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*By Email and US Mail* -- p66-railspur-comments@co.slo.ca.us

Murry Wilson, Environmental Resource Specialist
County of San Luis Obispo Department of Planning and Building
976 Osos Street, Room 300
San Luis Obispo, CA 93408-2040

Re: Comments on Phillips 66 Rail Spur project

Dear Mr. Wilson:

On behalf of Shea Homes, I write to ask that the EIR for the Phillips 66 project not be approved at this time. There is too much information missing from this document, and we believe that the failure to include this information renders the EIR invalid. NEK-01

The Draft EIR indicates that rail traffic transporting crude oil increased by 423% between 2011 and 2012; where is the data for the current rail traffic? We know that oil and gas production has skyrocketed in the past few years, to the point where the United States is -- for the first time in decades -- a net oil and gas exporter (data from the federal Energy Information Administration). No slowdown is in sight. During this same period, rail traffic increased dramatically, and yet the Phillips EIR does not have current data on such traffic. What is the relationship between increased oil traffic and increased accidents? NEK-02

The age of the rail infrastructure is also of grave concern. A recent Forbes magazine article (1/22/14) warned that the aging infrastructure has led to far more derailings and spills than in decades past:

> "All this moving oil, of course, poses increased risk. On July 6 [2013] an oil train operated by Montreal, Maine & Atlantic Railway crashed in Lac-Mégantic, Que., killing 47, destroying the town's core and spilling hundreds of thousands of gallons. In Alabama last November, 25 cars on a 90-car oil train derailed in another inferno that dumped thousands of barrels into marshland. And in the last week of December a BNSF train carrying grain derailed near Casselton, N.D., causing a collision with a 106-car oil train; 18 oil cars derailed and several burned. Recent data from the Manhattan Institute find trains are four times more likely to have accidents than pipelines, but pipeline spills release significantly more oil than train accidents. Still, 'the railroads carry oil right through town, over rivers and pastures,' says the Sierra Club's Wayde NEK-03

> Schafer. 'When routing pipelines at least you can take them around populated areas.'
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> "Prompted by these incidents, the National Transportation Safety Board investigated the safety of moving Bakken crude by rail. It determined that many railcars now moving Bakken oil are too old and need to be replaced or retrofitted to meet new safety standards. Both Ottawa and Washington arelikely to impose stricter regulations on oil shipments. 'Newer railcars are muchstronger and don't crack like an egg,' says Schafer.
>
> "The industry agrees. Edward Hamberger, president of the American Association of Railroads, says it's time for the Department of Transportation to review standards for tank cars that carry hazardous materials. 'There's *92,000* cars that need to be assessed,' he says. 'If they can't be retrofitted, then they should be phased out.'"

NEK-03 cont

Forbes' assessment is reflected in the Draft EIR's concerns regarding both federal state regulations, both of which are in the draft stages. In the Executive Summary (at page 25), it is noted that the increase in rail traffic has prompted both the state Office of Spill Prevention and Response (OSPR) and the federal Department of Transportation (DOT) to begin drafting regulations to address these issues; however, the "final outcome of the Federal regulations and the implementation timing for SB 861 were unknown at the time of the writing of this Draft EIR. Full implementation of the final Federal regulations and SB 861 could affect the analysis and conclusions in this Draft EIR." We would remind you that SB 861 is currently in litigation, and its fate is unknown at this time. Relying on the protections from SB 681 is impossible if the litigation voids the provisions of the bill.

NEK-04

Basically, waiting for these regulations is the responsible thing to do. Almost all of the Class I impacts are related to potential spills. You have failed to quantify the number of trains using the tracks along the Phillips 66 route, and have not identified the age of those tracks, nor when the aging infrastructure will be upgraded to handle the increased traffic. These figures are absolutely critical to understand and assess the environmental impacts of this project.

The mitigation measures in the Draft EIR are relying upon the state and federal regulations (the state's OSPR plans under SB 861 and the DOT regulations), both of which are still undergoing review. However, the law is clear on this: It is improper to defer formulation of mitigation measures to the future, or divert that responsibility to another agency. CEQA Guidelines section 15126.4(a)(1)(B) says it without ambiguity: " Formulation of mitigation measures should not be deferred until some future time." A recent case directly on point is *POET, LLC v. State Air Resources* Board (2013) 218 Cal. App. 4th 681, 740, which held that an agency could not rely on future rulemaking for mitigations because it did not and could not establish objective performance criteria when the rule had yet to be made.

NEK-05

We would remind the decision-makers that the basis for CEQA is to insure orderly development. By trying to bring this project into the County before the new regulations are in place, Phillips 66 is avoiding the "orderly development" this County needs and deserves. Waiting until the new regulations are in place, and waiting until information critical to the analysis is brought into the process, is the reasonable and responsible thing to do. NEK-05 cont

In the County's EIR, the Class I impacts of this project would fall most heavily on the Monarch Dunes community. Thousands of residents would be exposed to the potential for spills, derailments, fire and -- of course -- the unavoidable and unmitigateable air quality impacts. The Class II impacts are too lengthy to list here, and the mitigation measures for those will be incredibly difficult to monitor and enforce.

When the Woodlands Specific Plan (now Monarch Dunes) was adopted, the existence of the SMR was noted and analyzed. In its then-configuration (in 1998 and 2002), there was determined to be no significant impact. Certainly, with this expansion, a more rigorous analysis of the SMR and its proximity and potential impacts to the Monarch Dunes community should be completed. We would add that your only quantification of impacts to the Woodlands area is from 2010, when the development was just beginning. Current data from Monarch Dunes -- the SMR's closest neighbor -- must be included in the analysis. We would remind you that 1, 320 homes will be built at Monarch Dunes, along with hundreds of thousands of square feet of commercial and industrial parks, plus a resort hotel. Claiming in the EIR that only 576 people would be affected is incredibly misleading. NEK-06

We strongly urge you to postpone approval of this EIR until such time as the following information is included in the EIR:

(1) Age of the infrastructure on the rail lines used for this project, for the entire route of the project, in San Luis Obispo County and elsewhere;

(2) An analysis of whether the infrastructure can handle the increases in rail traffic noted in the EIR; that is, a 423% increase just from 2011 to 2012. A current assessment of the increase in rail traffic must be included in the EIR and matched to the age of the infrastructure and the availability of emergency responders along the entire route;

(3) Completion and adoption of the OSPR and DOT rules, to insure that the mitigation proposed in the EIR is based upon objective performance criteria, and not some uncertain rules that may or may not be adopted; NEK-07

(4) Mitigation for the air quality impacts for the entire route of the project, including those areas within the Central Valley's airshed, an airshed that has not met federal air quality standards for many years; and

(5) A proper and current analysis of how the SMR expansion will affect the thousands of new, existing and potential residents of Monarch Dunes. NEK-07 cont

Thank you for your consideration.

Sincerely,

Kate M. Neiswender

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| NEK-01 | This comment is an introductory comment about the perceived lack of information in the RDEIR but provides no specifics as to what information is lacking. Responses to the specific comments are provided below. No further response is required to the comment. |
| NEK-02 | Exact data on crude movement by rail is not publicly available. The railroads consider this to be proprietary information. Estimates are that 233,698 tank cars of crude oil were moved by rail in 2012. This increased to about 435,000 tank cars moved by rail in 2013 (the full year of data in not yet available for 2014). With this increase in crude by rail traffic, the derailment and spill probability data used in the RDEIR would suggest that multiple accidents would happen each year. The number of crude by rail accidents is consistent with what would be expected based upon the historical derailment and spill probability data for freight trains in the United States. Using the accident and spill probability data from the RDEIR we would have estimated that in 2012 and 2013 there would have been two to five derailments that had spills of 100 gallons or more in the U.S. The actual number of derailments with spills over 100 gallons in 2012 and 2013 was three.<br><br>Section 4.7, Hazards and Hazardous Material, provides a discussion of the crude by rail accidents that have occurred over the past few years.<br><br>CEQA requires that projected project impacts be assessed against the baseline conditions. Current rail traffic numbers are discussed in Section 4.12, Transportation and Circulation, for the various routes. The current train traffic volumes come from the 2013 State Rail Plan. Specific data on freight trains and their associated commodities are proprietary data that was not available to the EIR consultant.<br><br>The historical accidental data used in the RDEIR is not limited to trains shipping crude oil in recent years, but the long term historical train accident data for all freight. The use of data from all freight train movements nationwide provides a very robust database for estimating rail accidents and derailments.<br><br>Average U.S. train derailment rates over the 5-year period 2005 – 2009 have previously been estimated using data from the U.S. Department of Transportation, Federal Railroad Administration (FRA) Rail Equipment Accident (REA) database combined with traffic data from the rail industry (Liu et al, 2014). This dataset was used to develop detailed derailment rates as a function of three factors: FRA Track Class, traffic volume (which appears to be correlated with additional maintenance above basic federal requirements) and Method of Operation (i.e., signaled or non-signaled trackage). All three of these factors have a significant effect on freight train derailment rate. These factors were used to calculate segment-specific derailment rates thereby enabling a fine grained calculation of derailment probability for any particular route. As discussed below, the overall accident rate has declined since this data was recorded and analyzed, thereby resulting in an overestimate of the present- |

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| | day risk, and future risk. For example the average accident rate for the five-year period 2010-2014 was 27% lower than the average for the five-year period from 2005-2009, and the preliminary estimate of the accident rate for 2014 was 35% lower than the five-year period from 2010-2014.<br><br>The reason data from 2005-2009 was used is because that dataset contained additional information that allowed for the estimated effect of FRA Track Class, Traffic Density and Method of Operation (Signaled or Unsignaled) on derailment rate. This additional granularity is needed for more precise segment-specific accident rate used in the analysis.<br><br>The derailment rates calculated were based on 1,420 Class 1 railroad mainline derailments. Inclusion of a few more crude oil train derailments in recent years would have virtually no effect on the estimated rates. The suggestion that because these recent accidents were not included in our dataset somehow invalidates the results reflects a lack of understanding of the analytical technique and how it was used. The data needed for this analysis are less complete than for overall accident rate but all other things being equal, there is no reason to believe that crude oil trains derail at a rate different than other freight trains. Using what data are available and making certain assumptions, the EIR consultant conducted an analysis in 2014 and observed no significant difference in the derailment rate for crude oil trains then for other freight trains.<br><br>The railroad accident rate has been steadily trending downward for over a decade. The accident rates in the past few years were the lowest since the FRA started recording the data in the mid-1970s. In the period from 2004 to 2014 the rate declined by 49% (almost half) (see Figure 1 below). Most derailments receive little or no attention from the public or media. Railroads are required by regulation to report all accidents that exceed a certain monetary threshold in damage to track, signals and rolling stock (currently $9,600). Proper estimation of train accident rates involves analysis of all accidents, divided by the total amount of traffic. The reason that some perceive an increase in the railroad petroleum crude oil accident rate is because of the more than 50-fold increase in this traffic since 2009. Estimates are that 233,698 tank cars of crude oil were moved by rail in 2012. This increased to over 435,000 tank cars moved by rail in 2013 (the full year of data is not yet available for 2014). With this increase in crude by rail traffic, the derailment and spill probability data would suggest that multiple crude by rail accidents would happen each year.<br><br>**Figure 1. Railroad Accident Rate 2004 – 2014** |

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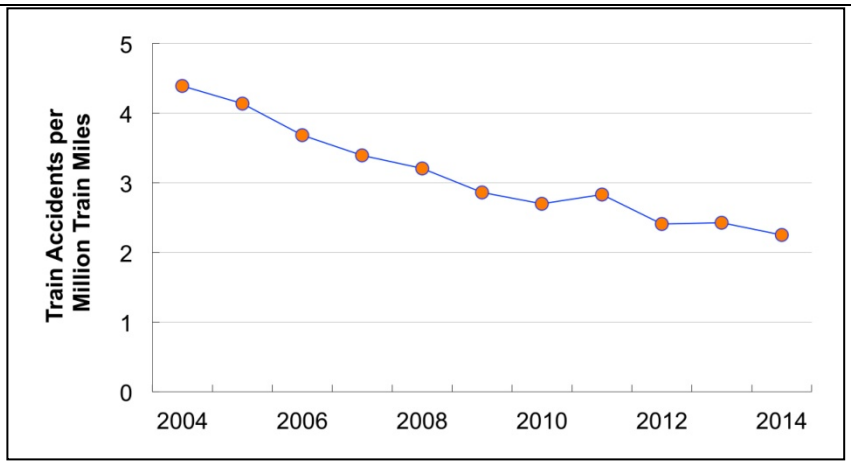

Data Source: US DOT Federal Railroad Administration<br>
http://safetydata.fra.dot.gov/officeofsafety/publicsite/summary.aspx<br>
(Data for 2014 include January through November)<br><br>
Using the accident and spill probability data from the RDEIR the DEIR would have estimated that between 2012 and 2013 there would have been two to five derailments that had spills of 100 gallons or more in the U.S. Based upon the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) incident data base, there were three crude oil train derailments with spills of 100 gallons or more.<br><br>
This does not contain the accident and spills that have occurred in Canada over this period since the accident and spill probability data is for mainline rails within the United States only.<br><br>
The methodology for estimating crude oil unit train accidents and spill probabilities is also consistent with the methodology outlined by the American Institute of Chemical Engineers, Center for Chemical Process Safety (AIChE CCPS) document *Guidelines for Chemical Transportation Risk Analysis* (CCPS, 1995), which is the definitive reference on the methodology for estimating hazardous materials transportation risk.<br><br>
The RDEIR analysis is also in full agreement with this comment regarding the probability of future oil spills that would be associated with increased crude oil rail shipments. The RDEIR found that the risk of a crude oil train accident and spill was a significant and unavoidable (Class I) impact.
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<td>NEK-03</td>
<td>The reference to the Forbes magazine article has to do with the aging DOT-111 legacy rail cars. Phillips 66 is proposing to use CPC-1232 tank cars, which are not the legacy DOT-111 cars. The RDEIR (see Section 4.7, Hazards and Hazardous Materials) found that with these tank cars the potential hazard impact along the mainline rail would be significant and unavoidable (Class I). The RDEIR recommends the use of Department of Transportation (DOT) Option 1 tank car design, which is substantially more robust than the CPC-1232. Even with the Option 1 tank car design, the potential hazard impact along</td>
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| | the mainline rail would be significant and unavoidable (Class I). As discussed in Table 4.7.6, the CPC-1232 tank car design was not one that was being considered as part of the DOT rulemaking for new tank car designs. In May 2015 the DOT issued their final rules for high hazard flammable trains. The final rule is discussed in Section 4.7.5, Hazards and Hazardous Materials.<br><br>A majority of the track along the proposed routes, and all of the track in San Luis Obispo are maintained at a high level to accommodate passenger rail services and existing freight service, including the crude oil unit train that travels the route between San Ardo and Los Angeles area refineries.<br><br>In July 2010, Federal Railroad Administration (FRA) released a Bridge Safety Standards Final Rule requiring railroad track owners to adopt and follow specific procedures to protect the safety of their bridges and to strengthen federal oversight of railroad bridge programs. The Bridge Safety Standards Final Rule requires rail carriers to:<br><br>• Implement bridge management programs that include at minimum annual inspections of railroad bridges<br>• Conduct special inspections if the weather or other conditions warrant such inspections<br>• Maintain an inventory of all railroad bridges and know their safe load capacities<br>• Maintain design documents and to document all repairs, modifications, and inspections of each bridge<br>• Ensure bridge engineers, inspectors and supervisors must meet minimum qualifications<br>• Make sure bridge inspections are conducted under the direct supervision of a designated railroad bridge inspector<br>• Conduct internal audits of bridge management programs and inspections<br><br>49 CFR 237.71 requires railroad bridge owners to determine bridge load capacities as follows:<br><br>(a) Each track owner shall determine the load capacity of each of its railroad bridges. The load capacity need not be the ultimate or maximum load capacity, but must be a safe load capacity.<br><br>(b) The load capacity of each bridge shall be documented in the track owner's bridge management program, together with the method by which the capacity was determined.<br><br>(c) The determination of load capacity shall be made by a railroad bridge engineer using appropriate engineering methods and standards that are |

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| | particularly applicable to railroad bridges.<br><br>(d) Bridge load capacity may be determined from existing design and modification records of a bridge, provided that the bridge substantially conforms to its recorded configuration. Otherwise, the load capacity of a bridge shall be determined by measurement and calculation of the properties of its individual components, or other methods as determined by a railroad bridge engineer.<br><br>(e) If a track owner has a group of bridges for which the load capacity has not already been determined, the owner shall schedule the evaluation of those bridges according to their relative priority, as established by a railroad bridge engineer. The initial determination of load capacity shall be completed no later than five years following the required date for adoption of the track owner's bridge management program in conformance with § 237.31.<br><br>(f) Where a bridge inspection reveals that, in the determination of the railroad bridge engineer, the condition of a bridge or a bridge component might adversely affect the ability of the bridge to carry the traffic being operated, a new capacity shall be determined.<br><br>(g) Bridge load capacity may be expressed in terms of numerical values related to a standard system of bridge loads, but shall in any case be stated in terms of weight and length of individual or combined cars and locomotives, for the use of transportation personnel.<br><br>(h) Bridge load capacity may be expressed in terms of both normal and maximum load conditions. Operation of equipment that produces forces greater than the normal capacity shall be subject to any restrictions or conditions that may be prescribed by a railroad bridge engineer.<br><br>The bridges along the proposed routes are currently rated to accommodate crude oil unit trains. ExxonMobil currently operates a unit train from San Ardo to Los Angeles following the same route as proposed by Phillips 66, including the Cuesta Grade and Stenner Creek Bridge. Plains All American pipeline also receives crude oil unit trains at their Kern County terminal that traverse much of the same routes that the proposed Phillips 66 unit trains would utilize. |
| NEK-04 | In May 2015, the United States Department of Transportation (DOT) issued the final rules covering high hazard flammable trains (HHFT). Section 5.7.5 (see Section 4.5, Hazards and Hazardous Materials) provides information on the final DOT rule. The Hazards section has been updated to include an evaluation of the tank car design include in the final rule. The mitigation measures in the Final EIR do not rely on the protections from SB 681 (see Response NEK-05).<br><br>CEQA requires that you assess impacts against the baseline conditions. Current rail traffic numbers are discussed in Section 4.12, Transportation and |

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| | Circulation, for the various routes. The current train traffic volumes come from the 2013 State Rail Plan. Specific data on freight trains and their associated commodities is proprietary data that was not available to the EIR consultant.<br><br>The tracks along the various mainline rail routes in California are continually being upgraded as part of an ongoing maintenance program. As discussed in Section 4.7, Hazards and Hazardous Materials, UPRR also has a capital track maintenance project in California that covers the replacement and upgrading of track. In the last five years UPRR has replaced over two million railroad ties and 452 miles of rail line in California. What is important in determine the derailment rate for trains is the FRA Track Class, traffic volume (which appears to be correlated with additional maintenance above basic federal requirements) and Method of Operation (i.e., signaled or non-signaled trackage). All three of these factors have a significant effect on freight train derailment rate. These factors were used to calculate segment-specific derailment rates for each of the routes in California, thereby enabling a fine grained calculation of derailment probability for any particular route. It is this data that was critical to understanding and assess the environmental impacts of movements along the mainline rail routes.<br><br>With regard to the DOT regulations for rail car design, the RDEIR has mitigation that would require the use of the Option 1 design, which was found to have the lowest spill probability in the event of a derailment. The mitigation is not dependent upon the outcome of the DOT rulemaking process. In May 2015 the DOT issued their final rules for high hazard flammable trains. The final rule is discussed in Section 4.7.5, Hazards and Hazardous Materials.<br><br>The RDEIR provides a discussion of the status of SB 861 in Section 4.4, Biological Resources and 4.13, Water Resources. The only mitigation measure that relies on the finalization of SB 861 is BIO-11 that addresses an Oil Spill Contingency Plan for the mainline rail routes. This mitigation measure has been modified to require the development of an Oil Spill Contingency Plan and measures that meet specific performance standards.<br><br>OSPR is currently in the process of implementing the requirements of SB 861, which will require railroads to have detailed oil spill response plans and to conduct oil spill response drills. Oil Spill Contingency Plans are due January 1, 2016. However, the timing of when the plans will have to be in place and the drill would start is not yet know. Portions of this legislation as it relates to railroads have been subject to litigation, and it is likely that further litigation by the railroads will occur, since the railroad claim the State is preempted by federal law.<br><br>Depending upon the outcome of the SB 861 process, the Oil Spill Contingency Plan required by this legislation could be used to meet the requirements of the modified mitigation measure. |

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| NEK-05 | The mitigation measures in the RDEIR do not rely on the final decision of the DOT rulemaking regarding crude by rail regulations. While the RDEIR discusses the rule making (see Section 4.7, Hazards and Hazardous Materials), the RDEIR evaluated all of the tank car designs suggested in the proposed DOT rule, and required as a mitigation measure the tank car design Option 1 be used (see mitigation measures PS-4b, in Section 4.11, Public Services and Utilities).<br><br>With regard to California Senate Bill 861, which will require railroads to have detailed oil spill response plans and to conduct oil spill response drills. The California Office Of Spill Prevention and Response (OSPR) has issued final regulations to implement SB 861. The Oil Spill Contingency Plans are due January 1, 2016. However, the timing of when the plans will have to be in place and the drill would start is not yet know. Portions of this legislation as it relates to railroads have been subject to litigation, and it is likely that further litigation by the railroads will occur, since the railroad claim the State is preempted by federal law. The OSPR regulation and implementation plan sets out standards for the Oil Spill Contingency Plans, which include best available protection, based upon reasonable worst case spill volumes, standards for response, containment and cleanup, equipment types, location and estimated time for delivery of equipment, contractual arrangement for equipment and services, use of rated oil spill response organizations, strategies to protect environmentally sensitive areas, and requirement to demonstrate financial resources to pay for spill response and damages. The plan must also include announced and unannounced spill response drills.<br><br>Mitigation measure BIO-11, which addresses an Oil Spill Contingency Plan for the mainline rail routes, has been modified to require the development of an Oil Spill Contingency Plan and identifies specific performance standards and does not rely on implementation of SB 861.<br><br>Depending upon the outcome of the SB 861 process, the Oil Spill Contingency Plan required by this legislation could be used to meet the requirements of the modified mitigation measure BIO-11.<br><br>The issue of waiting for the final rules to be developed by DOT and CDFW is not a CEQA issue, but rather an issue for the decision makers. The commenter's statement about waiting until these rules are finalized is included in the FEIR for the decision-makers' consideration as part of the County's deliberations on the proposed project. |
| NEK-06 | CEQA requires that one assess the impacts of a project against the baseline (i.e., environmental setting), which are the conditions on the ground at the time the NOP is issued. The information on the residential areas in the proximity of the SMR is based upon the time the NOP was issued. While the residential areas in the vicinity of the SMR would be expanded to include more homes and commercial/industrial development, they are currently to physically built or have building permit from the County and therefore are not considered part of |

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| | the baseline. RDEIR does address the impact of the Rail Spur Project on the residential areas in proximity to the SMR, including Monarch Dunes in multiple issues areas such as Air Quality, Noise, Aesthetics, etc.<br><br>The RDEIR never states that only 576 people would be affected by the project. The reference in the comment to 576 people is from Table 4.10.1 (see Section 4.10, Housing and Population), which is the estimated population in the Woodlands area for 2010 from the 2010 US census data. |
| NEK-07 | As discussed in the RDEIR (see Section 4.7, Hazards and Hazardous Materials), The mainline track along the three routes has an allowable gross weight rating of 315,000 lbs per car, with the exception of the track from Niles Junction to near Stockton (Altamont Pass), which has an allowable gross weight rating of 286,000 lbs per car (UPRR 2013). The weight of the Rail Spur Project cars would be limited to a maximum of 286,000 lbs. Therefore, the tracks are designed to handle the weight of the trains associated with the Rail Spur Project.<br><br>As discussed in Impact HM.2 (see Section 4.7, Hazards and Hazardous Materials) UPRR has a track inspection program for their rail lines in California that exceed the current Federal requirements. The UPRR inspection program includes the following:<br><br>Tracks in California are visually inspected twice a week with “hi-rail" pickup trucks to identify any broken rails or issues with track surface condition.<br><br>Special inspections are performed during and after storm events and earthquakes.<br><br>UPRR conducted track geometry tests of their mainline tracks at least twice per year. These tests provide information on the condition of the track, track alignment, curve wear, clearance in tunnels and bridges, track profile, etc. These inspections also include collecting video of the track, which can be used to further assess track conditions.<br><br>UPRR also tests their main line rails in California every three to six months using a rail detector system, which uses ultrasonic sound waves to search the tracks for any internal issues. This is a key technology that helps to prevent broken rail derailments.<br><br>UPRR also has a capital track maintenance project in California that covers the replacement and upgrading of track. In the last five years UPRR has replaced over two million railroad ties and 452 miles of rail line in California (UPRR, 2014b).<br><br>UPRR also has a bridge inspection program that complies with 49 CFR Part 237-Bridge Safety Standards. This program is used to ensure the structural integrity of bridges, culverts, and tunnels. All bridges are inspected between |

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| | one and three times per year. In the last five years, UPRR has upgraded 70 bridges in California (UPRR, 2014b).<br><br>Section 4.3, Air Quality and Greenhouse Gases, provides an assessment of the air impacts along all the mainline rail routes evaluated in the EIR, and provides mitigation (AQ-3) that requires the Applicant to secure emission reductions in ROG + $NO_x$ and DPM 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 + $NO_x$ and DPM emissions do not exceed the Air District thresholds for the life of the project.<br><br>See Responses NEK-03, NEK-04, NEK-05, and NEK-06. |