

Comments by Paul Stolpman on the Draft EIR for the P66 Rail Spur Project

These comments focus primarily on the air quality impacts of this project.

November 23, 2014

1. The Executive Summary states that the significant impacts on aesthetics and visual resources could be mitigated to less than significant levels. Although this may be true for some of the areas listed (e.g. the DeAnza Trail) it is simply not true for public areas in Trilogy, many of which sit 100 feet or more above the proposed tracks. Therefore, this impact should be listed as a Class I impact because the visual degradation will be significant and unavoidable, even with mitigation.

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2. The Executive Summary (on page ES-9) states that the “construction impact for the Rail Spur Project would be less than significant (Class III).” This statement disagrees directly with the findings of this EIR as listed in the Summary of Impact, and therefore, must be changed. Both AQ.1 and AQ.8, those impacts associated with the construction of the rail spur, are listed as Class II impacts in the Summary of Impacts Tables.

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3. On ES-9 the Executive Summary states, in regard to the impact of the operational pollutant emissions at the SMR, that “regardless of the preemption issue, the air emissions with the SMR can be mitigated through the use of emission reduction credits.” This statement is misleading in that there is no evidence in the EIR that the SMR has adequate emission reduction credits to mitigate the significant impact within the SMR. To deal with this misunderstanding it would be more accurate if the sentence read: “However, the SMR is not preempted from taking mitigation measures (including the use of emission reduction credits where appropriate) within the boundaries of the SMR.”

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4. The Executive Summary and the Chapter on Air Quality are riddled with references to preemption. The discussion on preemption usually takes place after the document says something like: “This impact can be reduced to less than significant with the use of” The document often then goes on to admit that these mitigation actions “may be preempted by Federal law”. This is a seriously misleading way to write this EIR because it leaves the reader with the impression that there are feasible mitigation actions, when in reality there are not. I would request that unless the county has made a decision to take the Federal Government and the railroads to court on the issue of preemption; and unless the county has a legal opinion from the appropriate county agency that it has any chance of prevailing in such a suit, this EIR must drop all references to any mitigation activities that it currently states are likely to be preempted. Including a discussion of “preempted mitigation actions” in the EIR is simply too misleading to the reader and the decision maker.

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5. The Executive summary states on ES-9 that the “Operation of the Rail Spur Project would generate very low levels of fugitive dust, which are well below the SLOCAPC thresholds.” From this the EIR concluded that “Fugitive Dust (PM10) emissions from the project would be less than significant (Class III).” This statement is not compatible with the statement on 4.3-11 that “all fine airborne particulate matter, regardless of composition, can cause respiratory distress when inhaled, especially to the very young, the elderly, and those with compromised respiratory systems.” In short, the EIR cannot conclude that a small increase in the emissions of PM10 is not significant. As the EIR admits, any increase in the emissions of PM10 in an area, like the Nipomo Mesa, that already violates the state and Federal standards for PM10 will cause “respiratory distress when inhaled”. Increases in respiratory distress must be considered “significant” and therefore the fugitive dust (PM10) increase of the Rail Spur Project at the SMR must be considered significant unless the SMR pursues mitigation actions that actually reduce total PM10 emissions at the SMR. Since emissions reduction credits do not actually reduce emissions from current levels, they should not be listed as mitigation measures for any particulate matter (PM) increases, including diesel particulate matter.

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6. On page 4.3-11 the EIR states that “...sand particles from the Oceano Dunes are high in crystalline silica, a known carcinogen.” What this statement admits is that the residents living downwind of the SMR are already exposed to toxic, cancer causing pollutants. Given the high concentrations of this crystalline silica in the air over the Nipomo Mesa, the risk of cancer from this exposure could actually be quite high. The EIR does not quantify the risk of this exposure. Because of this the EIR does not provide a baseline of risk that would allow the reader of the EIR to judge the true impact of the increase in cancer risk that would attend the introduction of additional diesel particulate matter (DSM) from the additional diesel trucks, on-site diesel engines and of course the diesel locomotives. For reviewers to be able to adequately evaluate the risk of the project the EIR must provide reviewers with a baseline risk analysis.

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7. In SLO County the worst PM10 levels by far are found on the Nipomo Mesa just downwind of the SMR. The primary source of the pollution is the crystalline silica dust coming from the riding area of the Oceano Dunes. In spite of this fact page, 4.3-2 states that “the major sources for PM10 are mineral quarries, grading, demolition, agricultural tilling, road dust and vehicle exhaust.” This statement is obviously wrong for the Nipomo Mesa and should be corrected to reflect the contribution of the off-road vehicle riding area of the Oceano Dunes.

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8. The EIR states on 4.3-3 that “the PM2.5 standard is a subset of the PM10 standard.” Although PM2.5 is a subset of PM10, I don’t know anyone who would agree that one standard is a subset of the other. Please remove this statement.

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9. The statement on 4.3-3 that the federal PM10 standards were not exceeded in any of these years is very misleading. As you know the Federal PM10 standards have been violated for the

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past three years at the PM10 monitor closest to the SMR. This information is central to our consideration of the impact of the Rail Spur Project on the area surrounding the SMR. A much more detailed review of PM10 concentrations on the Nipomo Mesa must be included in the EIR if the reader is to understand the true impact of adding diesel exhaust particulate from the rail spur into that environment. The EIR should be amended to include such an analysis.

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10. On 4.3-7 the EIR discusses the meteorological data from the Nipomo-Guadalupe monitoring station which is the station closest to the rail spur project and is just downwind of that project. Clearly this data would best represent the meteorological conditions at the rail spur. In spite of that, when evaluating the fugitive dust that will be generated by the construction of the project at the SMR, the EIR on page 4.3-36 states that wind speed and precipitation data used were the SLO county defaults. So, even though accurate, local meteorological data was available, the EIR used generic SLO county default data. I pointed out this problem in the last draft EIR and I am pointing it out again. This EIR needs to use the best local met data to analyze the fugitive dust emissions from the construction of the rail spur. The spur is proposed to be built in an area with somewhat unique meteorology (high wind speeds and unique wind angles) and using the SLO county defaults is simply inappropriate if we want to accurately predict the fugitive dust coming off the construction project. The analysis of AQ.1 needs to be redone with meteorological data from the Nipomo-Guadalupe monitoring station.

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11. The EIR provides no estimate of the amount of earth that will be moved during the construction project phase. This data needs to be provided. The EIR states on 4.3-36 that the fugitive PM10 emissions are based on a disturbed area as provided by the Applicant. We need to see that data so that it can be reviewed by the public.

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12. Page 4.3-33 lists the criteria that can be used to determine if the impact of a project is significant. One of those criteria is a "Comparison of calculated project emissions to SLOCAPCD emissions thresholds". In this EIR that is the only criteria used to determine "significance". However, other criteria were listed on 4.3-33 as follows:

- Consistency with the most recent Clean Air Plan for SLO County
- Consistency with a plan for the reduction of greenhouse gas emissions that has been adopted by the jurisdiction in which the project is located
- Comparison of predicted ambient criteria pollutant concentrations resulting from the project to state and federal health standards, when applicable
- The evaluation of special conditions which apply to certain projects; or
- Construction emissions would exceed the SLOCAPCD Thresholds.

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Since the criteria above are listed in the EIR, I believe that there needs to be further explanation in the EIR of the use of only the threshold criteria. I have found absolutely no discussion in the EIR as to why only the emissions threshold criteria was used to classify impacts. It seems clear that the criteria considering ambient criteria pollutant concentrations or the criteria looking at consistency with the County's Clean Air Plan would have been the more appropriate as the impact criteria for any project which, like this one, is proposed to be built in an area exceeding the state and federal health standards. This Rail Spur Project lies in the center of an area grossly exceeding the state (and federal) PM10 health standards. The use of a threshold limit criteria is not appropriate for this project because any emissions increase in a non-attainment area makes a significant problem even worse. The EIR should be amended to include impact evaluations using alternative impact criteria.

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13. Mitigation of the fugitive dust from the construction of the Rail Spur at the SMR is laid out in AQ-1a through AQ-1i. As drafted, these proposed mitigations take up over four full pages of the EIR. The Class II designation for the construction impacts relies on these mitigation activities being fully enforced. However, there is no evaluation in this EIR of the manpower and financial resources that the SLO County APCD would have to dedicate to enforcing these measures. I do not believe that the APCD has the resources to adequately do this job. Therefore the Class II designation is not appropriate and AQ.1 should be designated as Class I. This EIR needs to actually analyze the potential for non-compliance with the listed mitigation measures before it simply lists the proposed mitigation actions and assumes they will be carried out. The public's health is at risk and more assurances are necessary where mitigation measures are relied on so heavily to bring a significant impact into a Class II designation.

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14. Mitigation activity AQ-1f relies heavily on the use of water to suppress the dust that would be generated by the Rail Spur construction process. However, the EIR does not quantify the amount of water that would be needed. That quantity should be spelled out in this EIR.

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15. Mitigation activity AQ-1m allows P66 or the construction contractor to designate a person to oversee the mitigations measure implementation for the construction of the Rail Spur. This fox guarding the hen house approach to enforcement of the mitigation measures of AQ.1 is very problematic, especially in an area already exceeding ambient air health standards by a wide margin. This provision needs to be modified to require an on-site APCD employee (paid for by P66).

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16. Many of the air quality mitigation measures discussed in the EIR rely on the possible use of Tier 4 locomotives. It is my understanding that Tier 4 locomotives do not yet exist and that their introduction in the future would likely be very slow. This EIR needs to provide far more information on the status of the introduction of Tier 4 locomotives so that the reader can

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better evaluate whether the use of Tier 4 locomotives is actually a viable mitigation strategy or just a throw-away idea put forward without any hope of actual implementation.

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17. Emission reduction credits are cited throughout the EIR as mitigation measures. Given the different nature of the impact of different air pollutants I believe the allowed use of emissions reduction credits should be much more nuanced. It is true that in some cases (for regional and global air pollutant problems like ozone or climate change) emission reduction credits can be effectively used to mitigate the negative effect of the increase in air emissions that will accompany the diesel power units, the diesel trucks and the diesel locomotives that will be an integral part of the rail spur project. However, for “local” pollutant problems, like particulate matter, the “mitigation” offered by emissions reduction credits is not real because the mitigation measure does not reduce the actual air pollution problem created by the project. This is particularly troublesome if the emission reduction credits are used in an area already violating a state or federal health standard or criteria.

The logic of this conclusion is simple. If a credit is used to allow a new source of pollution to be used in an area already violating health standards, the air in that area can only get worse and the health effects already being experienced by the residents of that area (such as the area around the SMR) can only get worse. Such a situation cannot be found to be unacceptable from a public health perspective.

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Unfortunately for P66 and those living near the SMR, the current air quality at the SMR does not meet state and federal health standards for PM, and if an analysis of the cancer risk created by current concentrations of crystalline silica in the air around the SMR were carried out, as called for in these comments, I’m sure the state criteria for acceptable cancer risk would also be violated.

In summary, I believe the use of emission reduction credits should not be designated as “mitigation measures” for areas not currently attaining state or federal health standards because the use of those credits will only lead to a worsening of an already unhealthy situation. Using this approach, both on-site and off-site emission reduction credits for PM and air toxics would not be allowed at the SMR or any other area violating health standards for those pollutants. However, other uses of reduction credits (both off-site and on-site), for other pollutants in other areas not violating health standards, should be allowed and even encouraged.

18. The Impact Summary tables list AQ.8 as a Class II Impact. However, on page 4.3-74 the EIR states that “the residual cumulative criteria pollutant emissions at the refinery would be less than significant (Class III).” This statement contradicts the listing in the Impact Summary Table as well as the data shown in Table 4.3.26. This table shows that some criteria pollutants at the

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SMR will exceed the SLOCAPCD Threshold and since the only mitigation measures discussed for AQ.8 are GHG measures, it would appear that the significant increases in criteria pollutants at the SMR as analyzed for AQ.8 will remain significant. Therefore, AQ. 8 should be listed as a Class I Impact and this change should be reflected in both the Impact Summary table and on page 4.3-74 of the EIR.

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