Dear Mr. Wilson,

According to the latest EIR a contract between Phillips 66 and the Railroad would prevent any use of the locomotive horn during night time unloading operations. This is in direct conflict with Federal Regulation Title 49 Part 222 that states:

PHJ-01

a locomotive engineer may sound the locomotive horn to provide a warning to animals, vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the locomotive engineer's sole judgement, such action is appropriate in order to prevent imminent injury, death, or property damage

John Phipps
1149 Tyler Court
Nipomo, Ca 93444

From: John Phipps <phipps.john@verizon.net>
To: phipps.john@verizon.net, p66-railspur-comments@co.slo.ca.us
Date: 11/25/2014 11:08 AM
Subject: Re: EIR comment-Piecemeal Review

Dear Mr. Wilson,

Piecemeal review of projects under CEQA is not allowed. The California Supreme Court has a test to define piecemeal review as follows:

"that an EIR must include an analysis of the environmental effects of future expansion or other action if : (1) it is a reasonably foreseeable consequence of the initial project: and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or it's environmental effects" PHJ-02

The EIR for increasing the thru put for Phillips 66 and this EIR are the same project. This EIR indicates that a train source is needed to supplement a declining local supply of crude, therefore the EIR for a thru put increase is not sustainable without a train supplied source of crude oil.

This EIR (Rail Spur Expansion) must be combined with the EIR for increased thru put for this EIR (Rail Spur Expansion) to be legal under the laws of California.

Sincerely,

John Phipps
1149 Tyler Court
Nipomo, CA 93444
343-5107

From: John Phipps <phipps.john@verizon.net>
To: phipps.john@verizon.net, p66-railspur-comments@co.slo.ca.us
Date: 11/25/2014 11:08 AM
Subject: Re:EIR Comment-Noise

Dear Mr. Wilson,

The current EIR noise study is insufficient to allow anyone not involved in the noise study field to evaluate the increase in noise levels, so residents close to the area impacted by the noise do not understand what the impacts of increased noise will have on their life. The evaluation of the increases in noise levels as put forth in Table 4.9.9 of the Draft EIR as Significant or Not Significant are completely arbitrary, as there are no standards that define what is or is not significant noise level increases at a given site. PHJ-03

Therefore I am requesting that the EIR include another noise study that all residents close to the rail project can understand. The current EIR indicates that locomotive horns can be used and will be used for emergency situations, which are the same rules railroads have been following for the past 150 years. To evaluate the effects of this type of impulsive noise another type of noise test is required. The test would require a locomotive to be placed at the existing Phillips 66 rail spur at approximately 10:00 pm in the evening. That locomotive would have a horn that would be tested for the proper noise level output, it would then sound the horn 5 seconds every 30 seconds for 5 minutes. The local residents would be informed of the test by mail (local residents do not reside in Los Osos!). The mailing would contain an evaluation sheet for comments to return to the county planning department. This is a better way to evaluate the effects of increased noise at the Phillips 66 site. PHJ-04

Having a contract to limit the use of locomotive horns is in violation of federal rules and would be unenforceable, locomotive horns have been used for 150 years for emergency and safety situations. The county needs to evaluate the use of the horns in the real world of Nipomo , CA. A proper test is in order. PHJ-05

Sincerely,
John Phipps
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Responses to John Phipps Comments

PHJ-01	The Federal regulation that is cited in the comments applies to operations on the mainline track. The operations on the SMR property would be under the control of Phillips 66 and they have the ability to limit horn activity while the trains are on their property.
PHJ-02	The comment incorrectly states that the Throughput Increase Project and the Rail Spur Project are actually one project under CEQA. The comment tries to build the case that without the Rail Spur Project at the SMR, the amount of crude processed at the refinery would decline overtime. This is all based upon the assumption that without the proposed Rail Spur Project the SMR could not obtain adequate crude supplies. As shown in Table 2.7 of the RDEIR, the 2013 average throughput of the refinery was 41,635 barrels per day. The SMR has the ability to unload crude oil from trucks at the Santa Maria Pump Station (SMPS) where it is then moved via pipeline to the refinery. The current permitted limit on crude truck unloading at the SMPS is 26,000 barrels per day. As discussed in Section 5.1.1 (No Project Alternative), the current truck unloading rate at the SMPS is about 6,800 barrels per day. Therefore, an additional 19,200 barrels per day (26,000-6,800) could be shipped via truck to the SMPS for unloading and then moved via pipeline to the SMR. This additional 19,200 barrels of oil would increase the 2013 average daily throughput at the SMR to over 60,000 barrels per day, which is greater than the current permitted capacity of the refinery or the capacity of the refinery that would be allowed even under the Throughput Increase Project. Additional oil could be brought in by truck to the SMPS from other sources such as the San Ardo field, fields in the San Joaquin Valley, as well as additional crude by rail via the Palamo Station in Kern County. Also, as shown in comment CBE-78, the 2012 crude production from northern onshore Santa Barbara and OCS was 67,100 barrels per day. All of these sources of crude could be available to the SMR for processing. Whether or not Phillips 66 is willing to pay the needed price to obtain these crude is unknown and not a CEQA issue. CEQA does not require that the EIR identify all possible sources of crude for the SMR, but rather to demonstrate that adequate infrastructure existing to deliver crude to the refinery. The determination of crude source and method of delivery would be based upon economics and market forces. There are also other potential sources of local crude that could be available in the future to the SMR. As discussed in Section 2.7 of the RDEIR, there are a number of onshore oil development projects in northern Santa Barbara County that are being proposed that if approved could replace some of this lost production. In addition, the Arroyo Grande Oil Field (AGOF) has applied to the County of San Luis Obispo to increase production to 10,000 barrels per day. The County recently approved a project that would allow the oil from the AGOF to be moved via pipeline to the SMR (the oil production from the AGOF currently is trucked to the SMPS for delivery via pipeline to the SMR). If this project is approved it would increase the production from the AGOF by about

	8,000 barrels. There are a number of 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. These include projects such as Santa Maria Energy, which could move 3,000 barrels per day via pipeline to the SMR, Pacific Coast Energy, which could move 3,600 barrels per day to the SMR via pipeline, ERG Cat Canyon, which could move 5,000 barrels per day via pipeline to the SMR, the PetroRock development, which could move 1,600 barrels per day, and the Aera Energy Cat Canyon Project that could add 10,000 barrels per day. A listing from Santa Barbra County shows a total of 943 oil production wells in various phases of development, all of which could provide oil to the SMR. While some of these projects state that the oil will move to the SMR, some do not. For example the Aera Energy Project will truck oil to various customers. Under CEQA, a "project" subject to environmental review must be the "whole of an action." (CEQA Guidelines Section 15378(a).) This CEQA rule of analysis serves to assure that a large project is not chopped up into many smaller ones, resulting in piecemealing or segmenting of environmental review and masking the full scope of project impacts. Put another way, "a narrow view of a project could result in…overlooking its cumulative impact by separately focusing on isolated parts of the whole." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App.4th 713, 714.) Courts have determined that an EIR must include analysis of the environmental effects of a future action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. This standard involves determining whether the EIR has left out of the environmental analysis a "crucial element" or "integral part" of the project, without which the project cannot go forward. (*National Parks & Conservation Ass'n v. County of Riverside* (1996) 42 Cal.App.4th 1505, 1519.) Where an action is not a crucial element of the project, but merely contributes to the same pool of cumulative impacts, the action may be included in the EIR's analysis of cumulative impacts instead. Using this definition of piecemealing, the Throughput Increase Project is not dependent upon the Rail Spur Project since there is adequate crude supply for the SMR even without the rail project. The project has "independent utility" under CEQA since the ability of the SMR to operate at the maximum approved throughput level is based on the existing infrastructure and current available crude supply, it is not dependent on the Rail Spur Project.
PHJ-03	Section 4.9.3 discusses the thresholds of significance. The thresholds are basically divided into 2 parts: noise levels which would exceed applicable codes and noise levels which would exceed a given increase above the baseline noise levels. This addresses two areas of noise impacts, as discussed in the

Responses to John Phipps Comments

	EIR, to address levels of perceptibility. The noise levels at the closest receptors are based on noise modeling and in-field measurements. The levels listed in Section 4.9 (Noise and Vibration) are not arbitrary, but are based on the noise thresholds.
PHJ-04	The EIR utilized accepted acoustical engineering practices to assess the noise impacts using sophisticated models. This approach also took into account the subjective nature of noise impacts. Horn activity would be prohibited while at the SMR site. Train activities are currently ongoing at the SMR, and these were assessed from various points in the community (see Appendix D).
PHJ-05	The Federal regulation that is cited in the comments applies to operations on the mainline track. The operations on the SMR property would be under the control of Phillips 66 and they have the ability to limit horn activity while the trains are on their property.