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DATE: August 25, 2015

TO: Board of Supervisors

FROM: Sylvia Gallegos, Deputy County Executive

SUBJECT: Resolution in Opposition to the San Luis Obispo County Rail Spur Extension Project

RECOMMENDED ACTION

Under advisement from August 11, 2015 (Item No. 10): Adopt Resolution and approve letters opposing the Phillips 66 Rail Spur Extension and Crude Oil Unloading Facility in San Luis Obispo County. (Roll Call Vote) (Office of the County Executive)

FISCAL IMPLICATIONS

No fiscal implications associated with the recommended action.

REASONS FOR RECOMMENDATION

On August 11, 2015 (Item No. 10), the Board of Supervisors directed County Counsel and the Administration to prepare a Resolution and letter in opposition to a project to extend a rail spur from the Union Pacific rail mainline in order to unload trains carrying heavy crude to the Phillips 66 Santa Maria Refinery in Nipomo, an area of unincorporated San Luis Obispo County, for consideration by the Board of Supervisors at the August 25, 2015 meeting.

Phillips 66, a publicly traded oil company, has proposed to build and operate an oil unloading facility at the existing Santa Maria Refinery (Rail Spur Project) designed to accommodate trains carrying approximately 80 tank cars of crude oil to the refinery. The proposed Rail Spur Project would allow for the unloading of up to five trains per week, with a 250 annual maximum number of trains, with each carrying over 2 million gallons of heavy, high-sulfur crude oil from North American oilfields. Union Pacific Railroad (UPRR) would be responsible for delivering the trains to the Santa Maria Refinery.

Trains would travel from different oilfields and/or crude oil loading points and could arrive

from the north or south. The Rail Spur Project would have a direct impact on Santa Clara County because the proposed rail route leading to the Santa Maria Refinery from the north travels through Santa Clara County on the UPRR rail line, traveling through Milpitas, downtown San Jose, and then parallel to Highway 101 through Morgan Hill and Gilroy.



Status of Project Review

A Revised Draft Environmental Impact Report (DEIR) was released on October 10, 2014, with the comment period ending on November 24, 2014, and it evaluated, among other impacts, the effect of the Rail Spur Project on those areas along the mainline UPRR route. **The Revised DEIR identified the main hazard of the Rail Spur Project as potential accidents along the UPRR rail line resulting in oil spills, fires, and explosions, and the risk was found to be significant if the event were to occur in a location where long stretches of tracks are in close proximity to heavily populated areas, such as, in Santa Clara County.**

The Revised DEIR also concluded that the Rail Spur Project would have the following significant environmental impacts to areas on the proposed route including areas in Santa

Clara County along the UPRR line:

- **Public Services and Utilities:** The impact to fire protection and emergency services along the UPRR mainline was reported to be significant and unavoidable in the event of fire or explosion, and many of the local emergency responders along the rail line lack adequate resources to respond to oil-by-rail accidents – such as, rural areas or areas that rely upon volunteer firefighters.
- **Air Quality:** Air toxic emissions from the mainline rail operations would be significant and unavoidable for areas in close proximity to populated areas and where there is a speed limit restriction on trains of less than 30 mph, and in those locations the 30-year cancer risk would exceed air quality thresholds; Greenhouse gas emissions in the State of California could be significant and unavoidable.
- **Water Resources:** Accidental spills along the UPRR mainline were found to be significant and unavoidable in the event of a spill in areas adjacent to sources of surface and groundwater.
- **Agricultural Resources:** If there was an oil spill along the UPRR tracks adjacent to agricultural crops, there would be significant and unavoidable impacts due to direct oiling, fire, or surface and groundwater impacts.
- **Biological Resources:** In the event of an oil spill along the UPRR tracks adjacent to sensitive biological areas, there could be impacts to habitat for listed and special status species and habitat for rare plants and animals, and these impacts were found to be significant and unavoidable.

According to the Revised DEIR, Phillips 66 has proposed to ship the crude oil to the refinery in non-jacketed CPC-1232 tanker cars, tank cars adhering to the Association of American Railroads Casualty Prevention Circular (CPC) 1232 standards for transporting crude oil or ethanol that apply to tanks constructed after October 1, 2011. While the CPC-1232 standards were introduced by the rail industry in 2011 as an improvement over older models, adding requirements for thicker shells and pressure-relief devices, the tanker cars involved in the most recent derailments listed below in Ontario, West Virginia, Illinois, North Dakota, and Montana in 2015 all met the 2011 standards, yet failed to prevent tank ruptures or fires when those trains derailed.

Risks of Hazardous Material Shipments by Rail

Federal agencies have documented a significant increase in the number of rail accidents involving oil rail cars in the U.S. in recent years. According to the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA), more oil was spilled in train accidents in the U.S. in 2013 than in the previous 38 years combined – totaling 1.15 million gallons. The PHMSA also reports that in 2014, there were more train

accidents resulting in oil spills than in any other year on record, with more than 140 unintentional releases reported from railroad tankers – nearly a six-fold increase in the average number of spills per year since record keeping began in 1975.

Shipping hazardous materials is inherently dangerous, and the dangers of transporting crude oil by rail are compounded by the fact that the highly flammable material is often shipped in large unit trains that consist of upwards of 100 tankers¹. Below is a list of recent derailments of trains carrying oil in North America, and the damage the accidents caused:

- **Montana – July 2015:** More than 20 cars from a 108-car oil train derailed, and an estimated 35,000 gallons of oil spilled from the four cars that ruptured.
- **North Dakota – May 2015:** A 109-car crude oil train derailed, causing six cars to catch fire, and an estimated 60,000 gallons of oil to spill.
- **Ontario, Canada – March 2015:** Thirty-eight tanker cars on a 94-car train carrying crude oil derailed, causing a fire that burned for days and leaked oil into an adjacent waterway.
- **Illinois – March 2015:** Twenty-one of a train's 103 tank cars carrying crude oil derailed and at least five cars ruptured, causing fires and wreckage to burn for several days and threatening a tributary to the Mississippi River and the Upper Mississippi National Wildlife and Fish Refuge, one of the most complex ecosystems in North America.
- **West Virginia – February 2015:** Twenty-seven railcars carrying crude oil derailed, 19 of which caught fire and burned for days, spilling oil into the Kanawha River, forcing the evacuation of more than 100 people, and resulting in the state's Governor to declare a state of emergency.
- **Ontario, Canada – February 2015:** Twenty-nine rail cars on a crude oil train derailed, with seven catching fire and more than 264,000 gallons of crude oil being spilled.
- **Virginia – April 2014:** Over a dozen tank cars derailed and approximately 30,000 gallons of oil burned or spilled into the James River, forcing the evacuation of more than 300 residents.
- **Pennsylvania – January 2014:** While no oil was spilled, six cars in a 100-car train carrying oil derailed on a bridge over the Schuylkill River in Philadelphia near the University of Philadelphia, a highway, and three hospitals.
- **North Dakota – December 2013:** A 106-car train crashed and caught fire, causing a

¹ Unit trains consist of approximately 80-100 tank cars and associated locomotives and other supporting cars that stay together as one assembly fully dedicated to delivery of crude oil. Manifest trains may have a variety of car types and cargos, other than crude oil, that are not fully dedicated as are unit trains. The project may utilize unit or manifest trains.

blaze that engulfed at least 21 cars of the cars, spilled 476,000 gallons of crude oil, and forced more than 2,000 people to evacuate their homes.

- **Alabama – November 2013:** Twenty-five oil tank cars of a 90-car train derailed and 750,000 gallons of oil spilled into the Alabama wetlands.
- **Quebec, Canada – July 2013:** The early morning derailment of a 72-car train carrying crude oil through Lac-Mégantic, Quebec set off a series of massive explosions, killing 47 people, spilling 1.5 million gallons of oil, and destroying much of the downtown area - with the total cost to clean up, remediate, and rebuild the town estimated to be as high as \$2.7 billion.

Analysis from the U.S. Department of Transportation (DOT) of the risks associated with crude oil shipments in the U.S. projected that trains carrying oil would derail an average of 10 times a year over the next two decades, causing more than \$4 billion in damage. **The July 2014 DOT report predicted that if just one of these anticipated derailments occurred in a high-population area in the U.S., it could kill more than 200 people and cause approximately \$6 billion in damage.**

Timeline of Rail Spur Extension Project

The County of San Luis Obispo Planning and Building Department (SLO Planning) released a status update in July of this year, indicating that it is preparing the release of a Final Environmental Impact Report (EIR) for the project. SLO Planning is reviewing new regulations released by the U.S. Department of Transportation and the California Office of Environmental Health Hazard Assessment with respect to the San Luis Obispo County's EIR, and reported that when a final EIR is complete and available for review, a notification of its release would be issued. SLO Planning reported that it anticipates that the Final EIR will be completed and released sometime in the next two months.

A timeline of the project review to-date is as follows:

- **June 2013** – Phillips 66 submitted a Land Use Permit Application to SLO Planning to extend a rail spur off of the Union Pacific rail mainline in order to unload up to five trains per week carrying heavy crude oil to the Santa Maria Refinery in San Luis Obispo County.
- **November 27, 2013** – Draft EIR for the project was released, and the comment period closed on January 27, 2014.
- **October 10, 2014** – A Revised DEIR for the project was released, and the comment period closed on November 24, 2014.
- **July 1, 2015** – SLO Planning released a status update, indicating that it is preparing the

release of a Final EIR for the project.

According to SLO Planning, the next available opportunity to provide public input on the project will be when the County of San Luis Obispo's Planning Commission meets to consider the Land Use Permit Application for the project – a meeting that is anticipated to be scheduled sometime this winter following the release of the Final EIR.

After the Planning Commission takes action on the project, an appeal of any Commission decision would be made to the County of San Luis Obispo Board of Supervisors within 14 days of the Commission's action. If an appeal were made to the Board of Supervisors, there would be additional public hearings held on the project, and an opportunity for public input to be received. Following public hearings and a decision by the Board of Supervisors on the appeal, any Board action could then be appealed to the California Coastal Commission.

The appeal to the Board of Supervisors must be made to the Planning Commission Secretary, Department of Planning and Building, and the appeal to the California Coastal Commission must be made directly to the California Coastal Commission Office.

Recent State and Federal Measures to Improve Crude-By-Rail Transportation Safety

The federal government has primary authority over railroad safety, with the state enforcing federal requirements and California specific rules, and the state and local agencies taking the lead in the area of emergency planning, preparedness, and response. In conjunction with Canadian transportation officials, the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) released final oil transportation safety rules on May 1, 2015, directed at improving rail safety in North America and reducing the risks of future catastrophic events. The Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains (Final Rule) apply to the operation of "high-hazard flammable trains" (HHFTs), trains with a continuous block of 20 or more tank cars loaded with a flammable liquid or 35 or more tank cars loaded with a flammable liquid dispersed through a train. The Final Rule adopted the following standards for operation of HHFTs:

- **Enhanced Standards for New and Existing Tank Cars:** New tank cars constructed after October 1, 2015 are required to meet enhanced DOT Specification 117 design or performance criteria for use in an HHFT, and existing tank cars must be retrofitted to DOT retrofit design or performance standards, with a timeline for retrofits based on two factors – the type of car and the packing group (degree of risk of hazardous material transported).
- **Enhanced Braking:** HHFTs must have in place a functioning two-way end-of-train

device or a distributive power braking system, and trains comprised of 70 or more loaded tank cars containing certain flammable liquids and traveling at greater than 30 mph must be operated with an electronically controlled pneumatic braking system by January 1, 2023.

- **Reduced Operating Speeds:** HHFTs are restricted to 50-mph in all areas, and HHFTs that contain any tank cars not meeting the enhanced tank standards must operate at a 40-mph speed restriction in high-threat urban areas.
- **Rail Routing – Risk Assessment and Information Access:** Railroads operating HHFTs would be required to perform a routing analysis and select a route based on, at minimum, 27 safety and security factors, and railroads must ensure that routing decision information will be provided to the State and regional emergency response centers, and that the State or local officials may request information related to the routing of hazardous materials through their jurisdictions.

The Revised DEIR specifies that Philipps 66 has proposed shipping crude oil to the Santa Maria Refinery in non-jacketed CPC-1232 tank cars, and that the crude oil transported for the Rail Spur Project is assumed to be in Packing Group I, the classification indicating the highest level of danger. According to the DOT Final Rule mandated timeline for retrofitting existing tank cars, the non-jacketed CPC-1232 tank cars in Packing Group I or Crude Oil service need not be retrofitted to the new DOT enhanced car standards (DOT-117) until April 1, 2020.

Municipalities, public safety advocates, and environmental groups have expressed concerns that the final DOT rules fail to adequately provide for the safe transportation of oil by rail. Criticisms of the new DOT rules have included the following concerns:

- Although the DOT requires that old tank cars be retrofitted, the rules impose weaker standards for retrofitted cars than for new tank cars – for example, the new tank standards require thicker shells, measuring 9/16”, while retrofitted cars shells must only be made to be 7/16” thick.
- The DOT mandated phase-out of existing tank cars are unduly long and will still leave hazardous tank cars on the rails for another 5-10 years, depending of the type of car and the hazardous material transported by the train.
- The rules permit un-retrofitted tank cars to transport crude oil in non-HHFTs indefinitely.

Oil industry trade groups have brought legal challenges to the new federal oil-by-train safety rules, arguing that DOT timelines for retrofitting current tank cars are too burdensome, the requirements for the new braking systems impose unreasonable expenses in order to

implement an unproven technology, and that these mandates are beyond the PHMSA's statutory authority to impose.

Recent California legislation related to oil-by-rail and hazardous material transport include the following bills:

- A currently active bill, **AB 22** (Rodriguez), would provide fire departments with the necessary resources to train firefighters in response methods for oil-by-rail spills. Upon an appropriation by the Legislature, the bill requires the Curriculum Development Advisory Committee to review the curriculum of courses of instruction offered by public and private programs on this hazard, compile a list of those available courses, and make it available to all fire departments in the state. The bill also requires the Office of Emergency Services to establish a program to reimburse fire departments for costs incurred in sending their firefighters to training. AB 22 will be heard by the Senate Appropriations Committee on August 17, 2015.
- Last year's Public Resources Budget Bill, **SB 861**, expanded the state's oil spill prevention and response program to cover all statewide surface waters at risk of oil spills, not just coastal and marine waters. Funding for industry preparedness, spill response, and continued coordination with local, state, and federal government along with industry and non-governmental organizations was included in the measure.
- **SB 84**, the 2015-16 General Government Budget bill signed by the Governor included provisions on the issue of transporting hazardous material by rail. Specifically, the bill requires the State Office of Emergency Services to work with relevant local and state agencies to develop and adopt a state fire service and rescue emergency mutual aid plan to serve as an annex to the State Emergency Plan. The State Emergency Plan addresses the state's response to extraordinary emergency situations. The plan describes the methods for carrying out emergency operations and the process for rendering mutual aid.

The bill also creates the Regional Railroad Accident Preparedness Response Force within the Office of Emergency Services. The force will be responsible for providing response capabilities in the event of a release of hazardous materials that were being transported by rail. The bill requires the Director of the Office of Emergency Services to establish a schedule of fees to be paid by each entity owning any of the 25 most hazardous commodities that are transported by rail in California. The fee is to be based on each loaded rail car that travels in the state. The fee is to reflect the cost of preparations to respond to the release of hazardous materials from a rail car or a railroad accident involving a rail car.

Because of the potential significant environmental hazards and community risks to Santa

Clara County associated with the Rail Spur Project as currently set forth by the Revised Draft Environmental Impact Report released in October 2014, the Administration recommends that the Board of Supervisors adopt a Resolution and letters expressing the County's opposition to the project.

CHILD IMPACT

The recommended action will have no/neutral impact on children or youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

BACKGROUND

On August 11, 2015 (Item No. 10), the Board of Supervisors directed County Counsel and Administration to draft a Resolution and letters in opposition to the San Luis Obispo County Rail Spur Expansion Project for consideration by the Board of Supervisors at the August 25, 2015 meeting.

CONSEQUENCES OF NEGATIVE ACTION

The Board of Supervisors would not express the County of Santa Clara's opposition to the San Luis Obispo County Rail Spur Expansion Project.

ATTACHMENTS:

- BOS Resolution Opposing the Phillips 66 Rail Spur Project (PDF)
- BOS Resolution Exhibits (PDF)
- BOS Letters Opposing the Phillips 66 Rail Spur Project (PDF)
- Map of Projected UPRR Mainline Rail Route Through San Jose (PDF)