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. STP-01

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. STP-02

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." STP-03

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 than 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. STP-04

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. STP-05

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. STP-06

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. STP-07

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. STP-08

9. The statement on 4.3-3 that the federal PM10 statndards were not exceeded in any of these years is very misleading. As you know the Federal PM10 standards have been violated for the STP-09

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. STP-09 cont

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. STP-10

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. STP-11

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.

STP-12

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. STP-12 cont

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. STP-13

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. STP-14

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). STP-15

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 STP-16

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. STP-16 cont

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. STP-17

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 STP-18

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.

STP-18 cont

Responses to Paul Stolpman Comments

STP-01	The RDEIR Aesthetics section considers all public viewpoints surrounding the project, and specifically addresses viewpoints associated with the developments and recreation east of Highway 1. The project location was directly viewed and analyzed from each of these potential viewpoints. The analysis, potential impacts and mitigation measures identified in the RDEIR Aesthetic section include and specifically address views from the residential and recreational developments east of Highway 1, including Trilogy. Key Viewing Areas (KVAs) along Highway 1 provide a fair representation of how the majority of the public will experience the project. Highway 1 has the greatest traffic volume, is the closest public roadway and is a primary regional and local transportation route. KVAs along Highway 1 were positioned at major entrances to the Trilogy and other east side development to further increase their representative value. KVA-2, at the intersection of Highway 1 and Via Concha is at an elevation of approximately 200 feet above sea level. The closest residential street (and golf course) east of the project is at an elevation of approximately 235 feet above sea level. Potential viewpoints along Louise Lane and Eucalyptus Road rise to approximately 250 feet above sea level. Although the 35 to 50-foot viewpoint elevation difference between Highway 1 and the viewpoints to the east is not substantial when applied to the 0.5 to 1.5 mile viewing distance, field analysis showed that some public viewpoints would have slightly increased visual exposure to the project compared to views from Highway 1. This increased visual exposure would mostly occur through the 600-foot gap in the existing approximately one-mile long windrow of mature eucalyptus trees paralleling the east side of Highway 1. The RDEIR analyzed views from these elevated viewpoints, and includes mitigation measures which would minimize visual impacts from these areas. In addition, field review showed that this somewhat increased exposure also includes greater visibility of the existing Santa Maria Refinery, coke processing facility, railroad tracks and other development. As seen from these elevated locations the project would not block views of the Pacific Ocean, coastline, dunes, riparian corridors, or agricultural field patterns. Direct observation showed that from the vast majority of potential public viewpoints within the developed and recreation areas east of Highway 1, views of the project would be substantially or completely blocked by some combination of intervening vegetation, landform, distance or existing residential and recreational development. The RDEIR identifies and acknowledges potential impacts to the scenic vista and requires mitigation measures such as the screening berm which would reduce those impacts to a less than significant level. The RDEIR also notes that the project would not block views of the Pacific Ocean, sweeping coastline, dunes, riparian corridors, or agricultural field patterns.

STP-02	The commenter is correct that the air quality construction impacts were found to be less than significant with mitigation (Class II). The text in the Executive Summary has been changed.
STP-03	Emission reduction credit information has been added to the final EIR, indicating that there are sufficient emission reduction credits available with the SLOCAPCD to offset the criteria pollutants generated by the project within SLOC. The SLOCAPCD has a well established program of credits for criteria pollutants and GHG which can be used to offset the emissions increases. The mitigation measures have been developed in coordination with the SLOCAPCD. ERC are standard practice in many air districts state-wide to reduce the impacts of criteria pollutant emissions
STP-04	It is unclear whether the County is preempted from imposing mitigation measures to reduce the potential for significant impacts along UPRR's mainline. While requiring certain tiered locomotive engines would reduce potential ROG+NOx and DPM emissions, it is possible that the County may not be able to require Phillips to contract with UPRR to use only these types of engines for its Project-related shipments. Mitigation measure AQ-2a would allow the Applicant to mitigate its Project-related air quality impacts by securing on and off-site emission reduction credits through the SLOAPCD. As this measure does not require the action or involvement of UPRR, it is questionable that such a measure would be preempted by federal law. Given that the County may be preempted, the RDEIR concludes that air quality impacts relating to criteria pollutant emissions are potentially significant and unavoidable (Class I). This meets the lead agency's information disclosure requirements under CEQA and will allow County decision makers to evaluate the full spectrum of potential environmental impacts as well as possible measures that would mitigate those impacts. It is the County decision makers that will have to make a determination on the issue of preemption if they decide to approve the project.
STP-05	The use of SLOCAPCD thresholds is supported by the SLOCAPCD in their review of the EIRs for this project. The mitigation measures have been developed in coordination with the SLOCAPCD. ERC are standard practice in many air districts state-wide to reduce the impacts of criteria pollutant emissions. ERC are only listed as mitigation for ozone precursors or GHG. The use of credits for DPM or PM have been removed from the EIR.
STP-06	The baseline risks evaluated in the EIR are related to risks presented by the SMR and its emissions and activities. Baseline risk levels associated with other industries or activities in the community, such as vehicles along Highway 1 or Willow Road, or wind-blown dust from the dunes, is outside the scope of the EIR and outside the scope of health risk guidance such as the Guidelines for conducting risk assessments as published by OEHHA and CARB.
STP-07	The statements on page 4.3-2 are general in nature and dune dust from off-road

	vehicle activity would be classified as road dust. To the EIR prepares knowledge, no risk assessment has been conducted for the dune dust generated by off-road activity at the Ocean Dunes.
STP-08	$PM_{2.5}$ is a subset of PM_{10} as all $PM_{2.5}$ particles are also PM_{10} particles. The subset reference on page 4.3-3 of the RDEIR is in reference to this terminology. The text has been clarified in the FEIR.
STP-09	As per monitoring results, the Federal Standard was not exceeded at the stations monitoring for PM during the years listed. These results are based on the monitoring stations as compiled by the CARB. However, SLOCAPCD also monitors the CDF station, which does not report to CARB. This station recorded exceedances of the Federal PM_{10} and $PM_{2.5}$ as reported in the SLOCAPCD 2013 Annual report: "South County air quality continues to be impacted by dust blown from the Oceano Dunes State Vehicular Recreation Area (ODODSVRA) along the coast. Two exceedences of the federal PM_{10} standard occurred in 2013 at our CDF site located directly downwind of the dunes, and numerous exceedences of the more stringent state PM_{10} standard were recorded at all 3 monitoring sites located on the Nipomo Mesa (Mesa2, CDF, and Nipomo Regional Park). In addition, the federal 24-hour $PM_{2.5}$ standard was exceeded three times at CDF, and for the first time this site exceeded the federal and state standard for annual average $PM_{2.5}$." (SLOCAPCD Annual Report 2013 page 1). Text has been modified in the EIR to include this information.
STP-10	Meteorological data was utilized as recommended by the SLOCAPCD.
STP-11	The fugitive dust emission calculations are conducted as per recommendations by CARB and codified in the CalEEMod model. The CalEEMod modeling inputs and outputs are included in the air quality appendix.
STP-12	The use of SLOCAPCD thresholds is supported by the SLOCAPCD in their review of the EIR for this project. The thresholds are taken from the SLOCAPCD CEQA Handbook, and are what San Luis Obispo County Planning used to assess the significance of air quality and GHG impacts in EIRs.
STP-13	Both the SLOCAPCD and the County would be required to monitor the implementation of the mitigation measures included in the EIR. The Applicant would be required to fund the monitoring by APCD or County staff to ensure compliance.
STP-14	Watering requirements are detailed in the CalEEMod model and in the mitigation measure as to the number of times each day that watering is required to be conducted (not the volume), thereby ensuring that dust level are controlled. In addition, monitoring of any dust produced by the project is

	required.
STP-15	Both the SLOCAPCD and the County would be required to monitor the implementation of the mitigation measures included in the EIR. The Applicant would be required to fund the monitoring by APCD or County staff to ensure compliance.
STP-16	According to an article in Bloomberg in 9/2014, GE has taken orders for over 1,000 new Tier 4 locomotives that it will be producing in 2015. So the Tier 4 locomotives are feasible mitigation, are available and starting to enter the market this year (http://www.bloomberg.com/news/2014-09-29/well-timed-bet-has-ge-ahead-of-caterpillar-in-locomotives.html). Cummins has more than 100 Tier 4 rail vehicles on order extending from 1,200 hp (895 kW) up to 5,400 hp (4,027 kW) of installed power, featuring the latest generation of Cummins 15-liter to 95-liter engines with integrated Selective Catalytic Reduction (SCR) exhaust after-treatment. The installations include both single- and innovative multi-engine designs with a power-on-demand capability to significantly reduce fuel consumption and carbon emissions. (http://www.railwayage.com/index.php/mechanical/locomotives/cummins-says-its-on-top-of-tier-4.html?channel=) All new locomotives or remanufactured/rebuilt locomotives starting in 2015 are required to be Tier 4. Clearly, use of Tier 4 locomotives is a feasible mitigation measures so long as they County is not preempted by Federal law from implementing mitigation measures on the UPRR mainline.
STP-16	The mitigation measures for toxic and criteria pollutant impacts include the requirement to utilize Tier 4 locomotives, which are substantially cleaner than most locomotives currently operating. Tier 4 locomotives are available in 2015. However, this mitigation measure may be preempted by Federal requirements. According to an article in Bloomberg in 9/2014, GE has taken orders for over 1,000 new Tier 4 locomotives (the Evolution Series locomotives) that it will be producing in 2015 (Bloomberg 2014-09-29 "Well Timed Bet Has GE Ahead Of Caterpillar In Locomotives"). GE and Caterpillar are the current leaders in the development of Tier 4 locomotives. GE (http://www.getransportation.com/locomotives/) indicates that the Tier 4 locomotives will be available in 2015. Testing of the GE Tier 4 engine has been ongoing (http://www.getransportation.com/news/). Caterpillar indicates that it doesn't expect to offer a locomotive complying with the Tier 4 standards until 2017 (Wall Street Journal July 24, 2014 "Caterpillar Scales Back Forecast"). GE utilizes only engine design in order to achieve Tier 4 emissions levels while Caterpillar most likely will utilize both engine design and after-treatment utilizing SCR-type technology. GE maintains an estimated 70% of the locomotive market in the U.S. (as per the Wall Street Journal). So the Tier 4

	locomotives are feasible mitigation, are available and starting to enter the market this year. As a note, GE is currently selling Tier 4 "Credit User" locomotives in the first half of 2015 (http://trn.trains.com/, New Locomotive Deliveries Begin In 2015 With 'Credit User' Provision). A Credit User locomotive is essentially a Tier 3 emissions-equipped locomotive built after the Jan. 1, 2015, implementation date for Tier 4 emissions. General Electric was able to generate and bank credits by the use of its Energy Saving Design Features such as Distributed Power and Consist Manager on existing GE locomotives. These credits can then be applied to new locomotives to offset the difference between the differing emission requirements of Tier 3 and Tier 4. Any locomotive built using credits will be labeled as such on the builders plate on the locomotive. General Electric plans to build only Credit User and non-Tier (for outside-the-US customers) locomotives during the first part of 2015, and begin the switchover to production to Tier 4 locomotives beginning in the second quarter of 2015.
STP-17	Offset credits are used in the EIR to mitigate the impacts of criteria pollutant emissions, which can contribute to the formation of ozone throughout the air district. Emissions of toxic pollutants contribute to cancer risks and are generally more local impacts. Emission credits are not proposed for these impacts. The use of DPM credits was removed from the final EIR. The mitigation measures for toxic impacts are to utilize Tier 4 locomotives, which are substantially cleaner than most locomotive currently operating and Tier 4 locomotives are available in 2015. However, this mitigation measure may be preempted by Federal requirements. Emission reduction credit information has been added to the final EIR, indicating that there are sufficient emission reduction credits available with the SLOCAPCD to offset the criteria pollutants generated by the project within SLOC. The SLOCAPCD has a well established program of credits for criteria pollutants and GHG which can be used to offset the emissions increases. The mitigation measures have been developed in coordination with the SLOCAPCD. ERC are standard practice in many air districts state-wide to reduce the impacts of criteria pollutant emissions
STP-18	The use of a cumulative Class III for only onsite criteria pollutants is meant to indicate that no additional mitigation is required above and beyond that required for the individual projects in order to be less than significant.