developed by Purvin and Gertz, the 8 to 12 new, permanent jobs will result in an additional 64 to 96 jobs in the region.

c. Added Tax Revenue

Following completion of construction, the County will reassess the value of the refinery for property tax purposes. Following reassessment, it is expected that the refinery's annual property taxes will increase by approximately \$400,000 to \$600,000. Other state and local taxes likewise will increase. The additional construction and permanent employees are expected to live in the region, and so a portion of the additional payroll will be spent in the region, generating property taxes and sales taxes. The Project will also create additional economic opportunities for local vendors that will add significant sales and other tax revenue. A portion of the property, sales and other taxes paid directly by the refinery, as well as by employees and local businesses and vendors related to business generated by the refinery, will fund schools and other valuable community services.

d. The Project provides greater economic stability and certainty for future refinery operations.

Currently, Phillips 66 faces three challenges with respect to crude supply for the refinery. First, local crude oil production is declining. Second, the company does not itself produce crude oil for the refinery. Third, more recently, the pipeline through the refinery received crude oil produced offshore in or adjacent to Santa Barbara County was shut down, and the pipeline operator has not established a date for a return to operation. Loss of this pipeline severed the refinery from crude oil produced offshore in or adjacent to Santa Barbara County, exacerbating the crude supply challenges. The Project enhances the competitiveness and vitality of the refinery by increasing the refinery's access to crude markets across North America that are available by rail. By enhancing the refinery's

competitiveness, the Project sustains the significant economic benefits that the refinery contributes to the local economy.

When the refinery was built, it was owned by Union Oil Company of California. Most of the local crude production also was owned by Union Oil, so a single pipeline system was sufficient to deliver all of the crude oil needed to feed the refinery. However, Phillips 66 (the current refinery owner) does not produce crude oil and must purchase crude oil for the refinery from others. This change in relationship between the refinery and the sources of crude oil limits Phillips 66's ability to source competitively-priced crude oil. (EIR at 2-37 to 2-38.)

In addition, local production is declining. Where there are limited – and declining – sources of local crude, as there are here, the ability of the refinery to receive more distant crude by a variety of modes of transportation is an important factor in being able to negotiate long-term contracts at competitive prices.

Refiners typically prefer to negotiate long-term supply contracts for at least a portion of their crude oil supply. The resulting stability allows the refinery's engineers and operations personnel to better optimize the operation of the refinery. A relatively isolated refinery such as the Santa Maria Refinery faces challenges in establishing long-term contracts for crude oil at competitive prices, which can cause swings in refining margins. These swings in the refinery's profitability can affect employment, local purchases, taxes paid, charitable contributions and other direct and indirect payments and contributions to the County and the community. The County will benefit by greater stability in refinery operations. The Project will improve the future prospects for stability at the refinery by enabling it to access competitively-priced crude oil produced across North America that is available by rail.

In this respect, the project will also further the Goals and Policies of the San Luis Obispo County General Plan (General Plan). Appendix G of the Revised Draft EIR summarizes the Project's consistency with a wide range of goals, objectives and policies in the General Plan and its elements. Beyond consistency, the Project also is beneficial to the County because it furthers the goals and objectives of the Economic Element of the General Plan. The Economic Element states that economic vitality is as important as environmental and social factors in contributing to the County's quality of life. Goal EE 1 is to promote a strong and viable economy by pursuing policies that balance economic, environmental and social needs of the County. Goal EE 2 is to retain and enhance a diverse economy. The Project will further these goals through constructing additional infrastructure and facilities that will enhance the vitality of an existing business in the County, within the confines of the existing industrial site.

B. Environmental benefits

The significant, unavoidable environmental effects of the Project are associated with mainline rail transportation of crude oil. There are no significant, unavoidable adverse environmental impacts from project construction or operations on the refinery site, or from truck and passenger vehicle transportation associated with the Project. In the immediate

vicinity of the refinery, the Final EIR concluded that the Project would result in two environmental benefits.

1. The Project will increase the quantity and improve the quality of native habitat on the Phillips 66 site.

The construction of facilities at the refinery will impact approximately 20.88 acres of grazed land supporting a plant community considered sensitive by the California Department of Fish and Wildlife (CDFW). (EIR at 4.4-31.) However, with the implementation of mitigation measure BIO-5a, Phillips 66 will be required to compensate for the loss of habitat by creating new native habitat through on-site restoration at an acreage ratio of 2:1 (restored:impacted). The existing habitat that will be affected by the Project is highly disturbed from decades of cattle grazing and is largely dominated by non-native invasive species such as veldt grass. The performance standards that the new habitat must meet will ensure that the new habitat is of higher quality than the habitat lost due to the Project. Thus, the Project will ultimately result in the site supporting twice as much native habitat as will be lost, and the new habitat will be of higher quality than the habitat lost.

The impacts to approximately 20.88 acres of disturbed and degraded land which, in theory, could support healthy central dune scrub under certain future circumstances (e.g., if cattle grazing were eliminated and/or if the site was actively restored), will be offset through the creation of 41.76 acres of high quality central dune scrub habitat that will support not only the central dune scrub, but also other known rare plant species known to occur on the Phillips 66 property and in the region. Mitigation Measure BIO-5a requires the applicant to prepare a Dune Habitat Restoration Plan (DHRP) for review and approval by the County in consultation with CDFW and the United States Fish and Wildlife Service. The DHRP shall focus on restoring and enhancing sensitive plant associations, and supporting sensitive plant species by removing invasive species (iceplant, veldt grass, and other invasive species) and planting appropriate native species, including but not limited to: mock heather, purple nightshade, Blochman's ragwort, Blochman's leafy daisy, California spineflower, sand almond and suffrutescent wallflower. The restoration area(s) will be located within the Phillips 66 property boundary and protected from grazing activity and protected in perpetuity by easement.

As discussed in the EIR, no impacts to the endangered Nipomo Mesa lupine are expected to occur as the species is not known to occur in the project construction area. The applicant is required by BIO-1 to conduct a survey for the presence or absence of this plant at the appropriate season prior to construction, and mitigation is included in the unlikely event that the species is discovered in the work area at any point prior to or during construction of the project.

The Planning Commission has confidence that the restoration goals identified by BIO-5a will be achieved in light of the applicant's track record of conducting successful restoration elsewhere on its property. Restored portion of Phillips 66's property to the west of the Union Pacific Railroad tracks (EIR at 4.4-31) is now considered a mapped Environmentally

Sensitive Habitat Area containing high quality habitat and supporting numerous special-status species.

2. The Project provides air quality benefits.

The Project will provide marked air quality benefits to the surrounding community compared to existing (baseline) conditions. Specifically, the Project will result in reduced localized health risks within the community.

Currently, trucks transport solid petroleum coke and recovered sulfur away from the refinery. (EIR at 2-5.) Upon exiting the refinery, these trucks travel east along Willow Road to Highway 101. Diesel truck exhaust includes diesel particulate matter, which is considered a toxic air contaminant. The San Luis Obispo County Air Pollution Control District's (SLOAPCD) health risk threshold for toxic air contaminants is 10 in one million. The potential carcinogenic impacts associated with the refinery's existing stationary source emissions together with the existing refinery-related vehicular emissions along Willow Road were modeled, and the results included in the Final EIR. The modeling estimated that the cancer risk associated with the existing refinery and associated traffic would exceed the SLOAPCD's health risk threshold at the nearest sensitive receptor, and this risk results primarily from trucks entering and leaving the refinery. (Final EIR at 4.3-23.) For the existing refinery and associated traffic, carcinogenic impacts exceed 10 in one million in a corridor that extends for more than two miles from the refinery along and on either side of Willow Road. (See Final EIR, Figure 4.3-4 and pages 4.3-23 to 4.3-24.)

The Project will reduce the health impacts of the existing refinery on the nearby community. It will achieve this through the implementation of Mitigation Measure AQ-4b, which requires the trucks used to move coke and sulfur to meet NOx and PM emission standards established by EPA for 2010 model year trucks; a higher standard than is currently required for the trucks. The measure also requires that, to the extent feasible, transportation of coke shall be accomplished by rail rather than truck. In addition, Mitigation Measure AQ-4c limits the time of day during which crude oil train unloading and switching activities may occur (unless Tier 4 engines are used), to reduce emissions during periods of calm meteorological conditions. The result is that under the Project, the most serious health risks – those that exceed the 10 in one million threshold – no longer impact the community neighboring the refinery. With the Project, the area of carcinogenic risk exceeding 10 in one million is largely confined to the refinery property itself, and away from sensitive receptors. Compare Figure 4.3-4 (Final EIR p. 4.3-24) to Figure 5-7 (Final EIR p. 5-57).

This improvement to local air quality due to the Project will have real and long-lasting positive impacts on the community. The County has no means to achieve this improvement if there is no discretionary project approval to which the County can add enforceable conditions.

C. The Environmental Effects of the Project Are Preferred To The Future Environmental Effects Expected If The Project Is Not Approved.

The Planning Commission also has considered the adverse impacts of the project as compared with the most likely future crude delivery scenario if the project is not approved. While it requires weighing of trade-offs and the exercise of judgement to compare the different risks and impacts presented by different crude delivery modes, the Planning Commission has determined that the environmental impacts of future crude delivery to the refinery will be less if the Project is implemented than if it is disapproved. The significant, unavoidable impacts associated with the Project result from transportation of crude oil by rail. Disapproval of the Project would not avoid the impacts of mainline rail transportation, but simply divert some of them outside of San Luis Obispo County to other locations within California. In addition, within the County, there would be an increase in truck trips transporting crude oil, with related environmental impacts. No discretionary approval would be required from the County under this scenario, and so the County would not have authority or opportunity to impose and enforce conditions of approval in order to mitigate the environmental effects of the increased trucking.

Recently, 2-7% of the refinery's crude oil has been transported from Canada to California by train to a crude unloading facility near Bakersfield, California where it is transferred onto trucks. The trucks travel approximately 110 miles one-way (220 round trip miles) via State Highways 166 and 101 to the Santa Maria Pump Station for delivery into the dedicated pipeline that carries crude oil the last leg to the refinery. Crude deliveries via this route can increase substantially. Crude oil shipments via truck to the Santa Maria Pump Station have averaged about 6,800 barrels per day, but this could increase to 26,000 barrels per day, which is the volume currently allowed by the pump station permit issued by the Santa Barbara County Air Pollution Control District. An increase of 19,200 barrels per day could add about 100 truck trips per day of crude travelling between rail offloading facilities in the San Joaquin Valley and the Santa Maria Pump Station. (EIR at 5-4.) This transportation mode is not restricted to crude from Canada, and could be used to deliver crude oil originating from other parts of North America that are connected to the national rail network.

The significant, unavoidable environmental impacts associated with mainline rail operations and rail transportation of crude oil would occur regardless whether the Project is approved or disapproved. The rail route would follow the same path from the point of origin of the crude to the main rail yards in Roseville and Colton, California, resulting in nearly identical impacts for this portion of the transportation route, including air emissions, GHG emissions, and risk of accident and release that could affect human health or agricultural, biological, cultural or water resources. Under the no-project-approval scenario, from the Roseville or Colton rail yards, the trains would travel through the Central Valley rather than along coastal routes, but the mileage (and thus emissions, risk and other impacts) would be only slightly less. Given the 26,000 barrels per day limit on throughput at the Santa Maria Pump Station, under this scenario there would be only an average of 2.5 unit trains per week delivering crude oil, rather than three unit trains per week under the proposed project. This would translate into a small reduction in mainline rail-related

impacts if the project is denied, although a portion of the impacts would occur at a different location. Also, the risk of rail accident and release affecting agricultural resources would be greater if the project is disapproved and the route to the San Joaquin Valley unloading facility is used.

In addition, the no-project-approval scenario would rely on increased use of trucks to move the crude oil from the Bakersfield area to the Santa Maria Pump Station, introducing a new source of impacts that are not present in the proposed Project. Trucks have a higher likelihood of accident and release per mile than trains. Thus, it is more likely that there would be transportation accidents and releases of crude oil within San Luis Obispo County if the Project is disapproved, although the volume of any single crude oil spill would likely be less. With the addition of vapors emitted during truck loading and unloading, as well as the tailpipe emissions from 100 truck trips per day between Bakersfield and Santa Maria, the peak daily air emissions would be greater if the Project is disapproved.

Additionally, under the Project, the County has the ability to require feasible measures to mitigate Project impacts. As discussed in Section B.2, above, Mitigation Measure AQ-4b will result in a reduction of health risk related to toxic air contaminants from existing refinery-related activities in the event the Project is approved. This benefit will not occur if the Project is disapproved, and instead the existing air quality impacts near the refinery from refinery-related truck traffic will continue. Similarly and even more importantly, the County would have no authority to impose and enforce conditions regarding the type of trucks used to transport crude oil between the Bakersfield area and the Santa Maria Pump Station. If the Project is disapproved, the additional 100 trucks trips per day would emit increased amounts of diesel particulate emissions while traveling between Bakersfield and the Santa Maria Pump Station, and this increase in truck traffic could result in a significant and unavoidable health impact to sensitive receptors in close proximity to the truck route. Unlike with the approval of the Project, the County would not be able to require that trucks meet EPA model year 2010 standards for NOx and PM emissions.

Similarly, the benefits of Mitigation Measure BIO 5a would not occur if the Project is disapproved.

The Planning Commission has carefully considered impacts when evaluating the Project against the likely future crude delivery scenario if the Project is disapproved. The mainline rail impacts would be very similar, although a portion of the route (and associated impacts) would shift locations from the coastal route and San Luis Obispo County (under the Project) to the Central Valley and rail unloading facilities near Bakersfield (if the Project is disapproved). These are analyzed at length in the EIR (p. at 5-39 through 5-46) and summarized in Table 5.11 of the EIR.¹ In addition, Project disapproval would likely result

¹ In fact, Table 5.11 actually overstates project impacts from mainline rail relative to the no project alternative because at the time the table was created, the proposed project anticipated 5 trains per week (250 per year), rather than the project we are now considering, which anticipates 3 trains per week (150 per year). Nonetheless, even when comparing the

in an increase in trucks transporting crude oil to and within San Luis Obispo County, with associated impacts.

On balance, the County finds that the Project's distinct benefits of avoiding the impacts of increased truck transportation of crude oil within the County, when considered in light of the roughly equivalent mainline rail impacts, are preferable to the likely crude transportation impacts in the future if the Project is disapproved.

larger projects impacts with the no project alternative, the impacts from mainline rail are similar.