



**COUNTY OF SAN LUIS OBISPO
BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 3/13/2017	(3) CONTACT/PHONE Ryan Hostetter, (805) 788-2351 Kate Shea, (805) 781-4097	
(4) SUBJECT Hearing to consider appeals by Phillips 66 and Jeff Edwards of the Planning Commission's denial of a Development Plan/Coastal Development Permit to allow for construction of a 6,915-foot long rail spur, an unloading facility, onsite pipelines, replacement of coke rail loading tracks, the construction of five parallel tracks with the capacity to hold a 5,190-foot-long unit train consisting of 80 tank cars (60 feet each), two buffer cars (60 feet each), and three locomotives (90 feet each), and accessory improvements which would allow three trains per week to deliver heavy crude to the refinery, located at 2555 Willow Road, approximately 3 miles west of the Nipomo Urban Reserve Line; also being considered is the Resolution and Final Environmental Impact Report. District 4.			
(5) RECOMMENDED ACTION It is recommended that the Board: 1. Hold the public hearing on the appeals of the Planning Commission's decision as set forth in the Staff Report and Attachments. 2. Adopt and instruct the chairman to sign the resolution denying the appeals, affirming the decision of the Planning Commission, and denying Development Plan/Coastal Development Permit DRC2012-00095 based on the resolution with amended findings in Attachment 3.			
(6) FUNDING SOURCE(S) Planning and Building Department General Fund Budget	(7) CURRENT YEAR FINANCIAL IMPACT Approximately \$59,000	(8) ANNUAL FINANCIAL IMPACT N/A	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing time est. (March 13, 2017 & may be continued) <input type="checkbox"/> Board Business			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? Yes	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date _____	
(17) ADMINISTRATIVE OFFICE REVIEW Lisa M. Howe			
(18) SUPERVISOR DISTRICT(S) District 4			



COUNTY OF SAN LUIS OBISPO

TO: Board of Supervisors

FROM: Planning and Building / Ryan Hostetter, Supervising Planner

VIA: James Bergman, Director / Department of Planning and Building

DATE: 3/13/2017

SUBJECT: Hearing to consider appeals by Phillips 66 and Jeff Edwards of the Planning Commission's denial of a Development Plan/Coastal Development Permit to allow for construction of a 6,915-foot long rail spur, an unloading facility, onsite pipelines, replacement of coke rail loading tracks, the construction of five parallel tracks with the capacity to hold a 5,190-foot-long unit train consisting of 80 tank cars (60 feet each), two buffer cars (60 feet each), and three locomotives (90 feet each), and accessory improvements which would allow three trains per week to deliver heavy crude to the refinery, located at 2555 Willow Road, approximately 3 miles west of the Nipomo Urban Reserve Line; also being considered is the Resolution and Final Environmental Impact Report. District 4.

RECOMMENDATION

It is recommended that the Board:

1. Hold the public hearing on the appeals of the Planning Commission's decision as set forth in the Staff Report and Attachments.
2. Adopt and instruct the chairman to sign the resolution denying the appeals, affirming the decision of the Planning Commission, and denying Development Plan/Coastal Development Permit DRC2012-00095 based on the resolution with amended findings in Attachment 3.

DISCUSSION

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A. Project Description:

The proposed project includes modification of an existing on site rail spur at the Phillips 66 Santa Maria Refinery by constructing five new parallel tracks along with an unloading rack area in order to import heavy crude via train to the refinery. The project would involve unloading of up to three unit trains per week, with an annual maximum number of trains of 150 as revised by Phillips 66 in a letter dated February 4, 2016. Trains would arrive from different North American oilfields and/or crude oil loading points depending on market availability. In a unit train configuration (i.e. only oil cars attached to the train), each train would consist of three locomotives, two buffer cars, and 80 railcars carrying approximately 27,300 gallons each, for a total of approximately 2,190,000 gallons (52,000 barrels) of heavy crude oil per train. The project would not affect the amount of material processed at the refinery. “Throughput” levels (i.e. the maximum Phillips 66 is permitted to refine at the property) are capped by previous permits issued by the County and by the San Luis Obispo County Air Pollution Control District. In addition, no crude oil or refined product would be transported out of the refinery by rail. The semi-refined product would be shipped to the Rodeo Refinery in Contra Costa County via pipeline which is the refinery’s current operation.

B. Summary of Planning Commission Hearings:

The Planning Commission held eight days of hearings regarding the Phillips 66 Rail Spur project, on the dates listed below. At the final hearing on October 5, 2016, the Planning Commission denied the project.

1. February 4, 2016 - Staff report and public comment begins
2. February 5, 2016 – Public Comment continues
3. February 25, 2016 – Public Comment continues
4. March 11, 2016 – Public comment closes and follow up questions and responses begin
5. April 15, 2016 – Continue with questions and responses for the Commission
6. May 16, 2016 – Continue with questions and the Commission directs staff to come back on September 22, 2016, with draft findings and conditions for approval
7. September 22, 2016 – Review of draft findings and conditions of approval and open public comment on new information, closed public comment

8. October 5, 2016 – Continued deliberation and Planning Commission decision to deny project (3-2 vote)

The Planning Commission heard a staff presentation on February 4, 2016, where the item was introduced to the Planning Commission and the public. The Planning Commission began with questions of staff and the County's technical experts. This was followed by a presentation by the applicant and the public comment period which started on February 4, 2016, and continued through the March 11, 2016, hearing where public comment closed after hearing over 400 public speakers. After continuation of questions from the Planning Commission, on May 16, 2016, the Planning Commission directed staff to come back on September 22, 2016, with draft findings and conditions of approval for their review and consideration. On September 22, 2016, the Planning Commission reconvened and began their review of the newly submitted draft findings and conditions of approval for the project along with opening and closing public testimony on the newly submitted information. There were 81 speakers who commented on September 22, 2016. The item was continued again until October 5, 2016, where additional questions and answers of staff were conducted along with the final deliberations and decision to deny the application. The Planning Commission listened carefully to many hours of public testimony, diligently worked through the issues associated with the project, thoroughly discussed the project impacts, and deliberated extensively on the project.

On October 5, 2016, the Planning Commission finalized their review of the draft conditions for approval, and specifically requested that staff submit the document to the Board of Supervisors regardless of the Planning Commission's final decision. The Planning Commission made it clear that if a project were to be reviewed by the Board, that they would like the Board to have received a fully vetted set of conditions of approval from the Commission within the Board's packet during any project appeals. Those draft conditions of approval which were submitted upon request by the Planning Commission are a part of your Board's staff report package in Attachment 7. The Planning Commission however made the decision to deny the project on October 5, 2016, based on the adopted findings which are in Attachment 8. The majority of the Planning Commission determined that the benefits of the project did not outweigh the significant environmental impacts of the project. Therefore, they could not make the necessary Statement of Overriding Considerations to approve the project.

C. Summary of Information Reviewed by the Commission and Revised Project Description Information Submitted by Phillips 66:

The staff report dated February 4, 2016, for the first Planning Commission hearing (Attachment 13) details the information regarding project specifications that were reviewed and major issues discussed from both members of the public as well as the applicant. Some of these major issues are carried forward and discussed in the two appeals submitted for your Board's review (and discussed in detail below within this staff report). It is important to note, however, that during the first hearing Phillips 66 submitted a letter dated February 4, 2016 by Mr. Bill Schroll (former Phillips 66 Santa Maria Refinery Site Manager) outlining a revision to the project description, and that the applicant no longer wants to pursue the project description evaluated in the FEIR, which includes up to five trains delivering heavy crude each week. Rather, the updated project description outlined in the letter by Phillips 66 requests a maximum of three trains per week with a maximum of 150 trains per year. This project description revision is in line with one of the project alternatives outlined within the Final Environmental Impact Report (FEIR). The Planning Commission deliberations and decision were based on the three trains per week alternative.

D. Summary of Planning Commission's Decision:

Extensive community input has been submitted to the County with regards to the project. Approximately 24,500 comment letters were received during the environmental review process and over 400 public speakers provided testimony during the Planning Commission hearings. As a result of the public involvement and information in the record for the project, the Planning Commission made the decision that the project benefits do not outweigh the potential hazards and environmental impacts it would bring to the public. The hazards mainly stem from air quality impacts to residents who live near the refinery, rail accidents, oil spills, health hazards, and explosions/fires within communities along rail lines as a result of an increase of crude transport via rail. These hazards are also exacerbated because the County is not legally able, due to federal preemption, to require certain conditions of approval for Union Pacific along the main rail lines (e.g., require particular emergency response preparations, use of lower emissions locomotive (i.e. tier 4), use of particular routes to avoid sensitive areas, or modifications to Union Pacific Railroad [UPRR] tracks or operations). Therefore, the project would allow an increase in safety risk and environmental impacts to the populations within the County along the mainline (as well as outside the County and throughout the state) without the ability to enforce any measures to mitigate off-site impacts to these populations along the rail lines.

E. Appeals filed:

The appeal period from the Planning Commission's decision ran from October 6, 2016, until October 20, 2016, during which two appeals were received by the Department of Planning and Building. The first was submitted on October 6, 2016 by Jeff Edwards, and the second appeal was submitted by Phillips 66 on October 19, 2016. Both of those appeals are addressed within this staff report.

1. Appeal by Jeff Edwards

Appeal Summary: The appeal by Mr. Edwards (Attachment 1) focuses on one major issue, and that is coastal access. In his appeal, Mr. Edwards requests an amendment to the finding and addition of a condition related to coastal access in an effort to require a 100 foot "offer to dedicate" for the future re-location of the Oceano Dunes State Vehicular Recreation Area (ODSVRA) access point which is currently provided at Pier Avenue in Oceano.

- a. *Staff Response:* Coastal Access is a requirement of projects within the Coastal Zone Land Use Ordinance (CZLUO) under section 23.04.420 and is required for projects which are between the "first public road and the tidelands." This proposed project site is located within the first public road and the tidelands as the Phillips 66 property extends from the refinery west across the Union Pacific Rail Road (UPRR) all the way to the State Parks property which provides access to the dunes and the ocean for recreational purposes (including vehicles). While lateral access is currently provided through State Parks, vertical access which allows the public to access the ocean from the nearest public roadway (i.e. first public road) is not provided at this location. In order to access the beach one must enter through Pier Avenue in Oceano or there is an additional pedestrian access to the south at Oso Flaco Lake. These access points are over a quarter of a mile away from this location therefore vertical access is a requirement under the code for this project if approved, or unless an exemption is provided. There are exemptions from this requirement, and special findings must be made in order to not require the coastal access. These findings include the following: Access would not be required if it is determined that "access would be inconsistent with public safety, military security needs or the protection of fragile coastal resources." This particular location west of the refinery contains fragile coastal resources and safety concerns exist

with regards to crossing the Union Pacific Rail Road mainline tracks and access in close proximity to an operating refinery.

Within the draft conditions of approval to the Planning Commission (Condition no. 94 of Attachment 7), staff recommended to the Planning Commission that in an effort to balance the requirements of the code for vertical access within a quarter mile, and the sensitivities of the property, that the access only be within an existing 10 foot access road which has been previously disturbed, and is used as a maintenance road for the facility's outfall. This would include an amendment to an existing agreement to cross the rail road tracks which Phillips 66 currently maintains with Union Pacific. In addition, staff was requesting that all access be docent led due to the safety concerns regarding crossing the railway and refinery operations, and the sensitive habitat outside of the access road area.

The coastal access requirement only applies to this project upon approval. The Planning Commission did not approve the Rail Spur Project, therefore this coastal access requirement as recommended by staff was not placed upon the project. There remains, however, an existing coastal access condition of approval from a prior permit approval which is applicable to the property, and remains in place as carried over from the "throughput" permit DRC2008-00146. The preexisting requirement from the Phillips 66 Throughput Increase Conditional Use Permit states:

"Prior to issuance of the Notice to Proceed authorizing an increase in Refinery throughput, the applicant shall comply with Section 23.04.420 - Coastal Access Required. Construction of improvements associated with vertical public access (if required) shall occur within 10 years of the effective date of this permit (including any required Coastal Development Permit to authorize such construction) or at the time of any subsequent use permit approved at the project site, whichever occurs first. The approximate location of the vertical access required by this condition of approval shall be located within or immediately adjacent to the existing maintenance road as shown in Exhibit D - Project Graphic (Coastal Access Location Map 1 and 2)."

The above condition of approval from the throughput permit will remain in place unless amended through a new condition of approval with the Rail Spur Project. If the Board were to adopt new findings and conditions for approval of the Rail Spur Project, then staff recommends that the Board include a limited vertical coastal access requirement as was discussed before the Planning Commission and is included as condition no. 94 within the draft conditions of approval submitted from the Planning Commission as follows:

"Vertical coastal access is consistent with CZLUO requirements for public safety, military security, and need for protection of fragile coastal resources, therefore access shall be provided as required by Development Plan/Coastal Development Permit DRC2008-00146, and limited to docent led pedestrians access; no motor vehicles or bicycles shall be allowed. Provision of this access may be delayed in the event that the necessary docent led access across Union Pacific property is prevented. The applicant shall submit a coastal access plan for implementation of this condition for review and approval by the Department of Planning and Building. The plan shall include details such as parking, docent arrangements, hours, and frequency of docent led tours."

If, however the Board chooses to deny the appeals and ultimately deny the project, then the existing condition from the previous Throughput project would remain in effect.

2. Appeal by Phillips 66 Company

Appeal Summary: On October 19, 2016, Phillips 66 submitted an appeal of the Planning Commission's decision (Attachment 2). Included within the appeal package is information related to the project description, the status of crude oil markets and impacts to the local refinery, as well as the major points for which Phillips 66 is appealing the Commission's decision. In summary, the major points for the appeal include the following: Environmentally Sensitive Habitat Area, the Final Environmental Impact Report including points of issue related to air quality, mitigation measures, overriding findings, ordinance and general plan consistency, draft conditions from the Commission, and finally coastal access. All of these items have been thoroughly discussed through the Planning Commission hearings. A summary of the appeal issue along with a response to the main points of the appeal letter are submitted as follows.

a. Phillips 66 Discusses the Potential for Long-Term Decline in Local Crude Supplies for the Santa Maria Refinery

Appeal Issue Summary: Phillips 66 states that the Santa Maria Refinery (SMR) is connected by pipeline only to local and regional sources of crude. While the Santa Maria Refinery can receive crude by truck at the Santa Maria Pump Station, and to some degree at the Refinery itself, there are practical limits to the distance that crude can be trucked and remain competitive. Long-term trends show a decline in regional crude oil production, in contrast to the increased crude oil production across North America in recent years. California crude oil production has declined from 1985 to the present. Regional crude production has followed a similar trend. Despite modest increases from approximately 2009 to 2014, regional crude production fell again in 2015, and remains at just over half the amount produced 30 years ago.

Staff Response: In regard to long-term crude supply to the SMR from local sources, there are several potential crude oil development projects that could occur in the future. As discussed in the Response to Comments of the Final EIR, data from various sources provide estimates that in 2050 the upper end of locally produced crude that could be shipped to the SMR would be about 30,000 barrels per day from existing production sources. With the addition of 22,000 barrels per day that can be delivered by truck to the SMR the upper end of the available crude supply would be about 52,000 barrels per day, which is greater than the current permitted capacity of the SMR.

There are also several local crude production projects that are in various stages of development that could add additional local crude. For example, there is an existing pipeline between the Arroyo Grande Oil Field (AGOF) in unincorporated San Luis Obispo County (County) and SMR. The owners of the AGOF have applied to the County to increase production to 10,000 barrels per day. If this project is approved it would increase the production from the AGOF by about 8,000 barrels, which could be purchased by Phillips 66 and be refined at the SMR. There are other oil development projects currently proposed in northern Santa Barbara County that could add an additional 23,000 barrels per day of oil production that could be transported to the SMR. A listing from Santa Barbara County shows a total of 943 oil production wells in various phases of development, all of which could provide oil to the SMR. It is unknown whether Phillips 66 would purchase this additional local crude supply.

With recent increases in North American crude oil production, an increased number of crude oil sources have become “advantaged.” “Advantaged crudes” is a subjective phrase that primarily reflects a preference for crude oil inputs based on favorable supply, demand, and pricing factors that are subject to and impacted by a dynamic, complex, and at times, volatile crude oil market. “Advantaged crudes” typically have limited pipeline capacity from the production area to refinery destinations. Phillips 66 would like to benefit from these competitively priced crudes, which could offer economic benefits over locally sourced crude.

b. Phillips 66 Discusses the Incorrect Application of “Environmentally Sensitive Habitat Area” (ESHA)

Appeal Issue Summary: Phillips 66 states that the “Planning Department’s ESHA Findings are contrary to County Ordinance, and the Department’s incorrect conclusion permeated the Planning Commission’s decision.” Phillips 66 states that due to the fact that no official ESHA determination was made *prior to application acceptance*, the inclusion and requirement of ESHA standards and findings should not be imposed on the project.

Staff Response: This particular item has been at issue throughout the process and was discussed during the Planning Commission hearings on both February 4, 2016, in the staff report, and again in more detail on March 11, 2016, due to questions from the Commission as well as comments made during the Draft Environmental Impact Report (DEIR) public comment period. The site contains ESHA due to the results of independent survey work conducted during the CEQA process, and an onsite investigation with County, Coastal Commission, and Phillips 66 biologists (May 27, 2015) which confirmed the presence of sensitive habitat within the project area. At the staff level, it was determined that the project site is within dune habitat containing sensitive vegetative communities as classified by the California Department of Fish and Wildlife under the National Vegetation Classification system described in A Manual of California Vegetation, Second Edition (Silver dune lupine – mock heather scrub) during the re-circulated EIR process in the spring of 2015. The main point of contention, however is that this evaluation and determination was not done prior to the “acceptance” of the project application.

Following is a chronology of events which led to staff’s position:

- April 30, 2013 - Application submitted to the Department of Planning and Building.
- June 13, 2013 - Applicant submitted a biological report by Arcadis.
- July 8, 2013 - County prepared an Initial Study, released with the Notice of Preparation, to conduct an EIR which identified the potential for ESHA to be located on the site, and stated ESHA to be further evaluated in the EIR.
- July 12, 2013 - Project Application Accepted for Processing and Department of Planning and Building agreed to expedite the process at Phillips 66 request.
- July 29, 2013 - Public scoping meeting conducted for EIR process.
- August 6, 2016 - Board of Supervisors approves contract with EIR consultant MRS, Inc.
- November 2013 - Draft EIR released for public comment period. Project site was not considered ESHA due to the absence of (1) species protected under State and Federal Endangered Species act, (2) a fully protected species, (3) any CNPS List 1B plant, or (4) sensitive plant communities recognized by California Department of Fish and Wildlife.

- December 12, 2013 - Draft EIR public workshop conducted.
- January 27, 2014 - Draft EIR comment period closed – received 795 comments.
- February 2014 - Applicant and Department of Planning and Building agree to recirculate EIR based on comments that were submitted and additional analysis needed to revise EIR to address mainline impacts outside of San Luis Obispo County.
- March 12, 2014 - In correspondence with the County Department of Planning and Building regarding the DEIR, Coastal Commission states that regardless of quantity of impacts to central dune scrub, even if in degraded condition, the Commission has typically found central dune scrub to meet the definition of ESHA.
- October 2014 - Recirculated EIR (REIR) released for 45-day public comment period which closed on November 24, 2014. The finding regarding ESHA remained unchanged since no additional biological surveys were conducted at the site for the REIR.
- November 2014 - Comments received during REIR public comment period which called out potential for impacts to sensitive biological resources onsite and questioned some of the methods used to document and classify the baseline vegetation at the site (CBE, November 24, 2014 and Adams and Broadwell, November 18, 2014).
- February and March 2015 - Phillips 66 / Arcadis submitted a Sensitive Resources-Vegetation Report which addressed some of the vegetation documentation and classification comments received on the RDEIR. As part of this report additional biological surveys were conducted at the project site by the Applicant and the types of plant communities at the project site were updated.
- April 13, 2015 - Phillips 66 / Arcadis submitted Nipomo Lupine Survey Annual report to County which again found an absence of Nipomo Lupine within the proposed disturbance area at the project site.
- March through May 2015 - County biologist peer reviewed the Applicant's February and March 2015 Sensitive Resources-Vegetation Reports submitted by Phillips 66. During March 2015 site visit by County and Applicant biologists sensitive plant (i.e., California Native Plant Society "CNPS" List 1B Dune Larkspur) was found within project area, and sensitive plant communities recognized by California Department of Fish and Wildlife were identified, both of which trigger a determination of ESHA.
- May 27, 2015 - Site visit conducted with Phillips 66, County staff and Coastal Commission biologists. During visit presence of ESHA is confirmed.
- July 2015 - Phillips 66 / Arcadis submitted Sensitive Resource Report-Botanical Addendum (Addendum). The intent of Addendum is to compare vegetation east of the railroad to that of west of the railroad "to determine equivalency of environmental sensitivity".
- November 6, 2015 - County biologist peer reviewed the Addendum. It was determined that the Addendum did not change the County peer review findings from April 2015 that the project site contains ESHA. This is because the site contains Dune Larkspur, a CNPS List 1B plant, and sensitive plant communities recognized by California Department of Fish and Wildlife.
- December 2015 – Final EIR is released, which stated that the Rail Spur Project area meets the definition of ESHA as defined in the guidelines set forth by the California Coastal Commission

(CCC) for defining ESHA (CCC 2013). The Rail Spur Project site also appears to meet the definition of Unmapped ESHA in the County's LCP (CZLUO Section 23.11) since the area contains sensitive plant and animal species needing protection, which includes California Rare Plant Rank 1B species.

This appeal issue concerns the timing of the staff-level determination that unmapped ESHA exists on the project site. Phillips 66 cites to the Coastal Zone Land Use Ordinance (CZLUO) definition of unmapped ESHA and an explanation contained therein as follows: "The existence of Unmapped ESHA is determined by the County at or before the time of application acceptance and shall be based on the best available information." (Title 23, Sec. 23.11.030)

According to Phillips 66, this explanation is regulatory in nature and prevents staff or any hearing body from finding that unmapped ESHA exists on the project site at any later point in the processing of the application. In this case, as anticipated in the Initial Study, ESHA was determined through the CEQA process including, the site visit by the biologists, and review and consultation with Trustee (California Department of Fish & Wildlife) and Responsible (California Coastal Commission) Agencies and the public review process. It simply was not possible to gather the "best available information" and conduct all of the CEQA review through the EIR process prior to application acceptance because the department agreed to expedite the process and therefore accepted the application prior to any of that work was conducted (i.e. the peer review of the applicant's biological study and site visits). In addition, the Coastal Commission definition for ESHA does not include any timeline within which a determination must be made, but rather applies if there is a presence of habitat regardless of timing throughout the process. The site does contain both 1) a plant species that is listed as a Rank 1B status by the California Native Plant Society (Dune larkspur); and 2) is occupied by sensitive communities as classified by the California Department of Fish and Wildlife (CDFW) under the National Vegetation Classification system described in A manual of California Vegetation, Second Edition.

While the Planning Commission did adopt ESHA findings, there were many other factors on which the Commission based its decision such as health and safety and air quality. ESHA is a major point of interest of the California Coastal Commission, a major point of interest within the Applicant's appeal, and is likely to be a major point of interest in any appeal by or to the California Coastal Commission. As part of the Planning Commission hearings the California Coastal Commission staff submitted a letter stating that in their opinion the site contained ESHA.

c. Phillips 66 States That the Project Can Be Approved Under the California Environmental Quality Act

Appeal Issue Summary: Phillips 66 states that the project can be approved under the California Environmental Quality Act.

Staff Response: The Board could adopt the appropriate findings for either approval or denial of the project based on adequate substantial evidence in the record. The Planning Commission did not approve the project, and adopted findings for denial on October 5, 2016 (Attachment 8). The Planning Commission determined that there was not substantial evidence to support findings for approval or a statement of overriding considerations.

If the Board were to adopt findings for approval, staff recommends that the Final Environmental Impact Report is adequate and those documents are listed as a part of the Board's package which include a draft Board resolution (Attachment 4), the draft conditions of approval (Attachment 7), draft findings for approval (Attachment 5) and draft CEQA findings along with statements of overriding considerations (Attachment 6).

d. Phillips 66 Discusses the Project's Potential Environmental Impacts

Appeal Issue Summary: Phillips 66 states that the revised three trains per week project does not have any Class I impacts with mitigation measures at the Santa Maria Refinery.

Staff Response: While some of the impacts are reduced through the three trains per week alternative, the same significant impacts remain along the mainline, as well as significant impacts on the refinery property and in San Luis Obispo County (also refer to the Final EIR section 5.0 starting on page 5-51 which goes through the reduced rail alternative by each issue area where there is a change between five trains and three trains per week). Many of the significant and unavoidable impacts along the mainline would result if an accident occurred that resulted in a spill of crude oil and a possible resultant fire or explosion. These include impacts to public safety, public health, environmental impacts due to spills and/or fire as well as impacts to infrastructure and property. The other significant and unavoidable mainline impacts are the result of operating the trains and include air, toxic, and greenhouse gas (GHG) emissions from the locomotives. All the significant and unavoidable impacts along the mainline remain with either five trains per week or three trains per week. While the probability of an accident is reduced for three trains per week, the consequences of an oil spill remain the same as five trains per week. The air, toxic, and GHG emissions from locomotive operations are reduced with three trains per week, but remain significant and unavoidable. The Final EIR identifies mitigation measures that could reduce the probability and severity of an accident, and reduce air, toxic, and GHG emissions, however they are not feasible because the County is potentially "preempted" from requiring such mitigations along the main rail line, and therefore the Final EIR lists these impacts as Class I or "significant."

Impact AQ2 as it is listed in the Final EIR relates to air emissions from operation of the trains within San Luis Obispo County including diesel particulate matter (DPM) emissions associated with the Rail Spur Project. DPM emissions would remain significant since the San Luis Obispo County Air Pollution Control District does not currently have an emissions reduction program for DPM, and there are insufficient DPM reductions that could occur at or in the local area surrounding the Santa Maria Refinery (SMR) to offset the onsite Rail Spur Project DPM emissions. The total DPM emissions from the project in the County would be about 24 lbs per day, with 7.5 lbs per day occurring at the SMR. Both numbers exceed the San Luis Obispo County Air Pollution Control District (APCD) threshold of 1.25 lbs per day.

The DPM emission reductions that could occur for the existing refinery operations would be about 0.2 lbs per day. This assumes that all the existing diesel engines at the refinery would be converted to natural gas. APCD, as part of their presentation to the Planning Commission, explained that the DPM emissions at the SMR could potentially be mitigated by providing DPM emission reductions at or in the local area surrounding the SMR. This is only feasible if there are existing DPM emissions within the defined local area that can be reduced. The applicant has not provided any substantial evidence to show that DPM emission reductions to offset the project's emissions are available on or near the SMR. It is staff's position that there would not be enough existing DPM emissions (feasible mitigation) within the

local area to offset the 7.5 lbs per day of DPM that would occur at the SMR. Therefore, the onsite DPM emissions would exceed the APCD threshold of 1.25 lbs per day, and therefore this impact remains a Class I or significant and unavoidable impact.

e. Phillips 66 States that Trucking Crude will Increase

Appeal Summary: Phillips 66 states that the project's denial will only shift mainline impacts to a different location outside the County, and add one hundred crude truck trips per day to the "County roads".

Staff Response: Throughout the processing of the project, and compilation of data related to operations and trucking, Phillips 66 stated that the facility does not receive heavy crude via truck, and does not have facilities to unload trucks at the SMR as part of the Throughput Project EIR (letter dated April 19, 2011 from ConocoPhillips). It has been staff's position due to the information submitted by Phillips 66 during the processing of the environmental data that trucking of heavy crude to the refinery is not possible and therefore was not submitted as a project alternative during the EIR process. However, currently Phillips 66 owns and operates a pump station in Santa Maria (Santa Maria Pump Station or SMPS) which does receive crude via truck, and is permitted to do so from Santa Barbara County APCD and Santa Barbara County Planning and Development. This pump station is primarily used to receive crude oil produced in northern Santa Barbara County via truck. This is an existing facility that is permitted to receive up to about 22,000 barrels per day of crude oil (based upon current Santa Barbara County APCD permit) and has historically operated below these limits.

During the Planning Commission hearings Phillips 66 revealed that they are importing heavy crude via truck to the refinery in limited quantity. The SLO County APCD issued a temporary permit to allow this to occur since the local Plains All American pipeline, which is a major source of crude for the SMR, has been out of service due to a leak that occurred in Santa Barbara County. It should be noted that according to Phillips 66, the oil on the trucks is not from Santa Barbara County but is from other sources that is being moved to the SMR to make up for the capacity shortfall due to the closed Plains All American pipeline. The Plains All American pipeline is currently being evaluated to determine options for either repair or replacement. The SLO County APCD permit for trucking is valid until May of 2017.

The EIR "No Project" Alternative assumed that without the rail facility, crude could be delivered by rail to other unloading terminals in the San Joaquin Valley and then trucked to the Santa Maria Pump Station (SMPS). Under the current permitted capacity of the SMPS this would equate to about 80 truck trips per day, which would be equivalent to about two trains per week of crude. Whether or not these activities would occur would be based upon economics and the availability of unloading capacity at the rail facilities in the San Joaquin Valley and at the SMPS.

f. Phillips 66 Requests Amendment to Planning Commission Recommended Mitigation Measures

Appeal Summary: The Final EIR identified mitigation measures which were discussed by the Planning Commission, and brought into the draft conditions of approval agreed upon by the Commission (Attachment 7) and have been forwarded as a part of the Board staff report package upon request by the Planning Commission. While the Planning Commission did not approve the project, the Commission thoroughly vetted a set of draft conditions and mitigations. There are four items which Phillips 66 does

not agree with in the Commission's draft conditions. If the Board were to approve a project and adopt final conditions, Phillips 66 requests that the Board consider amending the following items:

- Condition 33 (EIR Measure AQ 4b) –This condition addresses trucks under contract to Phillips 66 that are used for delivery and removal of products such as coke, sulfur, and crude. Phillips 66 wants the condition modified to eliminate the portion that prohibits crude delivery to the SMR via truck.
- Condition 35 (EIR Measure AQ 6/8) – This condition addresses GHG emissions from the rail spur operations. The condition requires Phillips 66 to offset all the GHG emissions from the Rail Spur Project. Phillips 66 wants the condition modified to require only the GHG emissions above the 10,000-metric ton CEQA threshold to require offsets.
- Condition 73 (EIR Measure HM-2a) – This conditions address the types of DOT approved tank car designs that can be unloaded at the SMR. Phillips 66 wants the condition modified to add the DOT-117R tank car design to approved list.
- Condition 94 – This condition requires Phillips 66 to implement, if feasible, docent-led coastal access using their existing maintenance access road. Phillips 66 wants this condition eliminated since they believe vertical coastal access at this site is not consistent with the requirements of Section 23.04.420 of the San Luis Obispo County Coastal Zone Land Use Ordinance.

Staff Response: Staff recommends that if the Board were to adopt conditions of approval, that the four conditions mentioned by Phillips 66 for revision remain unchanged from the Planning Commission's draft conditions. Each of those conditions were discussed during the Commission's hearing on October 5th. A summary of issues associated with each of the four conditions is discussed below.

- Condition no. 33 includes specific requirements for trucks under contract to the refinery for moving coke and sulfur as well as a requirement which lists a maximum number of trucks for air quality purposes. The Condition Reads:

"MM AQ-4b - All trucks under contract to the SMR for moving coke and sulfur shall meet EPA 2010 model year NO_x 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. Trucking of coke and sulfur from the refinery shall be limited to an annual average maximum of 49 trucks per day. In addition, no crude oil shall be delivered to the refinery, or transported from the refinery by truck once the rail unloading facility becomes operational. Annual coke and sulfur truck trips associated with refinery operations and their associated model year and emissions shall be submitted to the SLOCAPCD annually."

Condition 33 was amended and additional language was added which reads: "In addition, no crude oil shall be delivered to the refinery, or transported from the refinery by truck once the rail unloading facility becomes operational. Annual coke and sulfur truck trips associated with refinery operations and their associated model year and emissions shall be submitted to the SLOCAPCD annually."

This language was added because of the issues brought up during the Planning Commission hearings regarding trucking of heavy crude to the refinery property, and concerns from the neighboring residences regarding the hazards of trucking crude which were not addressed in the Final EIR (FEIR). The FEIR did not include any trucking of crude oil to the SMR based upon the letter provided by the Applicant as part of the Throughput Project that stated no crude was trucked to the SMR and refinery did not have the equipment needed to unload trucks, and the fact that the trucking data provided by the applicant had no truck trips for the unloading of crude. The unloading of crude oil trucks at the SMR would have affected the health risk assessment due to the additional fugitive emissions associated with the unloading operations. Because the Final EIR did not address impacts of unloading crude at the SMR, the condition to prohibit trucking of crude to and from the refinery was added in the event the Rail Spur Project were to be approved.

- Condition 35 regarding Greenhouse Gasses (GHG) was amended and carried over from a mitigation measure in the Final EIR. The condition reads:

“MM AQ-6/8 - Prior to issuance of the Notice to Proceed, the Applicant shall provide a GHG mitigation, monitoring and reporting plan for the onsite GHG emissions. The plan shall investigate methods to bring the onsite 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 onsite GHG emissions from the Rail Spur Project still exceed zero, then [San Luis Obispo County Air Pollution Control District] 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.”

The SLOCAPCD has established a significance threshold for GHG emissions of 10,000-metric tons CO₂ equivalent per year. The County believes that this threshold applies cumulatively among all projects at the site. The analysis includes the previously approved throughput permit (DRC2008-00146) and the cumulative effect of the existing operations along with the addition of the Rail Spur Project. The throughput project resulted in an increase in GHG emissions at the SMR of about 20,470 metric tons CO₂ equivalent per year. As part of the conditions of approval for the Throughput Project, the applicant was required to reduce onsite GHG emissions and provide offsite GHG credits to keep the net increase in GHG emission below 10,000 metric tons CO₂ equivalent per year. The Rail Spur Project would add about 1,525 metric tons CO₂ equivalent per year at the SMR. Without offsetting these additional GHG emissions the cumulative GHG emissions from the Throughput and Rail Spur Projects would exceed the 10,000-metric ton per year threshold. This condition is required to assure that the cumulative GHG emissions from the Throughput and Rail Spur Project remain below the APCD threshold for GHG emissions.

- Condition 73 includes the type of tank car that is to be used in order to transport the heavy crude on to the Phillips 66 property. The condition reads:

“MM HM-2a - Only rail cars designed to DOT-117/117P standards set forth in 49 CFR § 179.202 (as published May 8, 2015 at 80 Fed. Reg. 26644) shall be allowed to unload crude oil at the Santa Maria Refinery. EPC 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.

If DOT adopts new rail car design standards for Class 3 flammable liquids in the future, then the Applicant shall use the most stringent DOT approved tank car design for the rail cars that unload at the SMR based on the approved DOT implementation schedule.”

This language was included because of safety concerns brought up by members of the public. The condition was amended by the Commission with language that would not allow the retrofitted DOT 117R cars to be used at the refinery. While the 117R cars are currently allowed by the Department of Transportation (DOT), they are a retrofitted historic car (retrofitted 1232 cars) and do not have the thicker shell as the new DOT 117 or a DOT 117P car. Because of this, it is recommended that the safer car be required on the property. The analysis in the Final EIR showed that use of the DOT-117 would reduce the probability of an oil spill in the event of an accident by about eight percent.

- Condition 94 is the requirement for Coastal Access. The condition reads:

“Vertical coastal access is consistent with Coastal Zone Land Use Ordinance (CZLUO) requirements for public safety, military security, and need for protection of fragile coastal resources, therefore access shall be provided as required by Development Plan/Coastal Development Permit DRC2008-00146, and limited to docent led pedestrian access. Provision of this access may be delayed in the event that the necessary docent led access across Union Pacific property is prevented. The applicant shall submit a coastal access plan for implementation of this condition for review and approval by the Department of Planning and Building. The plan shall include details such as parking, docent arrangements, hours, and frequency of docent led tours.”

This condition was added in an effort to strike a balance between the Coastal Zone Land Use Ordinance requirements for vertical access, and the sensitive needs and safety concerns of the property and UPRR rail line. The property is required to address coastal access because of a condition placed on the property from the throughput permit (DRC2008-00146) on December of 2012 which stated:

“Prior to issuance of the Notice to Proceed authorizing an increase in Refinery throughput, the applicant shall comply with Section 23.04.420 – Coastal Access Required. Construction of improvements associated with vertical public access (if required) shall occur within 10 years of the effective date of this permit (including any required Coastal Development Permit to authorize such construction) or at the time of any subsequent use permit approved at the project site, whichever occurs first. The approximate location of the vertical access required by this condition of approval shall be located within or

immediately adjacent to the existing maintenance road as shown in Exhibit D – Project Graphic (Coastal Access Location Map 1 and 2). “

Staff recommends that if the Board were to adopt conditions of approval, that the condition requiring limited doцент led access forwarded by the Planning Commission remain in place.

g. Phillips 66 states that the Project’s Benefits Outweigh the Adverse Impacts

Appeal Summary: The applicant states that there are adequate overriding findings in the record for the County to approve the project. Specifically those include construction benefits and long term benefits. The construction benefits include the 200 temporary construction jobs, equipment, and materials. Long term benefits would include 8 to 12 full time permanent jobs, additional property tax revenue and other state and local taxes. In addition, allowing another supply of crude to the facility will enhance the refinery’s competitiveness. Phillips 66 also discusses potential environmental benefits such as mitigating the habitat loss by restoring a larger area of habitat onsite as well as instituting mitigations which would improve air quality. If the project is not approved, Phillips 66 states that without the Rail Spur Project trucking of crude from a rail terminal near Bakersfield to their Santa Maria Pump Station (SMPS) could increase to as many as 100 round trips per day.

Staff Response: Whether the project is approved or not, the current company operations with regards to existing rail terminals in the Bakersfield area and the transport of crude via truck to the SMPS would remain in place. Phillips 66 has in the past trucked crude from a rail terminal near Bakersfield to their SMPS. Crude from local sources is also trucked to the SMPS from various locations in Northern Santa Barbara, San Luis Obispo, and Monterey Counties. With or without the Rail Spur Project it is likely that trucking of crude to the SMPS will continue.

With the Rail Spur Project, it is possible that some of the oil delivered via pipeline or truck to the SMPS could be displaced. Any displaced crude oil would likely be sold to other refineries in the Los Angeles or Bay areas, which could increase the amount trucking of locally produced crude oil. The amount, location, and destination of any displaced locally produced crude oil would be driven by market forces. Given the dynamics of the crude oil market, it is speculative as to what if any local crude oil would be displaced, and what would happen to any oil if it were displaced.

Without the Rail Spur Project, it is possible that additional crude oil could be delivered to the SMPS via truck from various locations including rail facilities in the San Joaquin Valley. The extent to which trucking to the SMPS would increase without the Rail Spur Project would be based upon economics, the availability of truck loading facilities, and the permit limits for truck unloading at the SMPS.

It is staff’s position that with or without the Rail Spur Project there could be changes in the amount of crude oil trucked to the SMPS. However, the extent of this change in trucking is unknown and would be driven by economic factors that are subject to and impacted by a dynamic, complex, and at times, volatile crude oil market. However, the Rail Spur Project would allow another avenue to receive heavy crude at the SMR in addition to the existing avenues (i.e., pipeline and trucking to SMPS) which would remain in place and operational with or without the Rail Spur Project.

It is staff’s position that the offset of the habitat areas and air quality mitigations are not a project benefit or “override”, but rather a mitigation measure to offset the known project impacts, therefore

these items are not additional benefits as a result of the project's implementation but rather a mitigation to offset damage to the environment that the project would create.

The project overriding findings would include tax revenue through both construction and property assessment, and jobs for both construction and long term employment. If the Board were to approve the project, a set of overriding findings are included in the record and could be either amended and/or adopted by the Board.

h. Phillips 66 States That the Project is Consistent with the County's Ordinances, Plans and Policies

Appeal Summary: Phillips 66 states that the project was denied by the Planning Commission based on findings that are not correct, and that the project is consistent with the County's Ordinances, Plans and Policies. The findings discuss the original project which was five trains per week, and also include findings related to ESHA and cancer risk for which Phillips 66 asserts were incorrectly used.

Staff Response: The Planning Commission made the decision to deny the project and adopted the findings that were submitted as a part of the February 4, 2016, staff report. It was not until during the February 4, 2016, hearing that Phillips 66 submitted a letter at the podium which requested an amendment to their project description, and requested that the Commission approve a project alternative of three trains per week.

While the Planning Commission did adopt ESHA findings, there were many other factors on which the Commission based its decision such as health and safety and air quality. ESHA is a major point of interest of the California Coastal Commission, a major point of interest within the Applicant's appeal, and is likely to be a major point of interest in any appeal by or to the Coastal Commission. As part of the Planning Commission hearings the California Coastal Commission staff submitted a letter stating that in their opinion the site contained ESHA.

The Board has a revised and updated set of findings as a part of this staff report which are based on the Phillips 66 revised project description of three trains per week. The ESHA findings are also included for review, however if the Board determines that the site is not ESHA, than those findings could be amended and/or removed based on Board direction. In addition, all other findings could be amended at the Board's discretion.

With regards to the project's compliance with the County's plans and policies, below is an updated table which takes into account the revised three train per week project and whether that project complies with specific sections of the County's plans. This table is similar to the one outlined in the February 4, 2016, staff report, however it has been updated to reflect the revised project of three trains per week. In addition, Attachment 3 includes updated findings for the three train per week project.

Each of the items lists whether the project is in compliance with the relevant section based on staff's recommendation, as well as a reference to the associated finding within the Planning Commission's February 4, 2016, staff report (Attachment 8) and a reference to the finding number in the Board's updated findings submitted as a part of this staff report (Attachment 3 Exhibit A). In addition, there is a note as to whether the compliance recommendation applies to the project construction and operation of the refinery site (i.e. "onsite") versus whether the compliance issue is related to impacts along the

mainline within San Luis Obispo County (i.e. “mainline”). It is staff’s recommendation that while the County is preempted from requiring mitigation measures related to the mainline, the County can in fact consider those impacts as a part of the decision making process based on information in the record from the Surface Transportation Board and the State Attorney General, therefore that information is included for the Board’s consideration and review.

While the project has been amended to a three train per week alternative, and that does lessen the impacts with regards to air quality and health risk, the project continues to have impacts related to air quality, habitat removal, public services, safety, and hazards. Neighborhood compatibility remains a major issue of concern.

Three Train Per Week Project - Policy Compliance Summary			
Policy, Goal, or Requirement Section	Reference to Finding From Planning Commission	Reference to Finding In updated Board Findings (Attachment 3 Exhibit A)	Compliance Recommendation
CZLUO Section 23.07.170, Environmentally Sensitive Habitats (ESHA)	Finding No. 31	Finding No. 32	Project not in compliance – Onsite
Coastal Plan Policies: Environmentally Sensitive Habitats, Sensitive Habitats, Policy 1, Land Uses Within or Adjacent to Environmentally Sensitive Habitats	Finding. No. 6	Finding No. 6	Project not in compliance – Onsite
Coastal Plan Policies: Environmentally Sensitive Habitats, Sensitive Habitats, Policy 29, Protection of Terrestrial Habitats	Finding No. 7	Finding No. 7	Project not in compliance – Onsite & Mainline
Coastal Plan Policies: Environmentally Sensitive Habitat Area Policy 36, Protection of Dune Vegetation	Finding No. 8	Finding No. 8	Project not in compliance - Onsite
Framework for Planning: Land Use Goal 4, Land Use Compatibility	Finding No. 9	Finding No. 9	Project not in compliance – Onsite
Framework for Planning: Strategic Growth Goal 1 Objective 2 Air Quality	Finding No. 10	Finding No. 10	Project not in compliance – Onsite & Mainline
Framework for Planning: Sensitive Resource Area General Objective 1	Finding No. 11	Finding No. 11	Project not in compliance – Onsite
Conservation and Open Space Element: Air Quality Policy AQ 3.2 Attain Air Quality Standards	Finding No. 22	Finding No. 23	Project not in compliance – Onsite & Mainline

Three Train Per Week Project - Policy Compliance Summary

Policy, Goal, or Requirement Section	Reference to Finding From Planning Commission	Reference to Finding In updated Board Findings (Attachment 3 Exhibit A)	Compliance Recommendation
Conservation and Open Space Element: Air Quality Policy AQ 3.3 Avoid Air Pollution Increase	Finding No. 23	Finding No. 24	Project not in compliance – Onsite & Mainline
Conservation and Open Space Element: Air Quality Policy AQ 3.4 Toxic Exposure	Finding No 24	Finding No. 25	Project not in compliance – Onsite & Mainline
Conservation and Open Space Element: Air Quality Policy AQ 3.5 Equitable Decision Making	Finding No. 25	Finding No. 26	Project not in compliance – Onsite
Conservation and Open Space Element: Biological Resources Policy 1.2 Limit Development Impacts	Finding No. 27	Finding No. 28	Project not in compliance – Onsite
Conservation and Open Space Element Air Quality Goal AQ 3: Implementation Strategy AQ 3.6.1 Identify Health Risks to Sensitive Receptors	Finding No. 26	Finding No. 27	Project not in compliance – Mainline
Conservation and Open Space Element Biological Resources Policy BR 1.15 Restrict Disturbance in Sensitive Habitats during Nesting Seasons	Finding No. 28	Finding No. 29	Project not in compliance - Mainline
Conservation and Open Space Element: Non Renewable Energy Facility Siting Policy E 7 Design, siting and operation of non-renewable energy facilities	Finding No. 29	Finding No. 30	Project not in compliance – Onsite
Conservation and Open Space Element Non Renewable Energy Facility Siting Policy E.7.1. Non Renewable Energy Facility Siting Policy	Finding No. 30	Finding No. 31	Project not in compliance - Onsite
South County Coastal Area Plan: Land Use Rural Area Industrial	Finding No. 17	Finding No. 17	Project not in compliance – Onsite
South County Coastal Area Plan: Industrial Air Pollution Standards	Finding No. 18	Finding No. 18	Project not in compliance – Onsite
Framework for Planning Land Use Goal 4 Neighborhood Compatibility	Finding No. 9	Finding No. 9	Project not in compliance – Onsite

Three Train Per Week Project - Policy Compliance Summary

Policy, Goal, or Requirement Section	Reference to Finding From Planning Commission	Reference to Finding In updated Board Findings (Attachment 3 Exhibit A)	Compliance Recommendation
Framework for Planning Strategic Growth Goal 1 Objective 2 Air Quality object to ensure safe air quality	Finding No. 10	Finding No. 10	Project not in compliance – Onsite and Mainline
Framework for Planning Combining Designations, Sensitive Resource Areas General Objective 1	Finding No. 11	Finding No. 11	Project not in compliance - Onsite
Framework for Planning: Strategic Growth Goal 1 Preserve Resources	Finding No. 12	Finding No. 12	Project not in compliance – Mainline
Framework for Planning: Strategic Growth Goal 1 Objective 4 Agriculture	Finding No. 13	Finding No. 13	Project not in compliance – Mainline
Framework for Planning: Land Use Goal 2 Preserve Agriculture	Finding No. 13	Finding No. 13	Project not in compliance – Mainline
Coastal Plan Policies: Chapter 6 Environmentally Sensitive Habitats, Coastal Streams Policy 20	Finding No. 14	Finding No. 14	Project not in compliance – Mainline
Coastal Plan Policies: Chapter 7 Agriculture Policy 1	Finding No. 15	Finding No. 15	Project not in compliance – Mainline
Coastal Plan Policies: Chapter 12, Archaeology Policy 1, Protection of Archaeological Resources	Finding No. 16	Finding No. 16	Project not in compliance – Mainline
Safety Element: Chapter 4, Fire Safety Goal S-4, Reduce the threat to life, structures and the environment	Finding No. 19	Finding No. 19	Project not in compliance – Mainline
Safety Element: Chapter 4, Fire Safety Goal S-14, Reduce the threat to life structures and the environment	Finding No. 20	Finding No. 20	Project not in compliance – Mainline
Safety Element Hazardous Materials Policy S-26 and Program S-68	Finding No. 21	Finding No. 21	Project not in compliance - Mainline
Safety Element: Chapter 6, Other Safety Issues Goal S-6, Reduce the Potential for harm to individuals and damage to environment from hazards	N/A	Finding No. 22	Project not in compliance – Mainline

- i. Phillips 66 States that Proposed Conditions of Approval Developed by the Planning Commission are Inappropriate or Unlawful

Phillips 66 has objected to portions of three conditions (Nos. 33, 35, and 73) and all of Condition 94. These are the same conditions as discussed above. Staff's response to the comments on the conditions is provided above in the section titled "Phillips Requests Amendment to Planning Commission Recommended Mitigation Measures".

- j. Phillips 66 states that Coastal Access is not appropriate at this location

Appeal Summary: Phillips 66 states that coastal access is not appropriate at this site due to public safety risks and the potential damage to fragile coastal resources. Phillips 66 requests approval of the application and deletion of condition number 94 as well as amending the finding with regards to coastal access to state the following:

"Public access across the Refinery Site is not required under Section 23.04.420 (c) of the Coastal Zone Land Use Ordinance because it would be inconsistent with public safety, and because it would be inconsistent with the need to protect fragile coastal resources. Each of these factors individually supports the finding of exemption."

Staff Response: Similar to the information stated above in this staff report under "mitigation measures," a draft condition (no. 94 from the Planning Commission's recommended draft conditions) was submitted for review in an effort to balance the requirements of the Coastal Zone Land Use Ordinance for coastal access with the sensitive nature of the site. These sensitivities include both crossing the rail line as well as ensuring that access remains within the previously disturbed roadway that is currently utilized for maintenance of the Phillips 66 outfall. The docent-led option within the existing access road was a suggestion put in place because the number of visitors could be limited during certain times under guidance from a docent which could be a representative or contractor of Phillips 66. A plan would be put in place by Phillips 66 or a representative to determine how the access will be conducted within this area along with details such as timing, parking, number of visitors and any other details necessary. It was anticipated that the current contract between Phillips 66 and Union Pacific Railroad with regards to their access across the rail line would be amended to include this docent led crossing at the existing gate and roadway which provides current access to the outfall.

Staff recommends that if the Board were to adopt conditions of approval, that the condition requiring limited docent led access forwarded by the Planning Commission remain in place.

OTHER AGENCY INVOLVEMENT

There are numerous agencies which have submitted comments regarding the project. Comments were submitted during the EIR process and many were submitted later for the Planning Commission's review as a part of the record for the deliberation process. The following agencies received referrals when the project was initially submitted to the County Department of Planning and Building:

County Public Works, County Environmental Health, County Agricultural Commissioner, Air Pollution Control District, County General Services, County Building Division, Cal Fire, Cambria Community Services District, Los Osos Community Services District, Avila Community Services District, Cayucos Fire, Cayucos Sanitary, Paso Robles Beach Water Association, Oceano Community Services District, San Miguelito Water Association, San Simeon Community Services District, Coast Union Joint School District, San Luis Coastal School District, California Department of Transportation (Caltrans), Regional Water Quality Control Board, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, California Coastal Commission, California Department of Parks and Recreation, Cayucos Citizens Advisory Council, North Coast Advisory Council, Los Osos Community Advisory Council, South County Advisory Council and the Avila Valley Advisory Council, Pacific Gas and Electric, Santa Barbara County, City of San Luis Obispo, City of Santa Maria, Division of Oil and Gas, City of Grover Beach, and the City of Guadalupe.

In addition, the following agencies have been contacted during the EIR process and their comments are listed in the Final EIR along with responses:

Berkeley (City of), Davis (City of), Placer County Air Pollution Control District, Sacramento Area Council of Governments, Sacramento Metro Air Quality Management District, San Luis Obispo Council of Governments, Santa Barbara (County of), Santa Barbara County Air Pollution Control District, South Coast Air Quality Management District, and the Ventura County Air Pollution Control District.

FINANCIAL CONSIDERATIONS

This project is within the Coastal Zone, therefore no appeal fee was charged and funding for the appeal was processed using department general funds.

The Department of Planning and Building has been carrying the cost of a portion of the Planning Commission hearings as well as the noticing requirements and facilities rentals before the Board of Supervisors. The Department of Planning and Building has set up a charge code specific to the Phillips 66 project and approximately \$59,000.00 of staff time has been charged to the project as of February 24, 2017 along with approximately \$1,700.00 for facilities rentals during the Planning Commission Hearings. The cost for the public hearing notice is approximately \$8,000.00 and is in addition to the figures listed above. The adopted County fee schedule requires full cost recovery for all development projects.

RESULTS

Affirming the Planning Commission decision by denying the appeals will mean the Final Environmental Impact Report is not certified and that Development Plan/Coastal Development Permit DRC2012-00095 is denied.

Upholding or partially upholding the appeal(s) would mean the Development Plan/Coastal Development Permit is approved and findings along with conditions of approval would be adopted along with certification of the Final Environmental Impact Report.

Conducting the public hearing for this matter is consistent with the countywide goals of providing livable and well governed communities.

BUSINESS IMPACT STATEMENT

Denial of the appeals would mean that the Planning Commission denial of the application would stand. The project is located in the Industrial land use category. Denial of the project would not allow for the increase in 12 permanent and 200 temporary construction jobs proposed as a part of the project nor would it allow for the increased assessment of the property or increased property taxes as a result. In addition, denial of the project would eliminate the receipt of additional tax revenue through sales tax and taxes on materials for construction of the project. The Planning Commission found that the project would negatively affect the health and safety of populations near the refinery as well as those along the main rail lines. The Commission determined that the monetary and job benefits of the project did not outweigh the significant environmental impacts of the project. Therefore, they could not make the necessary Statements of Overriding Consideration to approve the project.

MORE INFORMATION

The Final EIR, the appeal letters, and other project related information is available online at:

http://www.slocounty.ca.gov/planning/environmental/EnvironmentalNotices/Phillips_66_Company_Rail_Spur_Extension_Project.htm

ATTACHMENTS

1. Appeal Letters by Jeff Edwards
2. Appeal Letter by Phillips 66
3. Board of Supervisors Resolution with Updated Findings as Exhibit A (deny the appeals, uphold the Planning Commission Decision)
4. Board of Supervisors Resolution for Upholding the appeal and approval of the project
5. Exhibit B Draft Findings for Approval
6. Exhibit C California Environmental Quality Act Findings for Approval and Overriding Considerations
7. Exhibit D Draft Conditions of Approval from the Planning Commission
8. Denial Findings adopted by the Planning Commission on October 5, 2016
9. Federal Surface Transportation Board Letter September 20, 2016
10. Attorney General Letter
11. California Coastal Commission Letter re ESHA
12. APCD letter (Melissa Guise)
13. February 4, 2016 Planning Commission Staff Report
14. Location Map and Graphics