

# Rodeo Renewed Project

Final Revised Environmental Impact Report

County File No. CDLP20-02040

State Clearinghouse No. 2020120330

January 2024





## **RODEO RENEWED PROJECT**

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*Prepared for:*



Contra Costa County  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553

*Prepared by*

Stantec Consulting Services Inc.  
2890 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833  
[www.stantec.com](http://www.stantec.com)





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Appendix C	Odor Prevention and Management Plan

## Acronyms / Abbreviations

AQMD	Air Quality Management District
ATC	Authority to Construct
AVO	Audio, visual, and olfactory
BAAQMD	Bay Area Air Quality Management District
BMPs	best management practices
bpd	barrels per day
Cal/OSHA	California Division of Occupational Safety and Health
CalARP	California Accidental Release Prevention
CalEnviroScreen	California Communities Environmental Health Screening Tool
CARB	California Air Resources Board
CCR	California Code of Regulations
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CI	carbon intensity
CO <sub>2</sub>	carbon dioxide
CO <sub>2e</sub>	carbon dioxide equivalent
CSLC	California State Lands Commission
EBMUD	East Bay Municipal Utility District
EIR	Environmental Impact Report
EJ	Environmental justice
FID	Flame-ionization detector
FMP	Flare Minimization Plan
GHG	greenhouse gas
HEFA	Hydroprocessed Esters and Fatty Acids
HMBP	Hazardous Materials Business Plan
HTHA	High Temperature Hydrogen Attack
LCFS	Low-Carbon Fuel Standard
LDAR	Leak Detection and Repair
LKS	Lempert-Keene-Seastrand
LUP	Land Use Permit
MLD	Most Likely Descendent
MM	mitigation measure
MMRP	Mitigation Monitoring and Reporting Program
MOC	Management of Change
NAHC	Native American Heritage Commission

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NM	NOx Mitigation
NPDES	National Pollutant Discharge Elimination System
OPMP	Odor Prevention and Management Plan
OSHA	Occupational Safety and Health Administration
PG&E	Pacific Gas and Electric
PRC	Public Resources Code
Project or proposed Project	Rodeo Renewed Project
PTO	Permit to Operate
PTU	Pre-treatment Unit
REIR	Revised Environmental Impact Report
RMP	Risk Management Plan
RWQCB	Regional Water Quality Control Board
SB	Senate Bill
SPCC	Spill Prevention, Control, and Countermeasure
SWPPP	Storm Water Pollution Prevention Plan
TOLs	Terminal Operating Limits
VMT	vehicle miles traveled
VOC	volatile organic compound

# 1 Introduction

## 1.1 BACKGROUND

The California Environmental Quality Act (CEQA) of 1970 (Public Resources Code [PRC] Sections 21000 et seq.) and the CEQA Guidelines (California Code of Regulations Title 14, Section 15000) require a public agency with discretionary authority to issue a permit or other approval to evaluate the environmental impacts of its action. Phillips 66 (applicant) submitted a Land Use Permit (LUP) application for its proposed Rodeo Renewed Project (Project) with the Contra Costa County Department of Conservation and Development in 2020. Approval or denial of the LUP is a discretionary action requiring review under CEQA (PRC Section 21080). As the CEQA Lead Agency with discretionary authority for approving the LUP (PRC Section 21067; California Code of Regulations Title 14, Section 15367), in May of 2022, the Board of Supervisors for Contra Costa County (County) certified an Environmental Impact Report (referenced herein as the “2022 EIR”) for the Project as having been prepared in compliance with CEQA and approved the Project. The 2022 EIR can be found in its entirety at the County’s website: <https://www.contracosta.ca.gov/RodeoRenewed> (link)

In June 2022, a CEQA lawsuit was filed in the Contra Costa County Superior Court challenging the certification of the 2022 EIR and the approval of the Project. (Communities for a Better Environment, et al., v. County of Contra Costa, et al., Contra Costa County Superior Court Case No. N22-1080.) On July 21, 2023, the Superior Court, the Honorable Edward G. Weil presiding, issued a Statement of Decision in which the Superior Court remanded to the County for reconsideration three issues in the 2022 EIR (refer to Appendix A of the Draft REIR discussion below). On August 23, 2023, the Superior Court entered judgment and issued a peremptory writ of mandate to the County to decertify the 2022 EIR and to conduct further environmental review in compliance with CEQA to remedy the three issues identified in the Statement of Decision. On October 12, 2023, the Superior Court reaffirmed its Statement of Decision (see Appendix B of this Final REIR), allowing the Land Use Permit (Contra Costa County 2022a) to remain in place and allowing Project construction activities, and ruled that the judgment would be modified to enjoin Project operations until further order of the Court. The Superior Court did not identify any other CEQA violations, and the remaining content of the 2022 EIR is valid.

The County prepared a Draft Revised Environmental Impact Report (Draft REIR) to address the three issues identified in the Statement of Decision and to conduct further environmental review in compliance with CEQA as directed by the Superior Court. Consistent with the peremptory writ of mandate issued by the Superior Court, the Revised EIR need only address those issues specified in the Statement of Decision as necessary to achieve compliance with CEQA. Except for the three issues specified in the Statement of Decision, the remainder of the 2022 EIR previously prepared and certified by the County was either not challenged or was found by the Court to be in compliance with CEQA, and therefore remains valid. The Final 2022 EIR (State Clearinghouse No. 20200120330), to the extent it does not conflict with the additional information provided in this Final REIR, is incorporated herein by reference.

Analyses in the 2022 EIR that were not identified in the Statement of Decision and peremptory writ of mandate as requiring reconsideration have not been revised and were not recirculated. Pursuant to CEQA Guidelines Section 15088.5(f)(2), reviewers were notified that their comments should be limited to the revised chapters or sections of the Draft REIR. Pursuant to CEQA Guidelines Section 15088.5(f)(2)(ii), written responses have been prepared only to comments received regarding the contents of the REIR.

## 1.2 PURPOSE OF THIS FINAL REVISED ENVIRONMENTAL IMPACT REPORT

As described in CEQA Guidelines Section 15089, the Lead Agency must evaluate comments received on the Draft EIR and prepare written responses and consider the information contained in a Final EIR before approving a project. The purpose of a Final EIR is to provide an opportunity for the lead agency to respond to comments made by the public and agencies regarding the Rodeo Renewed Project Draft Revised EIR (REIR). Pursuant to CEQA Guidelines Section 15132, a final EIR consists of:

- (a) the Draft EIR or a revision of the Draft EIR; (b) comments and recommendations received on the Draft EIR either verbatim or in summary; (c) a list of persons, organizations, and public agencies commenting on the Draft EIR; (d) the responses of the Lead Agency to significant environmental points raised in the review and consultation process; and (e) any other information added by the Lead Agency.

This Final Revised EIR (REIR) constitutes the second part of the REIR for the Project and is intended to be a companion to the Draft REIR. The Draft REIR for the Project, which was circulated for public review and comment from October 24, 2023, through December 8, 2023, constitutes the first part of the REIR and is incorporated by reference and bound separately (refer to <https://www.contracosta.ca.gov/RodeoRenewed> (link)). Accordingly, the REIR for the Project comprises the following:

- Draft REIR and Appendices
- Final REIR and Appendices

The Draft REIR and Final REIR, as well as the portions of the 2022 EIR determined by the Superior Court to be in compliance with CEQA, will comprise the EIR for the project. The EIR will be considered anew by Contra Costa County for certification. Certification entails determination by Contra Costa County, as Lead Agency, that the EIR has been completed in compliance with CEQA, that the decision-making body reviewed and considered the information in the EIR, and that the EIR reflects its independent judgment. If the EIR is certified, Contra Costa County will file a return to the writ specifying the actions taken to comply with the writ and take necessary actions to discharge the writ.

## 1.3 MITIGATION MONITORING AND REPORTING PROGRAM

Public Resources Code section 21081.6 and State CEQA Guidelines Section 15097 (Mitigation Monitoring or Reporting) require public agencies to establish monitoring or reporting programs for projects approved by a public agency whenever approval involves the adoption of specified environmental findings related to an EIR (also mitigated negative declarations). Accordingly, as Lead Agency, the County has prepared a Mitigation Monitoring and Reporting Program (MMRP) for the proposed Project. See Appendix A of this document.

## 1.4 ORGANIZATION OF THE FINAL REIR

The Final REIR is organized into the following chapters:

- **Chapter 1: Introduction.** This chapter provides the background of the proposed Project and Statement of Decision, describes the purpose of the Final REIR, summarizes the Final REIR public review process, and identifies the contents of each section.
- **Chapter 2: List of Commenters.** Lists the names of agencies, organizations, and individuals who commented on the Draft REIR.
- **Chapter 3: Responses to Comments.** This chapter first presents Master Responses to address topics that apply to numerous comments received on the Draft REIR. This chapter then presents copies of the written comments received. Specific responses to the individual coded comments in each correspondence are provided following each commenting letter/email.
- **Chapter 4: County-Initiated Updates and Errata to the Draft REIR.** This chapter includes revisions to the Draft REIR that represent minor changes or additions in response to some of the comments received on the Draft EIR, and additional edits to provide clarification of Draft REIR text. New text is indicated in double underline and text to be deleted is reflected by double strike through. Text changes are presented in the page order in which they appear in the Draft REIR.
- **Appendix A: Mitigation Monitoring and Reporting Program.** This appendix includes the final MMRP for the Rodeo Renewed Project EIR. The MMRP is the document that will be used by the enforcement and monitoring agencies responsible for the implementation of the Project's mitigation measures and are listed by environmental topic. The MMRP identifies each mitigation measure, the applicable enforcement agency, monitoring agency, monitoring phase, monitoring frequency, and action indicating compliance.
- **Appendix B: Motion to Vacate Judgment and Writ, Amended Judgment Granting Peremptory Writ of Mandate.** This appendix includes two referenced court documents related to the Project.
- **Appendix C: Odor Prevention and Management Plan.** This appendix includes the revised Odor Prevention and Management Plan that incorporates revisions made as a result of responding to comments.



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## 2 List of Commenters

The County received 32 comment letters during the comment period on the Draft REIR for the proposed Project. The table below indicates the numerical designation for each of the 32 comment letters, and the author of the comment letter, received by the County. Letters are grouped by agencies, organizations, and individuals, but are otherwise presented in alphabetical order.

**Table 2-1 Commenters on the Draft REIR**

Commenter	Comment Letter Number
<b>State, Regional, and Local Agencies</b>	
Bay Area Air Quality Management District	1
East Bay Municipal Utility District	2
Stanislaus County	3
<b>Organizations</b>	
Biofuelwatch	4
Community Energy reSource (November 28, 2023)	5
Community Energy reSource (December 8, 2023)	6 <sup>1</sup>
Center for Biological Diversity and Communities for a Better Environment	7
Contra Costa Construction and Trades Council	8
Council of Industries	9
Industrial Association of Contra Costa County	10
International Brotherhood of Boilermakers Local 549	11
International Brotherhood of Electrical Workers Local 302	12
Iron Workers Local 378	13
LiUNA Laborers Local 324	14
Pacific Gas & Electric Company (October 25, 2023)	15
Pacific Gas and Electric Company (October 26, 2023)	16 <sup>1</sup>
Pacific Gas and Electric Company (November 27, 2023)	17
Phillips 66 Community Advisory Panel	18
Plumbers & Steamfitters Local 342	19
Steelworkers Local 326	20
<b>Individuals</b>	
Brandon	21
Brennan, Maureen	22
Brown, Clair	23
Callaghan, Janet	24
Davidson, Charles	25 <sup>1</sup>

<sup>1</sup> Due to the volume of documents, the attachments to Comment Letters 6, 16, and 25 supporting the commenters' comments can be found in their entirety on the County's website: <https://www.contracosta.ca.gov/RodeoRenewed> (link).

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<b>Commenter</b>	<b>Comment Letter Number</b>
Luchini, Richard (December 5, 2023)	26
Luchini, Richard (December 7, 2023)	27
Moore, Mike	28
Pygeorge, Janet	29
Rieser, Nancy	30
Warren, Jan	31
Webster, Ronald	32

## 3 Responses to Comments

### 3.1 INTRODUCTION

This chapter includes copies of the written comments received electronically via [joseph.lawlor@dcd.cccounty.us](mailto:joseph.lawlor@dcd.cccounty.us) by email, or by mail during the public review and comment period on the Draft REIR. This chapter also presents consolidated Master Responses that address recurring comments or topics raised throughout individual comment letters<sup>2</sup>.

As required by CEQA Guidelines Section 15088(c), the focus of the responses to comments is “the disposition of significant environmental issues raised.” Therefore, detailed responses are not provided to comments that do not relate to environmental issues. However, in some cases, additional information has been added for reference and clarity.

### 3.2 MASTER RESPONSES

Because several of the comment letters received had similar concerns relating to the Draft REIR, a set of consolidated responses, or “Master Responses”, were developed to address common concerns and avoid repetition within this chapter. References back to these Master Responses are made throughout the individual responses presented in this chapter:

- Master Response No. 1: Odor Mitigation
- Master Response No. 2: Piecemealing
- Master Response No. 3: Cumulative Impacts
- Master Response No. 4: Feedstock Analysis
- Master Response No. 5: Marathon Renewable Fuels Operations and Hazards
- Master Response No. 6: Carbon Plant and H Cycle
- Master Response No. 7: Scope of the Draft REIR and County Obligations
- Master Response No. 8: Non-CEQA Topics and Project Merits

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<sup>2</sup> Due to the volume of documents, the attachments to Comment Letters 6, 16, and 25 supporting the commenters’ comments can be found in their entirety on the County’s website: <https://www.contracosta.ca.gov/RodeoRenewed> (link).

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## **Master Response No. 1: Odor Mitigation**

The following responds to various concerns commenters raised regarding odor at the Rodeo Refinery.

The Odor Prevention and Management Plan (OPMP) has been revised since the Draft REIR and is presented as Appendix C of this Final REIR. To see the OPMP text changes between the Draft REIR and the Final REIR, see Chapter 4, County-Initiated Updates and Errata to the Draft REIR.

### ***Adequacy of the Draft REIR's Approach to Odor Mitigation***

Certain comments raise concerns regarding the adequacy of the County's revised discussion of mitigation measures relating to odors.

CEQA requires a lead agency to propose and describe mitigation measures to minimize a project's significant environmental impacts. Pub. Resources Code, §§ 21002.1(a), 21100(b)(3). "Any action, whether it be part of the project or imposed as a condition of approval, that is designed to avoid, minimize, rectify, or reduce or eliminate a significant environmental impact . . . qualifies as a mitigation measure." *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 240 (citing CEQA Guidelines, §§ 15126.4(a)(1), 15370.)

The County has determined that operation and maintenance of the Project at the Rodeo Refinery will result in less-than-significant odor impacts with mitigation (refer to Draft REIR, Table 4.3-10, page 9). As described in Draft REIR Section 4.3.9, Impact 4.3-5, robust control measures have been engineered into Project facility design, employing odor control strategies such as sealed covers for potential odor-generating equipment, fixed roof or floating roof tanks, scrubbing and incineration systems, and vapor collection and treatment systems. To address potential unforeseen odorous releases, the County has imposed a number of mitigation measures in the Draft REIR. Mitigation Measure AQ-4 requires Phillips 66 to implement an OPMP to diligently identify and remediate any potential odors generated by the facility, and new Mitigation Measure AQ-5 provides for additional mitigative operating requirements and monitoring procedures at the rail offloading rack area, Tank 100, other renewable storage tanks, and the Pretreatment Unit (PTU).

As part of its Statement of Decision, the Superior Court determined that the 2022 EIR improperly deferred mitigation of odor impacts. Specifically, the Superior Court indicated that the County should have included details of the draft Odor Management Plan in the 2022 EIR or explain why it was impractical or infeasible to do so. The Draft REIR addresses this aspect of the Superior Court's determination in the Draft REIR, Section 4.3-5, page 12 and Appendix E). As noted above, Mitigation Measure AQ-4 requires Phillips 66 to implement the OPMP and integrate the plan as a part of daily operations at the facility.

In addition to incorporating the full OPMP to the REIR, the County has supplemented the OPMP's mitigatory impact (Mitigation Measure AQ-4) with the new Mitigation Measure AQ-5 requiring additional monitoring and mitigation procedures at key facility locations. As an extra level of assurance, this new measure goes so far as to require taking equipment out of service if it is suspected or determined to be responsible for odorous emissions that cannot be otherwise mitigated or controlled. This must be done as soon as practicable, and no later than 24 hours after receiving an offsite odor complaint. Certain commenters argue that the 24-hour time frame should be shortened; however, a shutdown after 24 hours would occur only as the worst-case scenario if no other successful measures or quicker shutdown can be achieved. Given the Project's complexities, the County believes the timeframe provided to be what is effective and reasonably feasible.

Certain commenters also suggest that the OPMP and the Draft REIR's mitigation measures are not in alignment—specifically, these commenters express concern that the actions to mitigate or control odors may not be taken on odors detected through Leak Detection and Repair (LDAR) programs, fence-line monitoring, employee observations, or self-inspections, despite these mechanisms of odor monitoring being identified in the OPMP. The OPMP has been revised to clarify that all sources or processes determined or suspected to contribute to offsite odors shall be mitigated or otherwise controlled as soon as practicable and, if initiated by an offsite complaint, then no later than within 24 hours of receiving the offsite odor complaint.

In its Statement of Decision, the Superior Court noted that an operating permit from an air district could be sufficient to show mitigation had not been inappropriately deferred in some circumstances but found that the County had not established that the Project's Bay Area Air Quality Management District (BAAQMD) permit was enough to make up for the lack of detail about the draft Odor Management Plan in the 2022 EIR. In the Draft REIR, in addition to providing the full OPMP, the County explains in detail why the Project's BAAQMD permits help provide extra assurance of satisfactory mitigation. See Draft REIR, Section 4.3-5, page 11.

The Project received its Authority to Construct (ATC) from BAAQMD in January 2023 (see Draft REIR, Appendix D). As explained in the Draft REIR, “[t]he ATC set forth the conditions to construct the Project, which following completion of the Start-up Notification and required certifications, are expected to be conditions of the associated Permit to Operate (PTO).” The Project's permit incorporates an array of requirements to prevent and manage odors, including those associated with Tank 100, other storage tanks, and the PTU. Among these requirements is the mandate that any odorous emissions sources from the PTU and associated tanks be abated by biofilters and activated carbon vessels. See Draft REIR, Section 4.3-5. The ATC also specifically requires that final design drawings and specifications of odor mitigation equipment be provided to BAAQMD before the Project's permit to operate is issued. The Draft REIR's full discussion of the Project's BAAQMD permit provisions (appearing at Draft REIR Section 4.3-5, pages 11–12), demonstrates that, while the Project does not rely on BAAQMD's odor control requirements alone for odor abatement, these requirements complement the Project's design elements, operational procedures, and OPMP measures to mitigate the risk of potentially significant impacts. Given that the BAAQMD Permit to Operate is already a legal prerequisite to Project operations met by the Project, the County does not find it necessary to include requirement of that permit as a condition of Project approval as some commenters suggest.

The evidence summarized above and set forth in detail in the Draft REIR (including the OPMP in Appendix C of this Final REIR) supports the County's determination that potential odor impacts from the Project will be reduced to a less than significant level by the mitigation measures presented. In making its determination, the County is entitled to rely on the discussion and analysis in the 2022 EIR and the Draft REIR, as well as the input of its staff and other agencies. See, for example, *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 496 (citing agency support for city's mitigation as evidence of its efficacy). No evidence has been presented by commenters that demonstrates that implementation of the measures identified in the Draft REIR will not be effective in mitigating any potentially significant odor impact of the Project. The Draft REIR's mitigation measures incorporate engineered controls; operational procedures and monitoring; and requirements for rapid redress of odors, up to and including equipment shutdown. These measures provide the degree of finality and specificity routinely accepted by courts, particularly where the exact location and type of a given impact is not able to be known in advance. See, for example, *Cal. Oak Foundation v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 278–279 (determining that adequate mitigation had been provided through a combination of measures and best practices as to afford appropriate protection of “any type of [archaeological] resource that might be discovered” during project implementation and rejecting the claim that the project proponent promised “only to take ‘appropriate steps’ to ensure that resources are



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### 3 Responses to Comments

protected”). In sum, the County believes the Draft REIR has provided a sufficiently detailed explanation of the selected mitigation measures and has established how, taken together, these measures will adequately address potential odor impacts from the Project.

Additionally, commenters contend that the County should develop predictions of the Project’s feedstocks and use those predictions to inform the development of odor controls. As explained below in Master Response No. 4, the County is not able to reasonably predict the Project’s feedstock mix beyond the information already provided in the 2022 EIR. Because the Project’s exact feedstock mix is unknown and subject to fluctuation, the Project has been designed with controls to address odors from all the potential renewable feedstock types the Project will be able to process. Attempts to tailor odor mitigation to one particular mix or mixes of feedstocks based on uncertain predictions would risk having incomplete or inadequate mitigation, given the potential for the Project to need to rely on different feedstock types and ratios over time. Rather than engage in a speculative projection of feedstocks and extrapolate an uncertain mitigation approach based thereon, the County has developed Project features and measures that will mitigate odor impacts from the full variety of feedstocks the Project may use.

### **Deferral of Mitigation**

Commenters contend that the County has impermissibly deferred necessary formulation of odor mitigation measures by having a flexible OPMP. As discussed above, the Draft REIR has addressed the Superior Court’s concerns about deferred mitigation for odor impacts by providing the full OPMP document that was not included in the 2022 EIR. The County also expanded its explanation of how the Project’s engineered technologies and complementary BAAQMD permit requirements will help ensure any potential odors from the facility are adequately controlled, and it incorporated an additional mitigation measure (Mitigation Measure AQ-5) to solidify the operating and monitoring procedures expected to bring potential odor impacts below the level of significance.

The County did not impermissibly defer the formulation of odor mitigation measures by committing to mitigation measures that retain flexibility for future conditions.

While a lead agency generally cannot defer the formulation of mitigation measures indefinitely into the future, the details of a mitigation measure may be developed after project approval if including them during a project’s environmental review would be “impractical or infeasible,” provided that the agency commits to mitigation, adopts specific performance standards the mitigation will achieve, and identifies the types of actions that can achieve those standards. CEQA Guidelines, § 15126.4(a)(1)(B). “When, for practical reasons, mitigation measures cannot be fully formulated at the time of project approval, the lead agency may commit itself to devising them at a later time, provided the measures are required to satisfy specific performance criteria articulated at the time of project approval.” *Center for Biological Diversity v. Dept. of Fish & Wildlife*, *supra*, 234 Cal.App.4th at page 241 (internal quotation marks omitted). “Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan.” *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.

As CEQA permits, Air Quality Mitigation Measure AQ-4 commits the County to mitigation while retaining flexibility for future conditions.<sup>3</sup> Under this mitigation measure, Phillips 66 has developed its OPMP, which will be an integrated part of daily operations at the Rodeo facility. The OPMP will provide continuous

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<sup>3</sup> See *City of Hayward v. Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 855 (finding proper deferral and crediting argument that lead agency be allowed to “retain the flexibility to select those programs that best work at a given point in time”); *Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th 941, 971 (finding performance standard rather than prescriptive mitigation measure proper to allow implementation of mitigation to be tailored to future information).

evaluation of the overall system performance, to allow for identification of trends in order to improve the plan, and update of odor management and control strategies as necessary. In addition, the OPMP includes guidance for the proactive identification and documentation of odors through routine employee observations, routine operational inspections, and odor compliant investigations. Most significantly, the OPMP requires that *all* odor complaints received by the facility be investigated as soon as is practical, within the confines of proper safety protocols and site logistics. (For a complete list of OPMP requirements, see Draft REIR Section 4.3, Air Quality Measure AQ-4 and Appendix E.) As these OPMP requirements illustrate and as discussed further above, the County has specified performance standards that will mitigate odor impacts of the Project while retaining flexibility to accommodate future conditions.

### ***BAAQMD Requested Revisions to the OPMP***

The Bay Area Air Quality Management District (BAAQMD) (Comment Letter 1) requested that the OPMP provided in the Appendix E of the Draft REIR be revised to include specified additional information related to how Phillips 66 will prevent and mitigate odors through best management practices, inspections, record keeping, and staff training. The BAAQMD then provided a list of items that the OPMP should include.

The OPMP has been revised to incorporate the BAAQMD's request for this additional information, and is provided as Appendix C, Odor Prevention and Management Plan in this Final REIR. The revised OPMP replaces Appendix E of the Draft REIR. No revisions were required to Draft REIR Mitigation Measure AQ-4: Implement Odor Prevention and Management Plan, Mitigation Measure AQ-5: Rail Offloading Rack Mitigation, Tank 100 Mitigation, Renewable Feedstock Storage Mitigation, or Pretreatment Unit Mitigation. Refer to Appendix A, Mitigation Monitoring and Reporting Program, which includes the final MMRP for the Rodeo Renewed Project EIR.

To see the OPMP text changes between the Draft REIR and the Final REIR, see Chapter 4, County-Initiated Updates and Errata to the Draft REIR.

## **Master Response No. 2: Piecemealing**

Because a number of comments on the Draft REIR refer back to content and issues discussed in the 2022 EIR Master Response No. 7: Project Description-Piecemealing, we have provided it below for the reader's reference. Following the 2022 EIR Master Response No. 7 in this document, we provide additional responses to comments on the Draft REIR..

### **2022 EIR MASTER RESPONSE NO. 7: PROJECT DESCRIPTION-PIECEMEALING**

Comments received state that the Draft EIR fails to include as part of the Rodeo Renewed Project the following activities or projects: (1) the processing of renewable feedstocks at Rodeo Refinery's Unit 250; (2) Nustar Shore Terminals (Nustar project); and (3) terminal and wharf improvements at the Port of Los Angeles. None of these activities is part of the Rodeo Renewed Project. The Draft EIR's project description is complete and correct in not including these other activities or projects, as discussed below.

#### ***CEQA "Piecemealing"***

The comments state that the County improperly divided the Rodeo Renewed Project into two or more different projects, which is often referred to as "piecemealing" in CEQA parlance (or improper project segmentation). The CEQA piecemealing refers to whether the overall environmental effects are understated, minimized, or submerged by evaluating the projects separately. In case law, the California Supreme Court affirmed that a lead agency must consider the environmental effects of a future action if: "(1) [that future action] 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 its environmental effect." *Laurel Heights Improvement Assn. of San Francisco, Inc.* (1988) 47 Cal.3d 376, 396. Courts have also held that projects with "significant independent or local utility" are not considered part of the same project.<sup>4</sup> The County followed established principles for assessing "the whole of the action," in its review of the Rodeo Renewed Project.

#### ***Unit 250 Operations***

Comments state that existing renewable feedstock processing at the Rodeo Refinery's Unit 250 is functionally part of the Rodeo Renewed Project. That is not the case. Unit 250 is a diesel hydrotreater that has been operational for approximately 15 years. In April 2021, Phillips 66 began processing pretreated renewable feedstocks in the unit, whereas previously the unit solely processed petroleum feedstocks. Unit 250 has the flexibility to run either feedstock and, notwithstanding the Rodeo Renewed Project, will continue to process either pretreated renewable feedstocks or petroleum feedstocks depending on future market considerations such as transportation, logistics, economic, supply, and possibly other factors. Further, absent the Rodeo Renewed Project, Unit 250 renewable feedstock processing will continue to supplement the Rodeo Refinery's current, primary operation of refining crude oil and other petroleum feedstocks, but on a small scale (i.e., less than 10 percent of the throughput capacity). As described in the following paragraphs, the processing of renewable feedstocks at Unit 250 involves typical operational activities using existing equipment, whereas the Rodeo Renewed Project will transform the entire Rodeo Refinery by introducing new equipment and a new mode of operations.

The Project will transform the existing Rodeo Refinery into a facility that no longer refines crude oil. The Project will permanently shut down refinery equipment for crude oil refining. It also will include

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<sup>4</sup> See *Planning and Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 237 [rejecting allegations of piecemealed review for projects that had "significant independent or local utility"]; see also *Banning Ranch Conservancy* (2012) 211 Cal.App.4th 1209, 1223-26 [rejecting allegations of piecemealed review for a park that would be built regardless of other proposed development].

the shutdown of the Santa Maria Refinery, as well as removing the Pipeline Sites from service. The renewable feedstocks delivered to the Rodeo Refinery as part of the Project will first undergo pretreatment (in the proposed PTU) prior to being manufactured into renewable transportation fuels onsite. This is not the case for renewable feedstock processing in Unit 250. There, renewable feedstocks received at the Rodeo Refinery are already pretreated offsite prior to being processed in Unit 250 using the same equipment that was (and still can be) used for refining petroleum feedstocks until the Rodeo Renewed Project is operational.

Importantly, Unit 250 can process pretreated renewable feedstocks without the Rodeo Renewed Project and has done so for almost a year. It will continue to do so whether the Rodeo Renewed Project becomes operational or not. The processing of renewable feedstocks has independent utility from the Rodeo Renewed Project. The converse is true as well: the Rodeo Renewed Project has independent utility from renewable feedstock processing at Unit 250. If Unit 250 was dismantled tomorrow, the Rodeo Renewed Project would still occur as currently proposed.

Comments also state that the Rodeo Renewed Project “would depend on Unit 250 to maximize onsite refining of the pretreated feed output [of the proposed PTU]; and in turn, Unit 250 would be dependent on the Project for economical access to pretreated feed, feedstock acquisition, and Unit 250 product distribution.” While it is true that, from time to time, treated renewable feedstocks from the proposed PTU may be used as an alternative source of feedstock for Unit 250 (in addition to offsite-treated renewable feedstock), the Rodeo Renewed Project does not depend on Unit 250 to maximize onsite processing of the PTU output.

Depending on market conditions and feedstock supply, untreated feedstock that is received at the Rodeo refinery and processed through the Rodeo Renewed PTU and that cannot be processed onsite will be sold to third parties for processing elsewhere. Operational and market flexibility is the purpose underlying construction and operation of the third PTU processing train — not maximization of onsite processing using Unit 250 solely for the processing of treated feedstocks. The use of Unit 250 for processing pretreated feedstocks that are outputs from the yet-to-be-constructed PTU does not make Unit 250 “functionally part” of or an “interdependent component” of the Project.

Comments note that changes were made to Unit 250. However, the work on Unit 250 has been consistent with typical operational, maintenance, and turnaround activities for equipment used at the Rodeo Refinery. Industrial facilities regularly implement changes to equipment or facilities for maintenance or upgrades, and these activities generally do not require a permit from a regulatory agency. The County determined that none of the Unit 250 work needed a discretionary permit, and thus, CEQA review was not required for the work performed on Unit 250, per Contra Costa County Ordinance Code Section 84-63 (i.e. hazardous materials land use ordinance).

Comments also state that Phillips 66 began processing renewable feedstocks in Unit 250 without a BAAQMD permit, which is not the case. The Rodeo Refinery has a facility air permit from BAAQMD that includes Unit 250 operations (BAAQMD 2018). The air permit covering Unit 250 operations applies whether petroleum feedstocks or renewable feedstocks are processed in the unit.<sup>5</sup>

The comments also conclude that the BAAQMD permitting issue “underscores the need for the Draft EIR to determine whether Unit 250 is functionally part of the [Rodeo Renewed] Project and if so — evaluate it as such.” This statement does not render the Draft EIR deficient, nor does it transform Unit 250 operations from a standalone, separate project into part of the Rodeo Renewed Project.

The comments also make related technical claims (Karras, Attachment C, page 13) that “the deoxygenated output of HEFA hydrotreating is too waxy to meet fuel specifications and must be

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<sup>5</sup> On July 31, 2013, the California Air Resources Board and the State Water Resources Control Board issued a joint statement stating that renewable diesel should be treated the same as conventional CARB diesel for all purposes.

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isomerized in a separate processing step before it can be sold as transportation fuel...Unit 250 depends on the project isomerization component to make its output saleable....” This is not accurate as renewable fuels production from Unit 250 meets all of CARB's diesel specifications without a separate processing step. Also refer to Master Response No. 5, Renewable Fuels Processing.

CEQA prohibits piecemeal review, which is separating a large project into smaller pieces to avoid CEQA significance thresholds by dividing environmental effects among two or more projects. As indicated in the forgoing discussion, this is not the case with the Rodeo Renewed Project and existing renewable feedstock processing in Unit 250.

To summarize, the operational capacity of the Rodeo Refinery did not change when it began processing renewable feedstocks in Unit 250; Phillips 66 is still utilizing existing equipment, without modification, to process pretreated renewable feedstocks, which is not the case with the Rodeo Renewed Project; and the Rodeo Renewed Project is undergoing full environmental review under CEQA. As such, the “piecemealing to avoid environmental review” argument does not apply here.

### **Comments on the 2023 Draft REIR**

To directly respond to comments on the Draft REIR on the subject of the project description and piecemealing, the County provides the following:

Certain commenters assert that the legal question of whether projects are separate from one another “is determined by scrutinizing whether or not ‘two projects were “related in (1) time, (2) physical location and (3) the entity undertaking the action.” While courts have recognized those features as valid considerations, that is not the defining standard. As the Superior Court’s Statement of Decision indicated, the relevant case law establishes that two projects “must be linked in way that logically makes them one project, not two.” Statement of Decision, page 8 (quoting *Make UC A Good Neighbor v. Regents of Univ. of Cal.* (2023) 88 Cal.App.5th 656). Specifically, as the Superior Court quoted from the *Make UC a Good Neighbor* case cited above, “two projects may be kept separate when, although the projects are related in some ways, they serve different purposes or can be implemented independently.” Statement of Decision, page 8 (quoting *Make UC a Good Neighbor v. Regents of Univ. of Cal.*, supra, 88 Cal. App. 5th at page 684). The Superior Court further clarified that the inquiry is not whether two projects hypothetically could have been implemented independently, but whether in fact the projects are interdependent in the sense that “one would not be done without the other.” Statement of Decision, page 8.

### **Unit 250 Is Not a Part of the Project**

As discussed thoroughly in the 2022 EIR, and resolved in the Superior Court’s July 21, 2023, Statement of Decision, Unit 250 is a separate project pursuant to CEQA. Nevertheless commenters questioned the status of Unit 250 as a separate project from the Rodeo Renewed Project.

As the Superior Court determined in the Statement of Decision, Unit 250 is not part of the Project. The Court found that, apart from the NuStar rail terminal linkages, the changes related to Unit 250 were “separate from the [Rodeo Renewed] Project,” and “Unit 250 and this Project would have happened independently from each other.” Statement of Decision, page 11. In addition, Unit 250 and the Rodeo Renewed Project serve different purposes, as “Unit 250 is designed to process a relatively small amount of pretreated renewable feedstocks, while the Rodeo Renewed Project is designed to change the entire Rodeo Refinery from a petroleum facility to one that only processes renewable feedstocks.” *Id.*

It appears that some commenters misread the Superior Court’s determination and were under the impression that the Court ordered that the project description be revised to include Unit 250. As explained above, Unit 250 operations are distinct from Project operations, and the Court acknowledged that “Unit 250 and this Project would have happened independently from each other and thus, there was not

improper piecemealing for most of the changes to Unit 250.” (Statement of Decision, page 11 expressing reservations about NuStar terminal, as discussed below). Instead of requiring the County to conduct further analysis of the potential impacts of Unit 250 as part of the Project, as comments suggest, the Court only required the County to discuss Unit 250 in the cumulative impact section, recognizing that Unit 250 operations remain distinct from the Project. *Id.* at pages 11–12.

Other comments state that the Draft REIR is “silent” regarding Unit 250. This is incorrect. Within the Draft REIR, Unit 250 is addressed in an explanation of the project description (Section 1.1.1, pages 1–2) and described and analyzed in detail in the cumulative impacts section (Section 6.4.1.1, pages 16–17). These sections fulfill the Superior Court’s specific directives to focus its project description reconsideration on “changes to the NuStar terminal,” and to “discuss Unit 250 in the cumulative impact section.” (Statement of Decision, pages 12, 29)

Multiple commenters also state that the Draft REIR does not adequately address the connection between Unit 250 and the Project, resulting in improper piecemealing of Unit 250 impacts. However, as discussed above, the Court concluded that Unit 250 operations are independent from the Project. In reaching this determination, the Court relied on evidence presented in the 2022 EIR’s Master Response No. 7 (reproduced above) and elsewhere in the administrative record, and on briefings to the court explaining the linkage of Unit 250 to the rest of the Rodeo Refinery.

As described in detail in the 2022 EIR Master Response No. 7, Unit 250 is interconnected to the Rodeo Refinery. Unit 250 is a diesel hydrotreater that has operated for over 15 years (Contra Costa County 2022b, pg. 3-54). Unit 250 receives feedstocks that are pretreated elsewhere and processes them into renewable transportation fuels while retaining the flexibility to process petroleum feedstocks. *Id.* In contrast, the Rodeo Renewed Project would shut down the Rodeo refinery’s crude oil refining equipment, and renewable feedstocks delivered to the facility would be pretreated onsite in the Pretreatment Unit (PTU) before being processed into renewable transportation fuels onsite. *Id.* While pretreated renewable feedstocks from the PTU may occasionally be used as an alternative source of feedstock for Unit 250, the Project does not depend on Unit 250 to maximize onsite processing of PTU output (Contra Costa County 2022b, pg. 3-54).

Some commenters contend that Phillips 66’s November 2023 California Air Resource Board (CARB) Low Carbon Fuel Standard (LCFS) Fuel Pathway Report (“Pathway Report”) (S&T 2023) demonstrates connectivity between Unit 250 and the Project. Though this is not the case, the Pathway Report does help note the connections between Unit 250 and the Rodeo Refinery. As the report indicates, production of renewable diesel at Unit 250 began in early April 2021 (S&T 2023, page 1). To produce renewable diesel, Unit 250 uses hydrogen from either the Rodeo Refinery or Air Liquide, a “third-party hydrogen plant owned and operated by Air Liquide.” *Id.* at page 3. Unit 250 can use four potential streams of hydrogen at the Rodeo Refinery, but typically uses only two of those at any given time. *Id.* at page 14. This information further illustrates that, while Unit 250 is part of the Rodeo Refinery and sources hydrogen from there, it remains separate from the Project itself, which involves the shutdown of crude oil refining equipment to make way for the eventual pretreatment and processing of feedstocks onsite.

Certain comments focus on hydrogen linkages between Unit 250 and the Project by stating Unit 250’s use of hydrogen sourced from the Rodeo Refinery or Air Liquide establishes that Unit 250, NuStar, and the Rodeo Refinery are “all part of the same project.” This is not the case. Analogous to an electricity source providing power to several users, the Rodeo Refinery’s hydrogen is a utility that is drawn upon as needed by a number of different users. Use of the same hydrogen source does not make Unit 250 part of the Project, any more than use of electricity from the same utility makes different businesses the same entity, especially when each was designed to operate independently of the other.

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As stated in Section 3.4.2.2 of the 2022 DEIR, the Hydrogen Plant (Unit 110) produces hydrogen and steam for use in hydrotreaters and other refinery processes within the Rodeo Refinery (Contra Costa County 2022c, pg. 3-54). The 2022 DEIR describes the process for making renewable diesel which requires the use of hydrotreaters and hydrogen. (Contra Costa County 2022c, pages 3-17, 3-26). As the 2022 EIR Master Response No. 5: Renewable Fuels Processing explains, the Rodeo Refinery sources its hydrogen from elsewhere onsite (at Unit 110), or from nearby (at Air Liquide, an existing third-party supplier of hydrogen) (Contra Costa County 2022b, pg. 3-39). For a detailed explanation of hydrogen processing methods at the Rodeo Refinery, please refer to Master Response No. 5 in the 2022 EIR.

### NuStar Rail Terminal Is Not Part of the Project

As is discussed in Master Response No. 7: Scope of the Draft REIR and County Obligations, the Superior Court's Statement of Decision directed the County to reconsider the NuStar rail terminal as part of the Rodeo Renewed project description. The Superior Court indicated that, as to the 2022 EIR, "the record regarding NuStar is limited and with more information it may be possible to show that NuStar's changes can be considered a separate project but on the current record the Court cannot make this finding." (Statement of Decision, page 10)

Consistent with the Superior Court's decision, the County has conducted a thorough review and assessment of the NuStar rail terminal facility and its connections to the Project. As Draft REIR Section 1.1.1 explains, since 2021, Phillips 66 has received approximately 12,000 barrels per day (bpd) of pretreated renewable feedstocks from a pipeline connecting Unit 250 at the Rodeo Refinery to the NuStar rail terminal facility. The entire 12,000 bpd amount received by Phillips 66 is used for processing in Unit 250, which (as explained above) is a distinct operational unit of the Rodeo Refinery that is not a part of the Project.

A few commenters have stated that changes made to the NuStar rail terminal must be considered part of the Project. A common comment is that, because the NuStar rail terminal's 45,000 barrel per day capacity exceeds Unit 250's 12,000 barrel per day processing capacity, the changes at NuStar should be considered part of the Project. However, as explained in the Draft REIR and supporting documentation, any capacity the NuStar rail facility has above the current 12,000 bpd used in Unit 250 is not contemplated for use by the Project or any other portion of the Rodeo Refinery. See Draft REIR, pages 1-2; Draft REIR, Exhibit B.

As the Draft REIR explains, the changes to the NuStar rail terminal modified the existing facility by adding equipment that can accommodate pretreated renewable feedstocks. There was not an increase in the facility's capacity (45,000 barrels per day maximum) and there was no expansion of the rail spur tracks (Contra Costa County 2022c, pages 17 and 21). The changes to the facility gave the Selby Terminal the "capacity" – i.e., the ability – to handle pretreated renewable feedstocks; there was not a change in "capacity" in terms of the volume of materials or railcar traffic overall that can be handled by the facility. *Id.* As commenters have noted, there are a number of renewable fuels facilities in the region, including Unit 250. The evidence does not support a conclusion that the modifications to the NuStar rail terminal were done in connection with or contemplation of the Rodeo Renewed Project. Rather, the evidence in the County's records demonstrates that the Project and the NuStar rail terminal are wholly independent: they are independently owned and will be independently operated, and, most importantly, the Project will in no way be relying on NuStar for its feedstocks or any other materials. See Appendix B of the Draft REIR – Decl. of Lashun Cross, page 3; Decl. of Jolie Rhinehart, pages 2-3.

While there are inherent challenges to demonstrating "a negative" or an absence of a relationship as compared with alleging an affirmative connection, the County has made every effort to document the basis for its conclusion about the Project's independence from the NuStar rail terminal. In its review of this



issue at the direction of the Superior Court, the County has confirmed that the Project will not receive any product from the NuStar facility, and that changes to the NuStar facility were unrelated to the Project. See Draft REIR Section 1.1.1. Specifically, the County has collected testimony from relevant representatives from Phillips 66 and NuStar, analyzed County files associated with each facility's planned changes, and re-reviewed the Project's feedstock sources<sup>6</sup>. Having done so, the County has confirmed that the Project will in no way rely on the NuStar rail facility for any portion of its feedstocks or in any other capacity. See Appendix B of the Draft REIR, Decl. of Lashun Cross, page 3. Instead, the Project will rely on feedstocks solely from the following modes of transportation: tanker vessels, barges, Phillips 66's refinery railcar loading and unloading rack,<sup>7</sup> and truck trips, as listed in Table 3-2 of the EIR (Contra Costa County 2022c), none of which bear a relationship to the NuStar facility. See Appendix B of the Draft REIR, Cross Declaration, pages 2–3; Rhinehart Declaration, page 3.

It is the County's conclusion that the 2022 EIR's description of the Project's input sources—which *does* include shipments via tanker vessels, barges, truck trips, and Phillips 66's rail rack and which *does not* include any shipments via NuStar—remains accurate. Based on the information in County files and detailed above, the County has determined that the changes to the NuStar facility should be considered a separate project from the Rodeo Renewed Project. Accordingly, the project description set forth in the 2022 EIR remains unchanged, and the County has incorporated the NuStar rail project into the Draft REIR's cumulative impacts analysis.

There has been some concern expressed about the reliability of the signed declarations (Appendix B of the Draft REIR) that provide some of the evidence underlying the County's treatment of NuStar in the Draft REIR. These declarations were executed under penalty of perjury. Further, the declarations are consistent with the Land Use Permit (Contra Costa County 2022a) for the Project, which requires Phillips 66 to develop the Project in conformance with its approvals. Because the Project's chosen transportation methods are already enumerated in its EIR materials, Phillips 66 is required to operate the Project in conformance with those methods and commenters' suggested imposition of a specific Project condition to "assure" non-reliance on the NuStar facility is unnecessary.

Finally, at least one comment suggests that the declarations only attest to the present state of operations and do not speak to the future of the Project and its feedstock sources. However, the declarations speak both to present operations and future planning for the Project, including that, "[t]he Rodeo Renewed Project will not process pretreated feedstocks from the NuStar rail facility or any additional materials from the NuStar rail facility." See Appendix B of the Draft REIR - Decl. of Jolie Rhinehart, page 3.

The declarations attached to the Draft REIR are competent evidence to support the County's conclusions about the NuStar rail terminal's lack of relationship to the Project. Not only does this evidence provide substantial support for the County's conclusion, but there is a lack of support for a contrary conclusion.

### **Unit 250 and NuStar: Cumulative Impacts Discussion**

As explained in the Draft REIR Section 1.1.1 and above, because Unit 250 and NuStar are not part of the Project, they have been incorporated into the cumulative impacts analysis. Comments focused on the scope and contents of that analysis are addressed in Master Response No. 3: Cumulative Impacts, incorporated by reference here.

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<sup>6</sup> See 2022 Final EIR, Master Response No. 7, Project Description – Piecemealing (pages 3-53, 3-54); Contra Costa County Building Permit Applications BIMIC20-006503, BIEC20-003927, BIMIC20-003926; Draft REIR, pages 1–2, 17, 21; Appendix B of the Draft REIR – Declarations of Lashun Cross, Jolie Rhinehart, and Kyle Oppliger.

<sup>7</sup> Please note – Phillips 66's own refinery railcar loading and unloading rack, i.e., the destination of the 16 railcars per day referenced in the 2022 EIR's discussion of transportation, is a distinct operation from and bears no relationship to the NuStar facility.

### **Master Response No. 3: Cumulative Impacts**

The County received multiple comments that contend that the Draft REIR's discussion of cumulative impacts is insufficient. These comments question the scope of the cumulative analysis, request additional details of the Unit 250 project, and request additional analysis of the cumulative air impacts from the Bay Area refineries. Each of these is addressed in the following discussion.

#### ***Cumulative Impacts: Scope of Analysis***

Some comments questioned the scope of the information provided relating to the Project's cumulative impacts in relation to the Shore Terminals LLC's Selby Terminal (the NuStar rail terminal) and Unit 250 at Phillips 66's Rodeo Refinery, stating that the Draft REIR does not satisfy CEQA or the standards provided by the Superior Court's decision.

The Superior Court's July 2023 Statement of Decision directed the County to reconsider the NuStar rail terminal as part of the Rodeo Renewed project description. The Superior Court acknowledged that "the record regarding NuStar is limited and with more information it may be possible to show that NuStar's changes can be considered a separate project but on the current record the Court cannot make this finding." Statement of Decision, page 10.

Consistent with the Superior Court's directive, the County reconsidered whether changes to the NuStar rail terminal should be incorporated into the Rodeo Renewed project description. As is explained in the Draft REIR and Master Response No. 2: Piecemealing, the County has confirmed that the Project will not be relying on the NuStar rail terminal for any Project inputs. Thus, the facility is not part of the Rodeo Renewed Project.

In its Statement of Decision, the Superior Court also found that the 2022 EIR should have included Phillips 66's Unit 250 in the cumulative impacts analysis, as the Superior Court agreed with the County's determination that Unit 250 is separate from the Rodeo Renewed Project itself. The County has therefore incorporated and analyzed information regarding Unit 250 into the new cumulative impacts analysis presented in Draft REIR Section 6.4 along with the analysis of the NuStar rail terminal project.

The requirements for cumulative analysis are outlined in the California Public Resources Code and have been expanded upon in state rules and case law. CEQA Guidelines, Section 15130 provides guidelines for the discussion of cumulative impacts in an EIR. The section states, "An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065(a)(3). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable."

CEQA Guidelines, Section 15355 defines "Cumulative impacts" as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." Furthermore, Section 15130(b) describes that an EIR's analysis of cumulative impacts "should be guided by the standards of practicality and reasonableness."

As established in case law, CEQA requires an EIR address cumulative impacts "when two conditions are present: (1) the combined impact of the project and other projects is significant and (2) the project's incremental contribution to the combined impact is 'cumulatively considerable.'" *League to Save Lake Tahoe v. County of Placer* (2022) 75 Cal.App.5th 63, 148. A project's combined impact with other projects is significant "if it will cause a substantial, or potentially substantial, adverse change in the physical

environment.” *Id.* (citing Pub. Resources Code Sections 21100(d), 21068; CEQA Guidelines, Sections 15358, 15382). A project’s contribution to a cumulative impact is “cumulatively considerable” when the project’s incremental effects “are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” CEQA Guidelines, Section 15065(a)(3). If the County finds that a cumulative impact is insignificant or the Project’s incremental contribution to the impact is not cumulatively considerable, it need only “briefly describe its basis” for this determination. *San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 222). A project “must make some contribution to the impact; otherwise, it cannot be characterized as a cumulative impact of that project.” *Sierra Club v. West Side Irrigation Dist.* (2005) 128 Cal.App.4th 690, 700. The CEQA Guidelines provide that “[t]he discussion of cumulative impacts . . . need not provide as great detail as is provided for the effects attributable to the project alone.” *Id.*; *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383 (stating that “exhaustive analysis” of cumulative impacts “is not required,” citing several cases holding that an EIR’s discussion of cumulative impacts was adequate because it listed and discussed various projects, explained each potential cumulative impact, and provided the basis for their conclusions). Courts do not require “technical perfection in a cumulative impact analysis,” and look instead for “adequacy, completeness, and a good faith effort at full disclosure.” *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 320.

The County has considered all relevant CEQA Guidelines and case law in the preparation of the cumulative impacts analysis for the Rodeo Renewed Project EIR. The analysis of the NuStar rail terminal project and Unit 250 are complete and accurate.

Draft REIR Section 6.4.1 sets out the list of projects with impacts to be considered cumulatively with the Project’s own incremental impacts, including the NuStar rail terminal project and Unit 250. Section 6.4.1 provides operational details and precise description of emissions changes that resulted from Unit 250’s conversion to renewable feedstocks processing. This section also includes a thorough description of the NuStar rail terminal project, including key project features and objectives. This description makes clear that the NuStar rail terminal project did not change the 45,000 barrels per day maximum calculated capacity of the facility’s rail rack and that the rail rack continues to accommodate materials that it handled pre-project. (Draft REIR, Section 6.4.1, page 17) The CEQA Guidelines instruct that an EIR’s discussion is meant to focus on the cumulative impacts to which identified other projects contribute “rather than the attributes of other projects which do not contribute to the cumulative impact,” so the Draft REIR’s careful but concise descriptions of other projects including NuStar and Unit 250 are appropriate. (CEQA Guidelines, § 15130(b))

After setting out the descriptions of the projects to be considered, the Draft REIR’s updated analysis discusses the Project’s cumulative impacts across each resource area included in the EIR. For each, the County evaluated the geographic scope of the cumulative impact area for a given resource; the timeframe within which Project-specific impacts could interact with the impacts of the other projects; whether a significant cumulative impact would result from the other projects in combination with the Project; whether the incremental impacts of the Project (before mitigation) are cumulatively considerable; and the ability of Project-specific mitigation measures to ensure the Project’s incremental impact on a given resource would be less than cumulatively considerable. This analysis is consistent with the court’s ruling in *City of Long Beach v. Los Angeles Unified School Dist.* (2009) (176 Cal.App.4th 889, 907), which stated that an adequate analysis would explain how the nature of the resource, the location of a project, and the type of project are appropriate considerations in understanding whether another project may contribute to an impact.

Based on the County’s analysis of the evidence, the Draft REIR explains how the NuStar rail project and/or Unit 250 are anticipated to have certain impacts that could interact with Project-specific impacts, specifically, air quality, biological resources, energy conservation, greenhouse gas emissions, hazards

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and hazardous materials, and transportation and traffic. As described in the Draft REIR, Section 6.4.2.3, Biological Resources, page 21 and Section 6.4.2.8, Hazards and Hazardous Materials, page 24), of these resource areas, biological resources and hazards and hazardous materials were the only areas where a cumulatively considerable impact was identified in connection with the NuStar or Unit 250 projects. For the other areas, the Draft REIR, Section 6.4, pages 20–22, sets forth analysis of the Project’s incremental effect in combination with the effects of the NuStar rail project and Unit 250 where relevant, with factual justification provided for the County’s determination that impacts in that area would not be cumulatively considerable. This is consistent with CEQA Guidelines, Section 15130(a)(2), which explains that “[w]hen the combined cumulative impact associated with the project’s incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR,” provided the agency identifies the facts and analysis supporting its conclusion.

CEQA Guidelines, Section 15130(b)(5) directs the County to evaluate feasible options for mitigating or avoiding the Project’s contribution to any significant cumulative impact. For both resource areas where a cumulatively considerable impact was identified relating to either NuStar or Unit 250, the Draft REIR, Section 6.4.2.3, page 21, explains what the County has determined is feasible for each. For biological resources, it is made clear that, despite mitigation measures applied to the Project, a potential for adverse impact on special-status marine species or their habitat cannot be eliminated, and this impact exists when taking the Project in combination with the other projects identified for purposes of the cumulative impacts analysis. Similarly, for hazards and hazardous materials, the Draft REIR, Section 6.4.2.8, page 24, explains that mitigation measures and regulatory compliance are expected to reduce the frequency and size of feedstock or blendstock spills, but that the potential for a substantial adverse impact on water quality cannot be eliminated. In doing so, the Draft REIR notes that the NuStar project is not anticipated to increase potential hazards or hazardous materials impacts because the NuStar project did not change the rail terminal’s capacity; still, the County concluded that, in combination with other projects including Unit 250, the Rodeo Renewed Project will result in adverse hazards and hazardous materials impacts that would be cumulatively considerable. For both biological resources and hazards and hazardous materials, the County has therefore fulfilled its obligations under CEQA to consider—and has adopted—feasible options for mitigation of the Project’s contribution to any significant cumulative impact. This is consistent with CEQA Guidelines, § 15130(b)(5), which states, “An EIR shall examine reasonable, feasible options for mitigating or avoiding the project’s contribution to any significant cumulative effects.” Though in both areas, mitigation below significance is not achievable, the County has done what it could to reduce the Project’s contribution to areas of potentially significant cumulative impacts through the mitigation imposed.

As CEQA Guidelines, Section 15130(b)(5) instructs, the County did not examine options for mitigating or avoiding impacts not attributable to the Project’s contribution to the significant cumulative effects identified in the EIR: where cumulatively significant impacts exist, an EIR is only required to examine potential ways to mitigate “*the project’s contribution* to any significant cumulative effects.” This is consistent with the California Court of Appeal decision in *League to Save Lake Tahoe, supra*, 75 Cal.App.5th at page 150. Accordingly, the Draft REIR describes mitigation measures where the Project makes a considerable contribution to a significant cumulative effect and otherwise provides CEQA-compliant discussion of other potential cumulative impacts. By updating its cumulative impacts analysis to incorporate the NuStar project and Unit 250, and by identifying feasible mitigation of the Project’s contribution to areas of potentially significant cumulative impacts, the County has fulfilled its obligations under CEQA and implemented the directives of the Superior Court.

### **Proposed Additional Information and Analysis of Unit 250**

Multiple comments requested a more robust analysis of Unit 250, suggesting in part that what has been provided in the cumulative impacts discussion would not suffice as an analysis of “Unit 250’s own impacts, let alone an assessment of the cumulative impacts of Unit 250 as part of the larger Rodeo Renewed Project.” First, as explained above, Unit 250 is not part of the larger Rodeo Renewed Project. Second, the comment is inconsistent with CEQA’s standards for a discussion of cumulative impacts. Unit 250 is being assessed as one project among several in the cumulative impacts discussion; as is anticipated by CEQA, a discussion of Unit 250 or any other individual project within the cumulative impacts analysis will be less detailed than the analysis would be if that individual project was the subject of an EIR. This is consistent with CEQA Guidelines, Section 15130(b) which states, “discussion [of cumulative impacts] need not provide as great detail as is provided for the effects attributable to the project alone”. Furthermore, the analysis aligns with guidance from the California Court of Appeal in *Paulek v. Dept. of Water Resources* (2014) (231 Cal.App.4th 35, 51), that specified, “CEQA does not require exhaustive analysis of cumulative impacts.”

The County’s analysis is “guided by the standards of practicality and reasonableness” (CEQA Guidelines, § 15130(b)). As explained above, the County does not need to perform the same depth of analysis as would be necessary if the EIR was focused on Unit 250. This includes not undertaking all analysis requested by commenters. For example, Center for Biological Diversity/Communities for a Better Environment Comment Letter, page 5, states, “The County can and should estimate pollutants based on the operationalized practices of Unit 250 since 2021.” However, the County has already adequately evaluated the air quality impacts from the Project, and the additional analysis is not necessary. This is consistent with the California Court of Appeal decision in *Assn. of Irrigated Residents v. County of Madera* (2003) (107 Cal.App.4th 1383, 1396) which stated, “CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project. The fact that additional studies might be helpful does not mean that they are required,” citing CEQA Guidelines, § 15204(a)). The County provided a description of Unit 250’s potential pollutants by conservatively using a five-year average of Unit 250’s emissions between 2017-2021 and explaining the slight changes to that average in 2021 and 2022 during renewable feedstocks processing. See Draft REIR, page 17 and Table 6-2. The Draft REIR is not deficient for not providing some unspecified or less reliable further analysis of this one project among the many considered in the Rodeo Renewed Project’s cumulative impacts assessment.

Commenters state that the cumulative impacts discussion should include consideration of potential Unit 250 odor impacts. As explained in the Draft REIR, the Project’s potential odor impacts are reduced to a less than significant level, and the Project’s odor management and mitigation relates primarily to the raw feedstocks being processed at the facility. Unit 250 processes pretreated renewable feedstocks which have been demonstrated to not create the same risk of odors as untreated or raw feedstocks. In nearly three years of operations, there have been no confirmed odor complaints related to Unit 250. Regardless, the Odor Prevention and Management Plan applies to the entire Rodeo Refinery including Unit 250, outlining procedures that facility personnel must use to address facility-wide odor issues no matter their source. See Chapter 4, County-Initiated Updates and Errata to the Draft REIR and Final REIR Appendix C, Odor Prevention and Management Plan.

In addition to proposing further pollutant analysis based on Unit 250’s operations, commenters state that the Marathon Refinery’s conversion could provide information of feedstocks and impacts “as a projection for Unit 250.” Though the Marathon Martinez Refinery processes renewable feedstocks, the County does not need to use Marathon as a projection for Unit 250. Alternatively, the County is able to consider the nearly three years of Unit 250 actual operations. For all of the reasons described above and in Master

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Responses No. 4: Feedstocks Analysis and No. 5: Marathon Renewable Fuels Operations and Hazards, the County does not consider information about Marathon's operations to be reasonably predictive of Unit 250 or the Project's processes or potential impacts. A lead agency is empowered to use its experience and best technical judgment to assess whether evidence can support a conclusion asserted by commenters; here, the County has determined that the Marathon Refinery does not provide a reasonable basis for extrapolating projections about Unit 250's operations when actual Unit 250 operational information has been used instead. This approach is consistent with the court's decision articulated in *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal. 3d 376, 395–96, which acknowledges that an agency need not perform a proposed analysis unless it has "sufficient reliable data to permit preparation of a meaningful and accurate report."

Certain commenters state that the California Air Resources Board (CARB) Low Carbon Fuel Standard (LCFS) Fuel Pathway Report for Unit 250 should expand the assessment of Unit 250's impacts in the cumulative impacts discussion. Specifically, certain comments raise the proposal for Unit 250 to process pretreated soybean feedstocks from Argentina, claiming that cumulative greenhouse gas emissions from Unit 250's feedstocks in combination with the Project's will be substantial. As explained in greater detail in Master Response No. 4: Feedstock Analysis, Argentinean soybean oil is just one type of feedstock proposed for possible use at Unit 250. The Draft REIR on page 17 uses real data of GHG emissions from Unit 250 post-conversion, rather than extrapolating based on future potential pathways. Nevertheless, it is worth noting that the CARB Carbon Intensity (CI) score for Argentinian soybean oil is proposed at 61.98 grams of carbon dioxide equivalent per megajoule of energy (gCO<sub>2</sub>e/MJ), which is considerably lower than the 2024 benchmark for diesel, which is 87.89 gCO<sub>2</sub>e/MJ. (CARB 2020) This lower CI indicates that the life cycle GHG emissions for Argentinian soybean oil are substantially less than those for petroleum-based diesel, which was what had been previously produced by Unit 250. Thus, the new Pathways Report information is consistent with the Draft REIR's conclusion on page 23, that the Unit 250 project will result in a decrease of GHG emissions and will not contribute to a cumulative GHG impact.

Some commenters also contend that the Pathway Report's recognition of a possible Argentinean soybean oil pathway should result in expanded analysis of ship strikes and the risk of severity of accidents associated with feedstock transport. As is explained in Master Response No. 4: Feedstock Analysis, the existence of this potential pathway does not mean that Unit 250 will be using that particular feedstock source, and the County determined it would be speculative to assess the likelihood of possible ship strikes or accidents from a pathway with an unknown likelihood of being used, and an unknown type or quantity of trips required if the pathway is engaged at all. Moreover, there was already ship traffic associated with Unit 250's baseline operations prior to its conversion to renewable feedstock processing. The County here has declined to speculate about a hypothetical change to that traffic based on uncertain inputs.

Ultimately, this is not an EIR for Unit 250: Unit 250 is being studied in the context of the Rodeo Renewed Project's cumulative impacts analysis. Unit 250 therefore is not analyzed with the same or greater degree of detail than the Project. Instead, in line with CEQA's mandates, reasonably practical methods have been used to identify Unit 250's reasonably foreseeable impacts where they have the potential to contribute to cumulative impacts in conjunction with the Project. This is consistent with CEQA's standards.

As Master Response No. 7: Scope of the Draft REIR and County Obligations explains in greater detail, unless newly provided information meets the CEQA standard for significant new information, it will not trigger revisions to the EIR.<sup>8</sup> For the reasons discussed above, the County does not consider the information presented in comments to be reasonably predictive or reliable enough to result in new significant impacts of the Project that are reasonably foreseeable, substantially increase the severity of previously identified significant effects, substantially change the circumstances surrounding the Project, or demonstrate the availability of feasible mitigation measures not incorporated to the Project. Accordingly, public comments have not presented the County with new information that would justify expansion of the Draft REIR's cumulative impacts analysis.

### ***Other Proposed Additional Cumulative Impacts Information***

Certain commenters contend that the cumulative impacts analysis should do more to account for pollutant emissions for other refinery facilities in Contra Costa County. As discussed above, the County has fully evaluated the cumulative impacts from projects in the vicinity. Additionally, other than the Unit 250 and NuStar discussions, other portions of the cumulative impact analysis were not found to be inadequate. Furthermore, the County has provided detailed analysis and response to similar comments in Master Response No. 3: Cumulative Impacts from the 2022 FEIR.

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<sup>8</sup> CEQA does not require supplemental environmental review unless one of the following conditions has occurred: (1) substantial changes are proposed for the Project that involve new significant environmental effects or a substantial increase in severity of previously identified significant effects; (2) the circumstances under which the Project is being undertaken have substantially changed, involving new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or (3) important new information, which was not known and could not have been known at the time the 2022 EIR was originally certified, becomes available. See CEQA Guidelines, § 15162(a). In addition, alleged "new information of substantial importance" must show that (1) the Project will have at least one significant effect that was not discussed in the 2022 EIR; (2) significant effects previously examined will be substantially more severe than shown in the 2022 EIR; (3) mitigation measure or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce a significant effect of the Project, and the project proponent has declined to adopt that measure or alternative; or (4) mitigation measures or alternatives which are considerably different from those analyzed in the 2022 EIR would substantially reduce a significant effect on the environment, and the project proponent has declined to adopt that measure or alternative. See CEQA Guidelines, § 15162(a)(3).



## **Master Response No. 4: Feedstock Analysis**

### ***Comments Requesting Further Analysis of Feedstocks***

The County has received comments requesting additional analysis of the Project's feedstocks and related impacts. However, since these comments could have been raised in response to the 2022 EIR, they are therefore now untimely for the reasons detailed in Master Response No. 7: Scope of the Draft REIR and County Obligations, incorporated here by reference. Furthermore, as detailed below, the Superior Court found that the 2022 EIR's analysis relating to feedstocks and feedstock-related impacts was adequate and fulfilled CEQA's requirements.

On page 17 of the Superior Court's July 2023 Statement of Decision, the Court rejected challenges to the adequacy of the 2022 EIR's analysis of feedstocks and their alleged potential impacts. Specifically, the Court found that the "Project Description is sufficient and that the EIR is not required to include additional information on the likely amounts of feedstock." In addition, the Superior Court found that the 2022 EIR's analysis of the Project's indirect land use impacts complied with CEQA, noting that "providing more analysis on [the Project's] indirect land use impacts would be too speculative," and that evidence presented by project opponents "[did] not show that this Project will have a significant impact on land use changes." *Id.* at page 21. Finally, the Superior Court found that the 2022 EIR's analysis of cumulative indirect land use impacts did not violate CEQA, rejecting Petitioners' argument that the EIR should have considered nearly 20 other renewable conversion projects in California and nationwide. *Id.* at page 23.

As detailed in CEQA Guidelines, Section 15088.5(f)(2)(ii), when a lead agency revises and recirculates an EIR only in part, the agency need only respond to comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated. As explained in greater detail in Master Response No. 7, *res judicata* bars challenges to the environmental analysis that were or could have been raised in the prior litigation, and collateral estoppel precludes relitigation of issues decided in prior proceedings. Examples of how these doctrines are applied can be found in California Court of Appeal cases *Town of Atherton v. Cal. High-Speed Rail Auth.* (2014) (228 Cal.App.4th 314, 354) (deciding that a challenge to a revised EIR filed in compliance with the trial court's writ of mandate was barred by collateral estoppel because the issue was argued and decided in a prior proceeding); and *Citizens for Open Government v. City of Lodi* (2012) (205 Cal.App.4th 296, 324–327) (deciding that a similar challenge to a revised EIR was barred by *res judicata*, as the claim was beyond the scope of the revised EIR, could have been made in the first petition, and was "based on the same conditions and facts in existence when the original action was filed.")

Here, the Superior Court's July 2023 Statement of Decision on pages 1 and 21 directed the County to revisit three narrow aspects of the EIR, rejected Petitioners' challenges to the EIR's analysis of feedstock and indirect land use impacts, and did not identify any other CEQA violations. The Superior Court specifically determined that the EIR was "not required to include additional information on the likely amounts of feedstock" in the project description, and that it would be "too speculative" to provide further analysis of the Project's indirect land use impacts. The order directing the County to decertify the EIR did not reopen the door for challenges on issues that were raised or could have been raised in the prior litigation. This is consistent with the California Court of Appeal decision *Ione Valley Land, Air, & Water Defense Alliance, LLC v. County of Amador* (2019) (33 Cal.App.5th 165, 172) Any objections regarding analysis of feedstock and indirect land use impacts were already raised, or could have been raised, in challenges to the Project's 2022 EIR. Further, objections are thus untimely, and the County's prior responses on these issues are sufficient. This is consistent with case precedent: in *Citizens for Open Government v. City of Lodi*, *supra*, 205 (Cal.App.4th at pages 301, 327), the appeals court upheld the trial court order discharging the writ of mandate where the respondent agency declined to respond to comments that were beyond the scope of the revised EIR, citing *res judicata*.

### **No New Information Warrants Further Analysis**

Certain commenters contend that new information presented in their comment letters requires the County to conduct a new analysis of feedstocks and related impacts. However, the information provided does not justify additional CEQA evaluation.

As explained in greater detail in Master Response No. 7, CEQA Guidelines, Section 15162(a) does not require supplemental environmental review unless one of the following conditions has occurred: (1) substantial changes are proposed for the Project that involve new significant environmental effects or a substantial increase in severity of previously identified significant effects; (2) the circumstances under which the Project is being undertaken have substantially changed, involving new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or (3) new information “of substantial importance,” which was not known and could not have been known at the time the 2022 EIR was originally certified, becomes available. CEQA Guidelines, Section 15162(a)(3) specifies that any “new information of substantial importance” must show that (1) the Project will have at least one significant effect that was not discussed in the 2022 EIR; (2) significant effects previously examined will be substantially more severe than shown in the 2022 EIR; (3) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce a significant effect of the Project, and the project proponent has declined to adopt that measure or alternative; or (4) mitigation measures or alternatives which are considerably different from those analyzed in the 2022 EIR would substantially reduce a significant effect on the environment, and the project proponent has declined to adopt that measure or alternative.

Commenters provided information with their comments that they contend should trigger supplemental analysis; however, the information provided does not satisfy the criteria above, and the Project’s feedstock mix and alleged related impacts remain too speculative to analyze.

Commenters provided a copy of the California Air Resources Board (CARB) Low Carbon Fuel Standard (LCFS) Fuel Pathway Report on Argentinian Soybean Oil Renewable Diesel (“Pathway Report”) (S&T 2023) that was submitted by Phillips 66 to CARB for use in Unit 250, claiming that it demonstrates that Phillips 66 is now able to determine the sources and types of renewable feedstocks for the Rodeo Renewed Project. Commenters mischaracterize the Pathway Report both with respect to Unit 250 and its relevance to the Rodeo Renewed Project.

Under the LCFS program, providers of low carbon fuels generate credits by obtaining a certified carbon intensity (CI) score for the proposed fuels, and the credit is based on that CI relative to the annual CI benchmark established by CARB. CI is the measure of greenhouse gas (GHG) emissions associated with producing, distributing, and consuming a fuel which is expressed in a carbon dioxide equivalent (CARB 2020, page 5.) The CI takes into account the GHG emissions associated with the life cycle of that fuel. *Id.*

Importantly, the Argentinian soybean oil is proposed for use in Unit 250 specifically, not any other processing unit at the Rodeo Refinery, and not for the Rodeo Renewed Project processing unit (S&T 2023, page 1.) The operating data from Unit 250 is used to calculate the CI of the product. In addition, the proposed Argentinian soybean oil is only one type of feedstock to be used in Unit 250. As noted in the Pathway Report, Phillips 66 has been operating Unit 250 since April 2021 and has “received provisional CI values for two soybean oil pathways (different transportation options), canola oil and corn oil.” (S&T 2023, page 1.) Thus, if the CI is certified by CARB, the Argentinian soybean oil would provide an additional feedstock for use in Unit 250. In other words, the Pathway Report only confirms that different renewable feedstocks sources are to be used by Unit 250.

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Further, Unit 250 processes pretreated renewable feedstocks, and the Argentinian soybean oil is a pretreated feedstock. One of the critical components of the Rodeo Renewed Project is its pretreatment unit (PTU). The PTU allows Phillips 66 to process raw feedstocks, which are estimated to constitute most if not all of the renewable feedstocks to be processed by the Project. While the Project could technically process pretreated feedstocks, such pretreated feedstocks are not as economically favorable to renewable fuel producers and often result in higher CI scores. Thus, it would not be appropriate, as commenters suggest, for the County to assume that Phillips 66 would use Argentinian soybean oil for the Rodeo Renewed Project or to assume more generally that Unit 250 would have a similar mix or sources for its pretreated feedstocks as the Project would for its raw feedstocks.

Similarly, certain commenters suggest that the data from the Marathon refinery's LCFS Pathway Reports should be used to inform the analysis of the Project's feedstocks mix and potential impacts. First, as with Unit 250, Marathon relies exclusively on pretreated feedstocks, which are distinct from the Project's raw feedstocks. Second, Marathon and Phillips 66 are distinct companies, with distinct sources for their materials and distinct operational timelines and procedures. Marathon's identification of potential feedstocks for its already operational project does not provide a basis to conclude that the County can or should attempt to forecast this Project's feedstock mix or potential sources without reliable information applicable to its actual types of materials and processes.

Finally, commenters point to a variety of studies they contend demonstrate that the Project's use of renewable feedstocks would have potential impacts related to GHG and food scarcity that were not discussed in the Draft REIR. A few studies refer to GHG impacts that can be associated with different feedstock types. As was explained in the 2022 EIR, the Project's mix of feedstocks and the relative volumes of those feedstocks is not currently known and is subject to fluctuation over time. Refer to the 2022 EIR Master Response No. 4: Land Use and Feedstocks. These feedstock studies from various contexts do not provide reliable information from which the County can project this Project's feedstock mix or potential impacts.

For the same reasons various assertions about feedstock cultivation did not support forecasting in the 2022 EIR, the additional studies provided in recent comments do not give the County a basis to identify feedstock cultivation impacts in the Draft REIR, given all the ongoing uncertainties implicated by the global feedstock market and unpredictable climate, economic, and governmental factors in play. As discussed in the 2022 EIR Master Response No. 4: Land Use and Feedstocks, global trends in land use, crop cultivation, and food supply are not reasonably foreseeable based on the available evidence about the Project's inputs, and the County is directed by CEQA to avoid speculating. Consistent with CEQA's requirements, the County has used its best efforts to disclose what it can, concluded that the requested additional analysis would be speculative, and has not attempted to "foresee the unforeseeable." (CEQA Guidelines, Section 15144)

Commenters nevertheless state that the availability of these reports means that feedstock analysis would no longer require speculation and therefore should justify further evaluation.

CEQA requires an EIR to identify and analyze all of a project's significant effects on the environment, whether those effects are directly or indirectly caused by the project. (CEQA Guidelines, Section 15126.2(a)) However, an EIR need only analyze the significance of potential impacts that are reasonably foreseeable. *Id.* Section 15064(d). "A change which is speculative or unlikely to occur is not reasonably foreseeable." *Id.* Section 15064(d)(3). "[W]here future development is unspecified and uncertain; no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences." *Atherton v. Bd. of Supervisors* (1983). (146 Cal.App.3d 346, 351)

In the 2022 EIR, the County included analysis of the Project's feedstocks and related potential impacts to the best of its knowledge and ability, recognizing that the exact mix of feedstocks and their sources could not be determined due to a complex web of interconnected variables. Comments do not point to any resources that would enable the County to model the complex variables of the global marketplace, which would be necessary to reasonably predict the feedstock mix and resulting impacts of the Project at any given time. As the Superior Court affirmed in its July 2023 Statement of Decision, further analysis would necessarily require the County to engage in speculation, which CEQA instructs lead agencies to avoid. (CEQA Guidelines, § 15145) The same factors that the Superior Court considered when issuing this conclusion remain relevant here.

"CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors." (CEQA Guidelines, Section 15204(a)) "[T]he adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project." *Id.* As explained by the California Court of Appeal in *Citizens for a Sustainable Treasure Island v. City and County of San Francisco*, "[w]hile a lead agency must use its 'best efforts' to evaluate environmental effects, including the use of reasonable forecasting, 'foreseeing the unforeseeable' is not required, nor is predicting the unpredictable or quantifying the unquantifiable." (227 Cal.App.4th 1036, 1058.)

Consistent with CEQA Guidelines, Section 15145, in preparing the 2022 EIR, the County found that feedstock impacts were "too speculative for evaluation," noted that conclusion, and properly terminated discussion of those impacts. The County appreciates and has considered the information provided by commenters including LCFS Pathway Report data. After thorough review of the evidence, however, the County has determined that the Project's feedstock mix and potential upstream impacts still remain too unpredictable to allow for further analysis.

## **Master Response No. 5: Marathon Renewable Fuels Operations and Hazards**

Marathon processes pretreated renewable feedstocks to create renewable fuels at its Martinez facility. Commenters state that two recent fire incidents at the Marathon facility along with Marathon's flaring constitutes new information resulting in potentially new significant hazard impacts that need to be further studied in the EIR for the Rodeo Renewed Project. The Marathon incidents are being investigated by the County, and commenters state that the "root cause" of these Marathon incidents needs to be determined and studied in the Rodeo Renewed Project EIR. Commenters specifically mention the processing of renewable fuels and hydrogen usage as being part of their concerns.

Commenters contend that the Marathon fire incidents and Marathon's flaring demonstrate that similar events could or will occur as a part of the Rodeo Renewed Project. However, for nearly three years, Phillips 66 has been operating Unit 250 and processing pretreated renewable feedstocks, similar to Marathon. During this time, Phillips 66 has not had any similar fire incidents related to Unit 250's renewable fuels processing, nor has Unit 250 processing resulted in increased flaring that has met the BAAQMD Regulation 12 Rule 12 reportable flaring event definition, as noted by commenters with respect to Marathon's operations. A review of the BAAQMD web site indicates that none of the Flare Causal Analysis submitted by Phillips 66 since Unit 250 began producing renewable fuels in April 2021 were caused by Unit 250 operations (BAAQMD 2021a).

The County takes health and safety issues seriously, and the Marathon incidents have been reviewed in the context of the 2022 EIR and the Rodeo Renewed Project. Hazards for the Rodeo Renewed Project were extensively studied in the 2022 EIR, including hazards associated with the processing of renewable feedstocks and the use of hydrogen (Contra Costa County 2022b, Master Response No. 5: Renewable Fuels Processing, pages 3-44 – 3-47, addressing "Comment: Renewable fuels processing increases the risk of hazards."). The 2022 EIR concluded: "[T]he Rodeo Renewed Project does not have an increased risk of hazards as a result of the hydrogen usage or the processing of renewable feedstocks." (Contra Costa County 2022b, Master Response No. 5, page 3-47).

The types of potential hazards raised in the comments based on the Marathon fire incidents and Marathon's flaring were specifically addressed in the 2022 EIR – renewable fuels processing and hydrogen usage (Contra Costa County 2022b, Master Response No. 5, pages 3-44 – 3-47.) In addition, the 2022 EIR concluded while some baseline hazards of the Rodeo Refinery remain as a part of the Project, some hazard risks could decrease due to the higher flashpoints of renewable feedstocks such as vegetable oil or tallow as compared to crude oil (Contra Costa County 2022c, pages 4.9-337 – 4.9-338). The 2022 EIR did not conclude that the Project would eliminate all hazard risks as compared to the Rodeo Refinery.

Key portions of hazards analysis in the 2022 EIR are summarized below. The Marathon fire incidents and Marathon's flaring do not change either the analysis performed in the 2022 EIR for the Rodeo Renewed Project or its conclusions with respect to hazard impacts. Section 4.9 of the 2022 EIR evaluates potential hazard impacts from all aspect of the Project: "The analysis addresses potential impacts resulting from physical changes and process changes in hazardous materials use, storage, disposal and transport, including operational and feedstock changes, at the Rodeo Refinery, . . ." (Contra Costa County 2022c, page 4.9-291).

The 2022 EIR described in detail the baseline hazards associated with hazardous materials used at the Rodeo Refinery, including “fires” and “explosions”, noting that “refinery fires generally pose little risk to the public when buffer zones are incorporated into the design.” The 2022 EIR states:

### **Rodeo Refinery Hazards**

Hazardous materials currently used at the Rodeo Refinery consist of those common to petrochemical operations, such as petroleum hydrocarbons, sulfur and sulfur compounds, hydrogen, aqueous ammonia, and organic gases. These substances can cause fires, explosions, and toxic exposure. Explosions at refineries can occur if flammable vapors and gases are ignited or when a flammable substance is released at high temperatures, usually under elevated pressure. Refinery explosions can include a vapor cloud explosion and a boiling liquid–expanding vapor explosion, both of which are very rare events. Impacts of an explosion are expressed in terms of a sudden increase in pressure above ambient pressure, resulting from a blast or shock wave, and explosions at refineries have caused damage, primarily broken windows, in nearby neighborhoods. A more common event would be a flash fire in which ignition occurs before mixing with atmospheric air. This type of fire does not result in explosions that could cause damaging overpressure. Refinery fires generally pose little risk to the public when buffer zones are incorporated in to the design, mainly because they are typically confined to the vicinity of the equipment from which the flammable release occurs. (2022 EIR, p. 4.9-292.)

Section 4.9.2.4 of the 2022 EIR describes the “Existing Phillips 66 Safety Management Systems” including the emergency response plans, emergency response capabilities, design considerations, facility inspections and training. Section 4.9.2.5 describes the ongoing requirements for Phillips 66’s Process Safety Management and Management of Change, which ensures that changes to the facility “do not cause plant facilities to be operated outside their design limits or introduce new hazards to plant operations.” Section 4.9.2.6 describes Phillips 66’s Risk Management Plan which satisfies federal, state and local requirements for risk management, and explains how it would be updated as a part of the Rodeo Renewed Project. Sections 4.9.2.5 and 4.9.2.6 are set forth below:

#### ***4.9.2.5 Process Safety Management and Management of Change***

To comply with the Process Safety Management requirements, Phillips 66 has established procedures for the MOC. The purpose of these procedures is to ensure that changes to process chemicals, technology, equipment, facilities, or critical procedures do not cause plant facilities to be operated outside their design limits or introduce new hazards to plant operations. Applicable requirements of the MOC may include an environmental review, health and safety/loss control review, process hazards analysis, project field safety check, HAZCOM Review/Safety Data Sheet<sup>48</sup> update, new or revised procedures, operator training, operating manual update, maintenance records update, equipment inspection update, process flow diagram update, piping and instrumentation diagram update, electrical drawing update, instrument loop sheet update, or other requirements deemed necessary by the reviewing engineers.

#### ***4.9.2.6 Risk Management Plan***

Phillips 66 operates under the USEPA RMP rule, CalARP Program, and the Contra Costa County ISO. The Rodeo and Santa Maria Refineries maintain RMPs that includes three main components: (1) hazard assessment; (2) release prevention planning; and (3) emergency response planning. The RMPs are updated when there are changes that would affect the use or storage of acutely hazardous substances. A detailed hazards and operability study of the changed components is carried out prior to startup of new equipment or processes such as would be part of the Project. Upon completion of the Project, the HMBP, which provides input to the RMP, would be updated and the RMP scenarios would be reviewed for potential change as a result of Project implementation and transition from

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conventional refining operations to an operation using non-hazardous feedstocks and producing non-toxic renewable fuels.

The 2022 EIR also describes the broad range of federal, state and local regulatory programs that apply to the Rodeo Refinery and to the Project, including the many regulations that pertain to hazard emergencies and accidents, such as the federal Emergency Planning and Community Right-to-Know Act, federal OSHA requirements, Cal/OSHA requirements, California Fire Code (and National Fire Protection Association) requirements, California Emergency Response Agency and associated response plans, and the County's General Plan provisions for emergencies and fire protection, along with the County's Industrial Safety Ordinance. These regulations provide for ongoing investigation and oversight of hazard accidents and emergencies.

2022 EIR Master Response No. 5 addressed in significant detail the exact issues presented in the current comments. (The current comments present the same hazard issues with respect to renewable fuels processing and hydrogen usage.) Master Response No. 5 compares the hydrogen demand for hydrocracking crude oil feedstocks to hydrotreating triglycerides (renewable feedstocks):

“The comment also states that the process hazards are correlated with the hydrogen demand per barrel but this does not consider the overall volume of renewable feedstocks being processed in the hydroprocessing units. A more accurate assessment of this Project would be to compare the hydrogen demand of hydrocracking units with the hydrotreating of triglycerides. The hydrogen demand for these hydroprocessing units ranges from 1500 to 2500 SCF/B. Even though the hydrogen use per barrel of feed may increase, the processing units will process fewer barrels of renewable feedstocks as compared to crude oil feedstocks, and the overall hydrogen usage per processing unit is within this historic range of the Rodeo Refinery. Accordingly, hydrogen demand of a renewable diesel hydrotreater (or hydroprocessor) is similar to that of existing process units at Rodeo Refinery.” (2022 EIR, p. 3-44.)

Master Response No. 5 also explains that “the hydrodeoxygenation of triglyceride reactions are exothermic and require proper safeguards to control the heat release.” (Contra Costa County 2022b, page 3-45.) The 2022 EIR then explains that these risks are less likely to occur as compared to those from hydrocracking crude oil feedstocks:

“In hydrotreating of triglyceride (renewable) feedstocks, a runaway reaction or reactor excursion would only occur at higher temperatures (>800 F), and are therefore, less likely to occur than in the hydrocracking of crude oil feedstocks, which may occur at typical operating conditions (500-750 F). The Project employs process safety measures to reduce the potential for a risk of upset (I EC 2016).” (2022 EIR, p. 3-45.)

Master Response No. 5 then details design features and safeguards to address hazard risks, including the PTU, that will remove contaminants from the feedstocks “to increase processing reliability and decrease corrosion and fouling risks,” and safeguards in the hydroprocessing units “to prevent side reactions” such as the use of certain processing temperatures, dilution of reactive materials and specially designed catalysts. (Master Response No. 5, pages 3-45 – 3-46.) Master Response No. 5 discusses the potential for an increased risk of High Temperature Hydrogen Attack (HTHA) and how the Project would address this issue, ensuring that the “conversion of these hydrocrackers to renewable fuels will not increase the risk of HTHA.” (Master Response No. 5, page 3-46.)

Master Response No. 5 also addresses prior comments (similar to current comments) that suggested that there would be increased flaring as a result of hydrogen-related incidents. Based on the similarities between crude oil processing and renewable fuels processing, increased flaring is not expected. (Master Response No. 5, page 3-46.) This has been confirmed through Unit 250's operations for nearly three years. In addition, Master Response No. 5 explained that flaring at refineries is strictly regulated by BAAQMD, including Regulation 12, Rule 11: Flare Monitoring at Refineries and Regulation 12, Rule 12: Flares at Refineries (BAAQMD 2021b).

Based on the detailed analysis in the 2022 EIR, the Project's potential hazards risk was determined to be less than significant because "the Project's operations are not expected to increase safety hazards." (Master Response No. 5, page 3-47.) "The Rodeo Refinery employs and the Rodeo Renewed Project will continue to employ process safety measures to address the reduced risk of hazards (IEC 2016)." (Master Response No. 5, page 3-47.) Based on the above, the Marathon operational data does not qualify as new information of substantial importance, which was not known and could not have been known at the time the 2022 EIR was originally certified, becomes available. As described in detail in Master Response No. 7, none of the information presented in the comment letters meets any condition that would trigger further environmental review.

Further, the analysis related to hazards was not challenged in connection with the County's 2022 EIR, and new claims regarding the adequacy of the 2022 EIR are now barred by the applicable statute of limitations. This is further discussed in Master Response No. 7: Scope of the Draft REIR and County Obligations, which details the requirements for the scope of the REIR and explains how the legal principles of res judicata, which bars challenges to the environmental analysis that were or could have been raised in the prior litigation, and collateral estoppel, which precludes relitigation of issues decided in prior proceedings, affect the review of issues addressed in the 2022 EIR.



## **Master Response No. 6: Carbon Plant and H Cycle**

Commenters state that the Rodeo Renewed Project has changed due to changes with respect to the Carbon Plant Site, including comments that “a company called H-Cycle is requesting the use of that site [for] a waste-to hydrogen facility” and that “Santa Clara County will be shipping waste products to the former Carbon Plant in order that those products can be converted to hydrogen for use at the Rodeo Renewed facility.”

As described in the 2022 EIR, Section 3.9.2 of the Project Description, Discontinue Use of Carbon Plant, following Project implementation, the Rodeo Refinery would no longer produce petroleum coke feed that is suitable for the Carbon Plant Site. (2022 EIR, page 3-31.) Therefore, “the Carbon Plant Site would be shut down and demolished.” (*Id.*) However, the 2022 EIR notes that “demolition activities have not been scheduled.” (*Id.*) Consistent with the Project Description, the County has been actively working with Phillips 66 regarding the demolition of the Carbon Plant Site, including approval of preliminary grading permits and pre-application discussions for the submission of applications for demolition permits. The Carbon Plant is on schedule to be demolished and removed no later than two years following commencement of Project operations as required by the Land Use Permit (Contra Costa County 2022a). The Carbon Plant ceased operation of its calcining kilns in January 2023 and surrendered the BAAQMD permits to operate for that equipment (BAAQMD 2023).

No other use for the Carbon Plant has been proposed by Phillips 66, and the Rodeo Renewed Project has not changed. H Cycle is a company that processes waste into hydrogen, and H Cycle made a presentation to County staff regarding its process and operations. Phillips 66 has been approached by certain third parties, including H Cycle, regarding various concepts for the Carbon Plant Site. However, Phillips 66 has not made any commitments to H Cycle or to any other third party regarding any future use of the Carbon Plant Site. Furthermore, no applications have been filed with the County pertaining to a new future use of the Carbon Plant Site.

Given that future use of the site following demolition of the Carbon Plant is still unknown, speculation of potential future uses of the site by other parties is not required as part of the analysis under CEQA. Any proposed reuse of the site would be subject to separate permitting and approval processes. As a result, the 2022 EIR properly limits the analysis of impacts related to the Carbon Plant Site.

The Project Description for the Project remains accurate.

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## **Master Response No. 7: Scope of the Draft REIR and County Obligations**

### ***Comments Outside the General Scope***

The County has received comments raising issues or requesting additional analysis of potential environmental impacts in areas beyond the scope of the Draft REIR.

On July 21, 2023, the Contra Costa County Superior Court issued a Statement of Decision remanding to the County for reconsideration three issues in the 2022 EIR (see Draft REIR, Appendix A Superior Court Statement and Decision). On August 23, 2023, the Superior Court entered judgment and issued a peremptory writ of mandate to the County to decertify the 2022 EIR and to conduct further environmental review in compliance with CEQA to address the three issues identified in the Statement of Decision (see Appendix A of Draft REIR). On October 12, 2023, the Superior Court reaffirmed its Statement of Decision, allowing the Land Use Permit to remain in place and allowing Project construction activities, but enjoined Project operations until further order of the Court (see Appendix B of this Final REIR). The Superior Court did not find any other CEQA violations beyond the three specific issues identified in the July 21, 2023 Statement of Decision, and the remaining content of the 2022 EIR is valid.

As discussed in the Section 1.2 of the Draft REIR, the purpose of the Draft REIR is to address the three specific issues identified in the Superior Court's Statement of Decision and to conduct further environmental review in compliance with CEQA as directed by the Superior Court. Consistent with the Superior Court's peremptory writ of mandate, the REIR needs only to address the issues specified in the Statement of Decision as necessary to achieve compliance with CEQA. This approach is consistent with the California Court of Appeal decision in *Ione Valley Land, Air, & Water Defense Alliance, LLC v. County of Amador* (2019), which held that the respondent county was not required to revisit impacts or issues other than the specific areas identified in the trial court's limited writ of mandate. The court further rejected the idea that full decertification of the EIR allows new challenges to parts of an EIR already upheld by a trial court. (33 Cal.App.5th 165, 173) Thus, the County is not required to analyze different alternatives or reevaluate areas of potential impact already adequately addressed in the 2022 EIR.

Here, the Superior Court's ruling directed the County to remedy three narrow portions of the EIR, specifically to (1) reconsider NuStar terminal as part of the project description; (2) reconsider Unit 250 as part of the cumulative impact analysis; and (3) reconsider the mitigation measures for the Project's odor impacts. Beyond these portions of the EIR, the Superior Court did not identify any other CEQA violations. The Superior Court rejected all other challenges by Project opponents', including but not limited to, challenges to the sufficiency of the 2022 EIR's project description with respect to the feedstock mix, discussion of indirect land use impacts, and discussion of cumulative indirect land use impacts.

Pursuant to the Superior Court's ruling and discussed in the Draft REIR, Section 1.1, the County reconsidered the project description using evidence relating to changes made to the NuStar terminal. Based on this evidence, which includes signed declarations from Phillips 66 and NuStar officials, the County confirmed that "the Project has never been expected to receive and will not be receiving feedstocks from the NuStar facility." (Draft REIR, page 2 quoting Cross Declaration, page 2) As a result of its review, the County determined "the changes to the NuStar facility to be unrelated to the Project," and "understand[s] that the Project will in no way rely on the NuStar facility for any portion of its feedstocks or in any other capacity." See Appendix B of the Draft REIR, Cross Declaration, pages 2–3. The County therefore concluded, in reconsidering the NuStar terminal as directed by the Superior Court, the project description for the Rodeo Renewed Project should remain the same as was set forth in the 2022 EIR and not be revised or recirculated. With the project description remaining unchanged from the 2022 EIR, there are only two substantive revisions to the EIR being recirculated: (1) cumulative impacts and (2) odor mitigation.

According to CEQA Guidelines Section 15088.5(c), if revisions to an EIR are limited to a few portions or chapters of the EIR, the lead agency need only recirculate those portions that have been modified. Pursuant to this rule, the Draft REIR only includes and recirculates the chapters and sections necessary to address the specific deficiencies identified in the Superior Court's Statement of Decision. As permitted by CEQA Guidelines Section 15088.5(f)(2), the County requested that reviewers limit their comments to only the revised chapters or sections of the Draft REIR. The Draft REIR's revisions are comprised of the County's reconsideration of the EIR's project description in relationship to the NuStar terminal and portions of Section 6.4, Cumulative Impacts, and Section 4.3, Air Quality. Analyses in the 2022 Final EIR that were not identified in the Statement of Decision and peremptory writ of mandate as requiring reconsideration have not been revised and are not being recirculated. Under CEQA Guidelines Section 15088.5(f)(2)(ii), when a lead agency revises and recirculates an EIR only in part, the lead agency need only respond to comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated. In its discretion, the County has nevertheless provided this Master Response to address specific comments that are beyond the scope of the Draft REIR.

### **Comments Unrelated to the Revised EIR**

Some commenters raise concerns that either were or could have been raised in the earlier proceedings on the 2022 EIR. As noted above, when a lead agency revises and recirculates an EIR only in part, a lead agency need only respond to comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated. This is specified in CEQA Guidelines, § 15088.5(f)(2)(ii). Moreover, two legal doctrines limit the review of the Revised EIR, res judicata (also known as claim preclusion) and collateral estoppel (also known as issue preclusion). Res judicata bars challenges to the environmental analysis that were or could have been raised in the prior litigation, and collateral estoppel precludes relitigation of issues decided in prior proceedings.<sup>9</sup> These principles matter because the finality of the Superior Court's judgment would be undermined by relitigation of issues that were or could have been raised in the litigation based on the 2022 EIR. These doctrines are explained in *Town of Atherton v. Cal. High-Speed Rail Auth.* (2014) (228 Cal.App.4th 314, 354) and *Citizens for Open Government v. City of Lodi* (2012) (205 Cal.App.4th 296, 325)

In *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 324–327, petitioners challenged the adequacy of a revised EIR filed in compliance with the trial court's writ of mandate, claiming that the city failed to conduct environmental analysis of an issue outside the scope of the revised EIR. The reviewing court held that petitioners' challenge to the revised EIR was barred by res judicata, as the claim could have been made in the first petition and was "based on the same conditions and facts in existence when the original action was filed." *Id.* at page 327.

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<sup>9</sup> "Res judicata bars the litigation not only of issues that were actually litigated but also issues that could have been litigated." *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 324. The doctrine "applies when a party can demonstrate: (1) the decision in the prior proceeding is final and on the merits; (2) the present proceeding is on the same cause of action as the prior proceeding; and (3) the parties in the present proceeding or parties in privity with them were parties to the prior proceeding." *Central Delta Water Agency v. Dept. of Water Resources* (2021) 69 Cal.App.5th 170, 206 (*Central Delta*). Causes of action are considered the same if they are based on the same conditions and facts that were in existence when the original action was filed. *Ione Valley Land, Air, & Water Defense Alliance, LLC v. County of Amador* (2019) 33 Cal.App.5th 165, 171. The parallel doctrine of collateral estoppel prohibits relitigation of issues that were argued and decided in a prior proceeding where claimants are in privity with a party to the prior proceeding, even if the causes of action differ. *Town of Atherton v. Cal. High-Speed Rail Auth.* (2014) 228 Cal.App.4th 314, 354; *Silverado Modjeska Recreation & Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 299. "In CEQA cases, litigation of CEQA claims against a defendant on behalf of the public is generally sufficient to support a finding of common interest to establish privity" for res judicata and collateral estoppel purposes. *Central Delta, supra*, 69 Cal.App.5th at p. 209 (citing *Silverado Modjeska Recreation & Park Dist., supra*, 197 Cal.App.4th at p. 299).

## Rodeo Renewed Project, Final Revised Environmental Impact Report

### 3 Responses to Comments

Here, the Superior Court's decision directed the County to revisit three narrow aspects of the EIR, rejected Petitioners' other challenges, and did not identify any other CEQA violations. The order that the EIR be decertified did not reopen the ability to challenge the revised EIR on issues that were raised or could have been raised in the prior litigation. See *Lone Valley Land, Air & Water Defense Alliance, LLC, supra*, 33 Cal.App.5th at page 172. Objections regarding the project description, piecemealing, cumulative impacts, and feedstocks and land use were already raised, or could have been raised, in the initial challenge to the Project's 2022 EIR. Refer to the 2022 EIR, Master Responses Nos. 3: Cumulative Impacts, No. 4: Land Use and Feedstocks, and No. 7: Project Description-Piecemealing. These objections are therefore now untimely, and the County's prior responses on these issues are sufficient. See *Citizens for Open Government v. City of Lodi, supra*, (205 Cal.App.4th at pages 301, 327) which upheld the trial court order discharging a writ of mandate where the agency declined to respond to comments that were beyond the scope of the revised EIR, citing *res judicata*.

### Comments Requesting Additional Analysis

Several comment letters request additional environmental analysis based on new information presented with their comments. However, the information presented in these comments does not require additional CEQA evaluation. Statutes and regulations governing the preparation of subsequent EIRs, though not expressly applicable to a revised EIR prepared under the Superior Court's limited directive, guide the scope of the County's review here. For guidance, the County referred to the court's decision in *Silverado Modjeska Recreation & Park Dist., supra* (197 Cal.App.4th at pages 301–302) which explained the relationship of the principles governing recirculation after certification of a final EIR and recirculation to address new information received before certification of a final EIR (citing *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1130–1132)).

Additional CEQA analysis is not required "whenever *any* new arguably significant information or data is proposed, regardless of whether the information reveals environmental bad news." (*Silverado Modjeska Recreation & Park Dist., supra*, 197 Cal.App.4th at page 305 (italics in original)) As explained above, the Draft REIR analyses the three specific issues identified in the Superior Court's Statement of Decision as requiring reconsideration. Beyond those three issues, no supplemental environmental review is required, unless CEQA's triggering mechanisms are met. Specifically, CEQA first requires that one or more of the following conditions has occurred:

- (1) substantial changes are proposed for the Project that involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) substantial changes have occurred with respect to the circumstances under which the Project is being undertaken that involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) new information of substantial importance, which was not known and could not have been known at the time the 2022 EIR was originally certified, becomes available.

This is outlined in CEQA Guidelines, Section 15162(a); see also Pub. Resources Code, Section 21166. Further, "new information of substantial importance" needs to show:

- (A) the project will have one or more significant effects not discussed in the 2022 EIR;
- (B) significant effects previously examined will be substantially more severe than shown in the 2022 EIR;

- (C) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, and the project proponent has declined to adopt the mitigation measure or alternative; or
- (D) mitigation measures or alternatives which are considerably different from those analyzed in the 2022 EIR would substantially reduce one or more significant effects on the environment, and the project proponent has declined to adopt the mitigation measure or alternative. (CEQA Guidelines, Section 15162(a)(3))

As discussed in Master Response No. 3: Cumulative Impacts, the new Pathways Report information is not new information that would require expansion of the Draft REIR's cumulative analysis. The County does not consider the information presented in comments to be reasonably predictive or reliable enough to result in new significant impacts of the Project that are reasonably foreseeable, substantially increase the severity of previously identified significant effects, substantially change the circumstances surrounding the Project, or demonstrate the availability of feasible mitigation measures not incorporated to the Project. Accordingly, public comments have not presented the County with new information that would justify expansion of the Draft REIR's cumulative impacts analysis. The County determined on page 23 of the Draft REIR that the Unit 250 project will result in a decrease of GHG emissions and will not contribute to a cumulative GHG impact.

As discussed in Master Response No. 4: Feedstock Analysis, certain commenters contend that new information presented in their comment letters require the County to conduct a new analysis of feedstocks and related impacts. However, as explained in Master Response No. 4 and consistent with the 2022 EIR and the Court's Decision, the Project's feedstock mix and alleged related impacts remain too speculative to analyze and therefore the information provided does not satisfy the criteria above.

As discussed in Master Response No. 5: Marathon Renewable Fuels Operations and Hazards, commenters state that two recent fire incidents at the Marathon facility along with Marathon's increased flaring constitutes new information resulting in potentially new significant hazard impacts that need to be further studied in the EIR for the Rodeo Renewed Project. However, for nearly three years, Phillips 66 has been operating Unit 250 and processing pretreated renewable feedstocks, similar to Marathon. During this time, Phillips 66 has not had any similar fire incidents related to Unit 250's renewable fuels processing, nor has Unit 250 processing resulted in increased flaring that has met the BAAQMD Regulation 12 Rule 12 reportable flaring event definition, as noted by commenters with respect to Marathon's operations. A review of the BAAQMD web site indicates that none of the Flare Causal Analysis submitted by Phillips 66 since Unit 250 began producing renewable fuels in April, 2021 were caused by Unit 250 operations.

As described in detail in these Master Responses, none of the information presented in the comment letters meets any condition enumerated above that would trigger further environmental review.. Accordingly, the County is not required to conduct additional environmental analysis based on the information provided.

**Master Response No. 8: Non-CEQA Topics and Project Merits**

CEQA does not require lead agencies to respond to comments that do not raise significant environmental issues on the content of the EIR or the impacts of the Project on the environment (see CEQA Guidelines Section 15088). Where a comment does not identify any specific deficiencies related to the analysis presented in the Draft REIR, no further response is warranted and the County will acknowledge that the “comment is noted”. In addition, this Master Response is included to provide consideration of these comments by decision makers as part of the Project approval process. Moreover, because the comments were submitted during the public review period on the Draft REIR, they nonetheless constitute part of the public record that will be available to decision makers as part of this Final REIR.

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## Rodeo Renewed Project, Final Revised Environmental Impact Report

3 Responses to Comments

### **Master Response References**

BAAQMD (Bay Area Air Quality Management District). 2018. Final Major Facility Review Permit Issued to: Phillips 66-San Francisco Refinery Facility #A0016. December 27. Link: [A0016\\_12\\_27\\_2018\\_MR\\_Final\\_Permit\\_02.pdf.pdf](#)

\_\_\_\_\_. 2021a. Flare Causal Reports Link: [Flare Causal Reports \(baaqmd.gov\)](#)

\_\_\_\_\_. 2021b. Reg 12-12 Link: [rg1212\\_20211103-pdf.pdf \(baaqmd.gov\)](#)

\_\_\_\_\_. 2023. Device shutdown form. Facility ID #21360 Phillips 66 Carbon Plant. February 1.

CARB (California Air Resources Board). 2020. Link: <https://ww2.arb.ca.gov/sites/default/files/2020-09/basicsnotes.pdf>.

Contra Costa County. 2022a. Department of Conservation and Development, Community Development Division. Approved Permit, Application CDLP20-02040. Approval date May 3, 2022. Effective date May 3, 2022.

\_\_\_\_\_. 2022b. Rodeo Renewed Project Final Environmental Impact Report, County File No. CDLP20-02040, State Clearinghouse No. 2020120330. March.

\_\_\_\_\_. 2022c. Rodeo Renewed Project Draft Environmental Impact Report, County File No. CDLP20-02040, State Clearinghouse No. 2020120330. October.

S&T (S&T<sup>2</sup> Consultants Inc.) 2023. Low Carbon Fuel Standard (LCFS) Fuel Pathway Report on Argentinian Soybean Oil Renewable Diesel. Prepared for Phillips 66 Company. November 22.

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### 3.3 INDIVIDUAL RESPONSES TO COMMENTS

Individual comments and responses are presented starting on the following page and in the order shown in Table 2-1, Commenters on the Draft EIR, in Chapter 2, List of Commenters. The comment letters are organized by Agencies, Organizations, and Individuals. Each letter/correspondence is assigned a number and each comment that requires a response within a given letter/correspondence is also assigned a number.<sup>10</sup>

Responses focus on comments that pertain to the adequacy of the analysis in the Draft REIR or to other aspects pertinent to the potential effects of the Project on the environment pursuant to CEQA. As addressed in Master Response No. 8, Non-CEQA Topics/Project Merits, comments that address topics beyond the purview of the EIR or CEQA are noted as such for the public record.

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<sup>10</sup> Due to the volume of documents, the attachments to Comment Letters 6, 16, and 25 supporting the commenters' comments can be found in their entirety on the County's website: <https://www.contracosta.ca.gov/RodeoRenewed> (link).

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**Comment Letter 1. Bay Area Air Quality Management District**



**COMMENT LETTER: 1**

December 7, 2023

**BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT**

Joseph Lawlor, Project Planner  
Community Development Division  
Department of Conservation & Development  
Contra Costa County  
30 Muir Road, Martinez, CA 94553

Re: Phillips 66 Rodeo Renewed Project Draft Revised Environmental Impact Report

**ALAMEDA COUNTY**

John J. Bauters  
(Chair)  
Juan Gonzalez  
David Haubert  
Nate Miley

**CONTRA COSTA COUNTY**

Ken Carlson  
John Gioia  
David Hudson  
Mark Ross

**MARIN COUNTY**

Katie Rice

**NAPA COUNTY**

Joelle Gallagher

**SAN FRANCISCO COUNTY**

Tyrone Jue  
(SF Mayor's Appointee)  
Myrna Melgar  
Shamann Walton

**SAN MATEO COUNTY**

Noelia Corzo  
Davina Hurt  
(Vice Chair)  
Ray Mueller

**SANTA CLARA COUNTY**

Margaret Abe-Koga  
Otto Lee  
Sergio Lopez  
Vicki Veenker

**SOLANO COUNTY**

Erin Hannigan  
Steve Young

**SONOMA COUNTY**

Brian Barnacle  
Lynda Hopkins  
(Secretary)

Dr. Philip M. Fine  
EXECUTIVE OFFICER/APCO

Dear Joseph Lawlor:

Bay Area Air Quality Management District (Air District) staff has reviewed the Draft Revised Environmental Impact Report (DREIR) for the Phillips 66 Rodeo Renewed Project (Project).

**Project Description**

The Project is located at 1380 San Pablo Avenue, in the community of Rodeo, in Contra Costa County (County). The Project site comprises approximately 1,100 acres of land and is named the Rodeo Refinery. The main components of the Project are located within a 495-acre developed area of the Rodeo Refinery, located northwest of Interstate 80 (I-80). This area is referred to as the Rodeo Site. The Project includes other changes to Phillips 66's facilities, both within the Rodeo Refinery and in San Luis Obispo County, as described below.

As part of the Project, the Rodeo Site will stop processing crude oil, but will receive, blend, and ship up to 40,000 barrels per day (bpd) of gasoline and gasoline blendstocks. In addition to gasoline, the Rodeo Site will blend renewable diesel, propane, naphtha, and potentially aviation fuel, for a total of up to 55,000 bpd. In addition, the Carbon Plant Site, located southeast of I-80 at 2101 Franklin Canyon Road in Rodeo and within the 1,100-acre Rodeo Refinery site, will cease to be used and will be demolished.

The Project includes changes to the Phillips 66 Santa Maria facility in San Luis Obispo County. The Santa Maria facility currently provides crude oil feedstocks to the Rodeo facility. The Project will idle and decommission the Santa Maria facility. The existing Phillips 66 crude oil pipeline network from the gathering fields in central California to the Rodeo facility will no longer be necessary to support the reconfigured facility and will be active, but out of service. To account for the idling of the Santa Maria facility and to maintain production levels during the transition process, the Project proposes to increase deliveries of crude oil across the Marine Terminal on a short-term and transitional basis.

**Purpose of DREIR**

The County has prepared the DREIR in response to the Superior Court's October 12, 2023, decision regarding the Project's 2022 Environmental Impact Report. On October 12, 2023,

Connect with the  
Bay Area Air District:



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the Superior Court directed the County to reconsider three issues and to conduct further environmental review in compliance with the California Environmental Quality Act (CEQA). DREIR Appendix A includes the Superior Court's Statement of Decision.

**Air District's Previous Comment Letters**

The Air District previously submitted a comment letter dated January 27, 2021, on the Project's Notice of Preparation for a Draft Environmental Impact Report (DEIR), released on December 21, 2020; and a comment letter dated December 17, 2021, on the Project's DEIR released in October 2021. Both letters are available on the Air District's [Comment Letters](#) webpage.

**Air District's Comments on the DREIR**

The Air District has the following comments on the Project's DREIR.

**Odor Prevention and Management Plan**

The Air District strongly encourages Phillips 66 to revise the Odor Prevention and Management Plan (OPMP), included in the DREIR as Appendix E, to include more information about how Phillips 66 will prevent and mitigate odors through best practices, inspections, good record keeping, and staff training. A well-documented OPMP will reassure community members that Phillips 66 is committed to being proactive and responsive to community concerns about odors. The OPMP should include:

1. A list of Best Management Practices Phillips 66 will implement, including, but not limited to commitments to:
  - a) Offload the feedstock as soon as it arrives at the site and disallow the overnight storing of feedstock in rail, truck, or other shipping containers;
  - b) Ensure that sludge from the Pre-treatment Unit will not be stored in trucks overnight;
  - c) Specified daily and/or weekly frequencies of conducting such practices; and
  - d) Include identification of Air District-assigned source number for applicable sources.
2. Documentation stating how Phillips 66 will:
  - a) Control marine unloading odors;
  - b) Ensure the carbon canister systems have permit conditions that specify monitoring, inspection, and changeout, and include the corresponding frequency of these activities;
  - c) Corrective actions and procedures to prevent repeating odor incidents;
  - d) Descriptions of renewable feedstock tanks, in addition to the description of Tank 100;
  - e) Description of the Facility's REOP-11-OPS EMERGENCY - Odor Complaint Investigation and CWS Notification Requirements procedure; and
  - f) Descriptions of the pre-job plans and procedures put in place for the safe flushing and cleaning of the equipment, vessel, piping, etc., prior to opening the system for maintenance work.
3. A detailed Administrative Section that includes:
  - a) A schedule of odor monitoring and inspections, including a frequency of odor inspections (i.e. daily, weekly);
  - b) Use of proper Air District protocol to determine the source of any odorous emissions;

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- c) Requirement to maintain, update, and operate the OPMP as reviewed and approved by Contra Costa County;
- d) A record retention policy, including what records will be kept regarding odor events and where records are to be kept;
- e) A description of the staff odor prevention and management training program, including how to identify the source of potential odor and respond to spillages; and
- f) The name, title and contact information of the responsible individual(s) in the case of odor complaints.

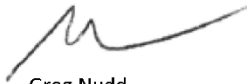
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cont'd

In addition to the comments above, the Air District recommends that the County review and require implementation of best practices to center environmental justice, health, and equity in the construction and operations phases of this Project as illustrated in chapter two (2) of the Air District's 2022 California Environmental Quality Act (CEQA) Guidelines.<sup>1</sup>

2

Thank you for the opportunity to provide comments on the DREIR. If you have any questions on these comments, please contact Alison Kirk, [akirk@baaqmd.gov](mailto:akirk@baaqmd.gov) and Mark Tang, [mtang@baaqmd.gov](mailto:mtang@baaqmd.gov).

Sincerely,



Greg Nudd  
Deputy Executive Officer of Science and Policy

Cc: BAAQMD Chair John Gioia  
BAAQMD Director David Hudson  
BAAQMD Director Ken Carlson  
BAAQMD Director Mark Ross

<sup>1</sup> Bay Area Air Quality Management District, 2022. [California Environmental Quality Act \(CEQA\) Guidelines](#), Chapter 2, Best Practices for Centering Environmental Justice, Health, and Equity

### **Response to Comment 1**

Refer to Master Response No. 1: Odor Mitigation.

### **Response to Comment 2**

Best Practices for Centering Environmental Justice, Health and Equity

The BAAQMD 2022 CEQA Guidelines, *Chapter 2: Best Practices for Centering Environmental Justice, Health and Equity*, provides “lead agencies with best practices on centering environmental justice (EJ), health, and equity in the siting, design, and development of projects” under CEQA. (2022 CEQA Guidelines, page 2-1.) The chapter includes definitions of and concepts associated with equity and environmental justice, citing federal and State laws, and provides background regarding environmental justice. (2022 CEQA Guidelines, Sections 2.1.2 and 2.1.3.)

Section 2.2 provides guidance regarding ways “to assess and improve EJ practices in CEQA review for all projects.” “By using this guidance, lead agencies should be able to:

- inform, consult, or engage overburdened and/or AB 617 communities in CEQA analysis and decision making;
- identify projects located in overburdened and/or AB 617 communities;
- analyze project-level impacts on overburdened and/or AB 617 communities; and
- determine whether the project is centering nondiscrimination and environmental justice through its mitigation plan, cumulative impact analysis, and alternatives analysis.”

This guidance discusses processes for public participation, defining the environmental setting and project description, and identifying and analyzing project-level impacts on overburdened communities relative to air quality, community risks and hazards and odors. (2022 CEQA Guidelines, Sections 2.2.1, 2.2.2 and 2.2.3.) This guidance discusses CEQA’s provisions regarding economic and social effects. (2022 CEQA Guidelines, Section 2.2.4.) The guidance then discusses environmental justice considerations in project-level mitigation, providing several examples of mitigation to reduce pollution exposure and minimize impacts, including a community benefits agreement. (2022 CEQA Guidelines, Section 2.2.5.)

Section 4.17 of the 2022 EIR evaluates environmental justice, consistent with the BAAQMD’s 2022 CEQA Guidelines and its environmental justice guidance. Section 4.17 provides background regarding environmental justice and the State’s legislative efforts since 1999 to address environmental justice. Section 4.17.2 provides the regulatory setting under federal, State and local law for the evaluation of environmental justice, including the County’s draft policies for its General Plan intended to meet the requirements of SB 1000. The County used the California Communities Environmental Health Screening Tool (CalEnviroScreen) to identify disadvantaged communities in the vicinity of the Project. The County relied on State law to evaluate whether “the Project is consistent with these statutory provisions to reduce pollution exposure, including air quality, in disadvantaged communities and to consider whether or not the effects of pollution are disproportionately borne by disadvantaged communities.” (2022 EIR, page 4.17-458.) The EIR concluded that despite the Project’s potentially significant impacts, these impacts would not have a “corresponding public health or safety impact” and thus “would not disproportionately affect disadvantaged communities.” This section of the EIR was not challenged in the lawsuit and remains valid.



In addition, Phillips 66 entered into a community benefits agreement for the Project, which is enforceable through conditions imposed as part of the County's Project Land Use Permit approval (Contra Costa County 2022a).

### Climate Impact Thresholds of Significance (Project Level) and Project-Level Climate Impacts

Chapters 3 and 6 of BAAQMD's 2022 CEQA Guidelines include new information regarding project-level thresholds of significance for climate impacts related to greenhouse gas (GHG) emissions. Chapter 3 includes Table 3-2 copied below, which is also set forth in Chapter 6, and appears to apply to projects that generate GHG emissions from sources other than stationary sources. Section 6.4, entitled Stationary Sources of GHG Emissions, states: "the bright-line threshold of producing 10,000 metric tons of carbon dioxide equivalent (MTCO<sub>2</sub>e) per year," citing Table 3-2 (although Table 3-2, does not include this threshold). As stated in Section 6.4, this evaluation of GHG emissions from stationary sources "should include mobile sources that are associated with the stationary source such as trucks, ships, and rail." (2022 BAAQMD CEQA Guidelines, page 6-9.) This guidance also specifically refers to refineries: "Major stationary sources are typically associated with industrial processes, such as refineries and power plants." (2022 BAAQMD CEQA Guidelines, page 6-9.)

**Table 3-2 Climate Impact Thresholds of Significance (Project Level)**

Thresholds of Significance for Land Use Projects (Must Include A or B)
<p>A. Projects must include, at a minimum, the following project design elements:</p> <ol style="list-style-type: none"> <li>1. Buildings                             <ol style="list-style-type: none"> <li>a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development).</li> <li>b. The project will not result in any wasteful, inefficient, or unnecessary energy use as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines.</li> </ol> </li> <li>2. Transportation                             <ol style="list-style-type: none"> <li>a. The project will achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target that reflects the recommendations provided in the Governor's Office of Planning and Research's <i>Technical Advisory: Evaluating Transportation Impacts in CEQA</i>:                                     <ol style="list-style-type: none"> <li>i. Residential projects: 15 percent below the existing VMT per capita</li> <li>ii. Office projects: 15 percent below the existing VMT per employee</li> <li>iii. Retail projects: no net increase in existing VMT</li> </ol> </li> <li>b. The project will achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.</li> </ol> </li> </ol>
<p>B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).</p>

Note: The project-level thresholds of significance for climate impacts were adopted by the Air District's Board of Directors on April 20, 2022.

The 2022 EIR, Section 4.8, evaluated the Project's operational GHG emissions, including stationary sources and mobile sources, determining that there would be a reduction in GHG emissions. (Table 4.8-5, page 4.8-263.) This section of the EIR was not challenged in the lawsuit, and it remains valid.

Although Table 3-2 provisions do not apply to the Rodeo Renewed Project, it is worth noting that the EIR also evaluated the Project’s vehicle miles traveled (VMT), and while the employee traffic and associated VMT would not change, the Project’s truck traffic would be reduced by over 50% resulting in a substantial reduction of VMT – approximately 110 truck roundtrips per day to approximately 44 truck roundtrips per day.

**Thresholds of Significance for Criteria Pollutants and Risks and Hazards**

The relevant thresholds of significance for criteria pollutants and risks and hazards did not change from the 2017 to the 2022 versions of the Guidelines. This is true for construction and operational thresholds. Excerpts from the 2017 and 2022 Guidelines with the thresholds are below.

**2022 Guidelines**

**Table 3-1 Air Quality Thresholds of Significance (Project Level)**

	Construction Related*	Operational	
<b>Criteria Air Pollutants and Precursors (Regional)</b>			
Pollutant	Average Daily Emissions (lb/day)	Average Daily Emissions (lb/day)	Maximum Annual Emissions (tpy)
ROG	54	54	10
NO <sub>x</sub>	54	54	10
PM <sub>10</sub>	82 (exhaust)	82	15
PM <sub>2.5</sub>	54 (exhaust)	54	10
PM <sub>10</sub> /PM <sub>2.5</sub> (fugitive dust)	Best management practices**	None	
Local CO	None	9.0 ppm (8-hour average), 20.0 ppm (1-hour average)	
<b>Local Risks and Hazards</b>			
Risks and hazards for new sources and receptors (cumulative threshold)	Same as operational thresholds	Cancer Risk: > 100 in a million (from all local sources) Non-cancer: > 10.0 Hazard Index (chronic, from all local sources) PM <sub>2.5</sub> : > 0.8 µg/m <sup>3</sup> annual average (from all local sources)	OR Compliance with Qualified Community Risk Reduction Plan
Risks and hazards for new sources and receptors (individual project)	Same as operational thresholds	Increased Cancer Risk >10.0 in a million Increased Non-cancer > 1.0 Hazard Index (chronic or acute) PM <sub>2.5</sub> increase: > 0.3 µg/m <sup>3</sup> annual average	OR Compliance with Qualified Community Risk Reduction Plan

2017 Guidelines

<b>Table 2-1 Air Quality CEQA Thresholds of Significance*</b>			
<b>Pollutant</b>	<b>Construction-Related</b>	<b>Operational-Related</b>	
<b>Project-Level</b>			
<b>Criteria Air Pollutants and Precursors (Regional)</b>	<b>Average Daily Emissions (lb/day)</b>	<b>Average Daily Emissions (lb/day)</b>	<b>Maximum Annual Emissions (tpy)</b>
ROG	54	54	10
NO <sub>x</sub>	54	54	10
PM <sub>10</sub>	82 (exhaust)	82	15
PM <sub>2.5</sub>	54 (exhaust)	54	10
PM <sub>10</sub> /PM <sub>2.5</sub> (fugitive dust)	Best Management Practices	None	
Local CO	None	9.0 ppm (8-hour average), 20.0 ppm (1-hour average)	
GHGs – Projects other than Stationary Sources	None	Compliance with Qualified GHG Reduction Strategy OR 1,100 MT of CO <sub>2</sub> e/yr OR 4.6 MT CO <sub>2</sub> e/SP/yr (residents+employees)	
GHGs –Stationary Sources	None	10,000 MT/yr	
Risk and Hazards for new sources and receptors (Individual Project)*	Same as Operational Thresholds**	Compliance with Qualified Community Risk Reduction Plan OR Increased cancer risk of >10.0 in a million Increased non-cancer risk of > 1.0 Hazard Index (Chronic or Acute) Ambient PM <sub>2.5</sub> increase: > 0.3 µg/m <sup>3</sup> annual average  <u>Zone of Influence:</u> 1,000-foot radius from property line of source or receptor	
Risk and Hazards for new sources and receptors (Cumulative Threshold)*	Same as Operational Thresholds**	Compliance with Qualified Community Risk Reduction Plan OR Cancer: > 100 in a million (from all local sources) Non-cancer: > 10.0 Hazard Index (from all local sources) (Chronic) PM <sub>2.5</sub> : > 0.8 µg/m <sup>3</sup> annual average (from all local sources)  <u>Zone of Influence:</u> 1,000-foot radius from property line of source or receptor	

The guidance for conducting the cumulative health risk assessment in the 2022 CEQA Guidelines uses the same methodology to determine what sources are included in the analysis as the 2017 CEQA Guidelines. Both versions use the same radius of 1,000 feet for inclusion of existing sources.

Table 2-1 of the 2017 CEQA Guidelines (shown above) indicates the “Zone of Influence” for Risks and Hazards is a 1,000-foot radius. The radius used in the 2022 CEQA Guidelines is also 1,000 feet as described below, from page E-15.

“For assessing the cumulative impacts from a project’s source(s) in combination with existing sources, a specific project radius is recommended. The Air District recommends that the cumulative analysis combine the risks and hazards from existing sources within 1,000 feet of the project’s source(s) with the risks and hazards from the project’s source(s).”

The thresholds of significance and the methodology for evaluating project and cumulative impacts have not changed with the 2022 CEQA Guidelines. These sections of the EIR remain valid. It should also be noted that BAAQMD did not have any issues with the methodology and sources chosen for the cumulative impacts assessment in the 2022 EIR.

**Comment Letter 2. East Bay Municipal Utility District**

COMMENT LETTER: 2



November 28, 2023

Joseph Lawlor, Project Planner  
Community Development Division  
Contra Costa County, Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553

Re: Notice of Availability of a Draft Revised Environmental Impact Report for the Phillips 66 Rodeo Renewed Project (County File No. CDLP20-02040), Rodeo

Dear Mr. Lawlor:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Draft Revised Environmental Impact Report (EIR) for the Phillips 66 Rodeo Renewed Project (Project) located at 1380 San Pablo Avenue in Rodeo in unincorporated Contra Costa County (County). EBMUD commented on the Project Draft EIR on December 6, 2021, and Notice of Preparation of a Draft EIR on January 20, 2021. EBMUD's original comments (see enclosure) still apply regarding general, water service, water recycling, and water conservation. 1

If you have any questions concerning this response, please contact Timothy R. McGowan, Senior Civil Engineer, Major Facilities Planning Section at (510) 287-1981.

Sincerely,

A handwritten signature in blue ink that reads 'David J. Rehnstrom'.

David J. Rehnstrom  
Manager of Water Distribution Planning

DJR:DVG:kn  
wdpd23\_311 Phillips 66 Rodeo Renewed Project

Enclosures: Comments on the Project Draft EIR  
Comments on the Notice of Preparation of a Draft EIR

cc: Don Bristol  
Phillips 66 Company  
1380 San Pablo Avenue  
Rodeo, CA 94572

**COMMENT LETTER: 2**



December 6, 2021

Gary Kupp, Senior Planner  
Contra Costa County  
Department of Conservation & Development  
Community Development Division  
30 Muir Road  
Martinez, CA 94553

Re: Notice of Availability for a Draft Environmental Impact Report for the Proposed Phillips  
66 Rodeo Renewed Project (County File# LP20-2040)

Dear Mr. Kupp:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Draft Environmental Impact Report (EIR) for the Phillips 66 Rodeo Renewed Project located at 1380 San Pablo Avenue in Rodeo in unincorporated Contra Costa County (County). EBMUD commented on the Notice of Preparation of a Draft EIR for the project on January 20, 2021. EBMUD's original comments (see enclosure) still apply regarding water service, water recycling, and water conservation. EBMUD has the following clarifying comments on water recycling.

**WATER RECYCLING**

The proposed project presents opportunities to produce and serve significant amounts of recycled water for industrial and irrigation uses. EBMUD requests that an estimate of expected water demands for feasible recycled water applications be provided for the project. EBMUD also requests that Phillips 66 continue to coordinate closely with the EBMUD regarding specifications and infrastructure requirements in implementing a recycled water project when feasible to do so.

If you have any questions concerning this response, please contact Timothy R. McGowan, Senior Civil Engineer, Major Facilities Planning Section at (510) 287-1981.

Sincerely,

A handwritten signature in cursive script that reads 'David J. Rehnstrom'.

David J. Rehnstrom  
Manager of Water Distribution Planning

DJR:KTL:djr  
sb21\_331.Phillips 66 Rodeo Renewed Project NOA of DEIR Response

Enclosure

375 ELEVENTH STREET, OAKLAND, CA 94607-4240, TOLL FREE 1-955-40-EBMUD

**Rodeo Renewed Project, Final Revised Environmental Impact Report**

**3 Responses to Comments**

Gary Kupp, Senior Planner  
December 6, 2021  
Page 2

**COMMENT LETTER: 2**

cc: Richard G. Harbison  
Phillips 66 Company  
1380 San Pablo Avenue  
Rodeo, CA 94572

Don Bristol  
Phillips 66 Company  
1380 San Pablo Avenue  
Rodeo, CA 94572



**COMMENT LETTER: 2**



January 20, 2021

Gary Kupp, Senior Planner  
Contra Costa County  
Department of Conservation & Development  
Community Development Division  
30 Muir Road  
Martinez, CA 94553

Re: Notice of Preparation for a Draft Environmental Impact Report for the Proposed Phillips 66 Rodeo Renewed Project (County File# LP20-2040)

Dear Mr. Kupp:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Notice of Preparation of a Draft Environmental Impact Report for the Phillips 66 Rodeo Renewed Project located at 1380 San Pablo Avenue in Rodeo in unincorporated Contra Costa County (County). EBMUD has the following additional comments.

**GENERAL**

EBMUD owns and operates a 24-inch and 48-inch transmission pipeline located in an EBMUD right-of-way (owned in fee) that traverses the Phillips 66 Refinery. These pipelines provide continuous service to customers within the area; the integrity of these pipelines needs to be maintained at all times. Any proposed construction activity near or within the EBMUD property will need to be coordinated with EBMUD and may require relocation of the pipelines and/or property at the project sponsor's expense. No buildings or structures shall be constructed in EBMUD's property unless specific approval is given by EBMUD. Furthermore, any construction in the vicinity of the EBMUD property shall not undermine the integrity of the transmission pipelines and the surrounding soil. EBMUD requests that the project sponsor provide a set of plans of the proposed construction in any future environmental documentation to determine its proximity to EBMUD's property, right-of-ways, and pipelines.

**WATER SERVICE**

EBMUD's Maloney Pressure Zone, with a service elevation range between 0 and 200 feet, currently provides water service to the Phillips 66 Refinery. If additional water service is needed, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine the costs and conditions of providing additional water service to the development. Engineering and installation of water services requires



Gary Kupp, Senior Planner  
January 20, 2021  
Page 2

**COMMENT LETTER: 2**

substantial lead time, which should be provided for in the project sponsor's development schedule.

EBMUD's Standard Site Assessment Report indicates the potential for contaminated soils or groundwater to be present within the project site boundaries. The project sponsor should be aware that EBMUD will not install piping or services in contaminated soil or groundwater (if groundwater is present at any time during the year at the depth piping is to be installed) that must be handled as a hazardous waste or that may be hazardous to the health and safety of construction and maintenance personnel wearing Level D personal protective equipment. Nor will EBMUD install piping or services in areas where groundwater contaminant concentrations exceed specified limits for discharge to the sanitary sewer system and sewage treatment plants. The project sponsor must submit copies to EBMUD of all known information regarding soil and groundwater quality within or adjacent to the project boundary and a legally sufficient, complete and specific written remediation plan establishing the methodology, planning, and design of all necessary systems for the removal, treatment, and disposal of contaminated soil and groundwater.

EBMUD will not design piping or services until soil and groundwater quality data and remediation plans have been received and reviewed and will not start underground work until remediation has been carried out and documentation of the effectiveness of the remediation has been received and reviewed. If no soil or groundwater quality data exists, or the information supplied by the project sponsor is insufficient, EBMUD may require the project sponsor to perform sampling and analysis to characterize the soil and groundwater that may be encountered during excavation, or EBMUD may perform such sampling and analysis at the project sponsor's expense. If evidence of contamination is discovered during EBMUD work on the project site, work may be suspended until such contamination is adequately characterized and remediated to EBMUD standards.

**WATER RECYCLING**

EBMUD's Policy 9.05 requires that customers use non-potable water, including recycled water, for non-domestic purposes when it is of adequate quality and quantity, available at reasonable cost, not detrimental to public health, and not injurious to plant, fish, and wildlife to offset demand on EBMUD's limited potable water supply. Appropriate recycled water uses include landscape irrigation, commercial and industrial process uses, toilet and urinal flushing in non-residential buildings, and other applications.

The project site is located within the service boundaries of a future EBMUD recycled water supply project that is intended to serve industrial usages such as cooling and boiler make-up water purposes within the refinery. EBMUD will continue its coordination with Phillips 66 to implement a recycled water project when feasible to do so.

Gary Kupp, Senior Planner  
January 20, 2021  
Page 3

**COMMENT LETTER: 2**

**WATER CONSERVATION**

The proposed project presents an opportunity to incorporate water conservation measures. EBMUD requests that the County include in its conditions of approval a requirement that the project sponsor comply with Assembly Bill 325, "Model Water Efficient Landscape Ordinance," (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). The project sponsor should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense.

If you have any questions concerning this response, please contact Timothy R. McGowan, Senior Civil Engineer for Major Facilities Planning, at (510) 287-1981.

Sincerely,



David J. Rehnstrom  
Manager of Water Distribution Planning

DJR:JRK:btf  
sb21\_004.doc

cc: Richard G. Harbison  
Phillips 66 Company  
1380 San Pablo Avenue  
Rodeo, Contra Costa County 94572

Don Bristol  
Phillips 66 Company  
1380 San Pablo Avenue  
Rodeo, Contra Costa County 94572

## **Rodeo Renewed Project, Final Revised Environmental Impact Report**

### 3 Responses to Comments

#### ***Response to Comment 1***

East Bay Municipal Utility District (EBMUD) re-submitted its comments made on the 2022 Draft EIR regarding water service, water recycling, and water conservation. The 2022 Final EIR provided responses to those comments, and those responses remain adequate (refer to Comment Letter 6 and associated responses, pages 3-138-3-143). Water service analyses in the 2022 EIR were not identified in the Statement of Decision and peremptory writ of mandate as requiring reconsideration and have not been revised or recirculated in the Draft REIR. On page 3 of the Draft REIR, and pursuant to CEQA Guidelines Section 15088.5(f)(2), reviewers were notified that their comments should be limited to the revised chapters or sections of the Draft REIR. Therefore, since this is not a comment on the Draft REIR no further response is required.

Refer to Master Response No.7: Scope of the Draft REIR and County Obligations.

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## Rodeo Renewed Project, Final Revised Environmental Impact Report

3 Responses to Comments

### **Comment Letter 3. Stanislaus County**

FW: Contra Costa County Rodeo Renewed Project CDLP20-02040

COMMENT LETTER: 3

Teresa McDonald <MCDONALDT@stancounty.com>

Wed 11/15/2023 10:07 AM

To: Joseph Lawlor <Joseph.Lawlor@dcd.cccounty.us>

Cc: Jeremy Ballard <BALLARDJ@stancounty.com>

📎 1 attachments (10 MB)

2023-10-24 Contra Costa County Rodeo Renewed Project CDLP20-02040.pdf;

Good morning,  
Stanislaus County Planning, Public Works, Department of Environmental Resources, and Fire Prevention have no comments on the subject project. | 1  
Thank You

Teresa McDonald  
Associate Planner  
Planning and Community Development  
(209)525-6330

Due to high volume, appointments are strongly recommended and will be given priority over walk-ins. For information on how to schedule an appointment please go to <http://www.stancounty.com/planning/phone-mail-options.shtm>

***Response to Comment 1***

The comment is noted.

**Comment Letter 4. Biofuelwatch**

COMMENT LETTER: 4



December 8, 2023

Joseph Lawlor, Project Planner  
Community Development Division  
Department of Conservation and Development  
Contra Costa County  
30 Muir Road, Martinez, CA. 94553

**Re: Comment on Draft Revised Environmental Impact Report  
for the Phillips 66 Rodeo Renewed Project (County File No. CDLP20-02040)**

*Submitted via electronic mail to [joseph.lawlor@dcd.cccounty.us](mailto:joseph.lawlor@dcd.cccounty.us)*

To responsible officials:

Biofuelwatch<sup>1</sup> is an international organization that works to increase public understanding and civic engagement on the land-use implications of climate policy. We have a particular focus on the environmental harms and social inequities of large-scale industrial bioenergy projects, and we work extensively on addressing the negative ecological and social outcomes of policy and actions that are justified as being beneficial to the global climate, yet carry with them risks and threats to public health and natural resources. We have been intimately engaged with the California Environmental Quality Act (CEQA) process around the conversion of refineries in Contra Costa County to producing liquid biofuels, and we have extensive experience in California on climate policy matters such as the Low Carbon Fuel Standard (LCFS).

This letter is our public comment on the Draft Revised Environmental Impact Report (Draft REIR)<sup>2</sup> for the Phillips 66 Rodeo Renewed Project (Project)<sup>3</sup> as prepared by the Contra Costa County Department of Conservation and Development (County). After review of the Draft REIR documentation and inconsideration of other relevant information it is the conclusion of our organization that the County is failing to appropriately respond to the court order requiring the Decertification of the Final Environmental Impact Report (FEIR) of the Project and thus it is necessary that the Draft REIR be further revised and recirculated. There are numerous incongruencies in the governance of this project and the County is, on a variety of levels, failing to fulfill legally mandated responsibilities to protect the public interest on this matter.

<sup>1</sup> <http://www.biofuelwatch.org.uk/>

<sup>2</sup> <https://www.contracosta.ca.gov/DocumentCenter/View/80824/Phillips-66-Rodeo-Renewed-Project-Draft-Revised-EIR-October-24-2023>

<sup>3</sup> <https://www.contracosta.ca.gov/RodeoRenewed>

COMMENT LETTER: 4

***The County Has Failed to Respond Appropriately to the Court Order***

There are many incongruencies between how the County is regulating the Project and implementing the order of the court to comply with CEQA. One disconcerting dynamic is that County staff have publicly misrepresented the Contra Costa County Superior Court (the Court) order by suggesting that the order was for ‘minor revisions.’ The Court ordered that the County ‘comply with CEQA’ first and foremost, specifying that extremely serious failings such as **piecemealing and cumulative impacts** be adequately addressed. However, despite the existence of the Court order, the Draft REIR does not adequately address the piecemealing and cumulative impact questions. The County thus continues the pattern of inadequate description of the project, making substantive analysis of the project under CEQA impossible. Therefore, the Draft REIR needs to be revised to include an accurate project description, to rectify the piecemealing, and to do an adequate cumulative impacts analysis. Then the Draft REIR must be recirculated in order to comply with the Court order.

2

Also, specific to Unit 250, the court ordered that Unit 250 was not adequately considered in the cumulative impact assessment of the FEIR. Unit 250 was defined by the Court decision as part of the Project. At the same time the Court ordered that Construction on the Project could continue, yet Operation of the Project would be prohibited until the flaws in the CEQA review were corrected. Yet the evidence from a recent LCFS Fuel Pathway Credit Application<sup>4</sup> from Phillips 66 for the Rodeo Refinery indicate that Operations of the Project are indeed occurring. How else could Phillips 66 manufacture Renewable Diesel to earn LCFS credits without operating the Project? Unit 250 is clearly part of the project; even a court of law has confirmed that point, a point that that community members have been emphasizing in previous engagement on the CEQA process and that the County has ignored, even after the Court order. By allowing Operations to continue at the Project the County is failing to adhere to the order of the Court. Such incongruencies are reflective of deeper issues of the governance failures of the County to adequately supervise the Project and the CEQA process. The County is allowing illegal operation of the Project, and has done so since April 2021 when Unit 250 began producing Renewable Diesel. This runs contrary to the responsibilities of the County to uphold bedrock environmental law and to protect the public interest. Completing environmental review before the operation of a project is fundamental premise of the most basic tenants of environmental governance, yet the County has totally failed in this regard.

3

***The County Has Failed to Respect Public Requests for a Public Meeting and for Adequate Time to Engage on the Draft REIR***

Many community members made informed requests to the County to extend the public comment period on the Draft REIR, yet the County has denied those requests. Our organization also made repeated requests to the County for an extension of the deadline, and for a public meeting. Our requests were also denied.

4

The Draft REIR and the Phillips 66 Project more broadly has raised a host of complex technical issues that the affected communities are still scrambling to assess. The public deserves a

<sup>4</sup> [https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0520\\_cover.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0520_cover.pdf)



COMMENT LETTER: 4

detailed explanation from the County regarding what the court has decided, but the County is choosing at this juncture to forego a public meeting and to pursue an abbreviated public comment timeline while relying on an incorrect interpretation of the Court order. There is an ambiguous promise from the County of a public meeting at a later date, but that undermines the efficacy of holding a meeting now to help the public be informed to offer comment on the Draft REIR. Having a public meeting after the public comment period defeats the purpose of a public meeting. The County is engaged in backwards management of the public participation process. We would like to be able to inform your process not merely with general observations about broad topics to address, but with informed input concerning both the types of potentially unaddressed environmental harm that may result from a project of this nature, and the types of questions that need to be vetted with respect to the recent court decision exposing the flaws of the original Final Environmental Impact Report. Putting together that type of input, which we believe will be useful to the quality of the CEQA review, takes more time than the County has afforded us.

We would also like to remind the County of the spirit of the law and that “(I)nformed public participation is essential to environmental review” under the California Environmental Quality Act.<sup>5</sup> Given the circumstances of this project, we sought an extension to allow the public to fully understand and comment on the draft revised environmental review documents that the County has recently published. But the County denied those requests, failing in the jurisdictions responsibility to protect the public interest. Because of the failure to recognize the degree of public controversy around the Project and to afford stakeholders sufficient time to review the new documentation, as well as denying the meeting that was requested to inform public comment, the County is failing to comply with CEQA. By failing to comply with CEQA the County is failing to adequately implement the Court order that commanded that the County “conduct further environmental review of the Project in compliance with CEQA.” The Draft REIR must be revised and recirculated, and the public must be afforded adequate time and information to be able to engage effectively in the public comment process.

***The County Has Failed to Adequately Consider and Acquire New Information Relevant to Compliance with CEQA and the Draft REIR***

Inexplicably the County is apparently unwilling to prioritize public safety and public health when it comes to the CEQA review of the Project. In particular, on November 19, 2023 there was a dramatic fire incident at the Marathon Martinez Renewable Fuels Project, a refinery project that is similar and even identical in some ways to the Phillips 66 project. This fire incident is now being investigated by the US Chemical Safety Board. There is much that can be learned from this incident that could inform a CEQA review of the Project that is designed to protect the public interest. Yet the County is not willing to extend the deadline for public comment on the Draft REIR to secure information from other County agencies reviewing the incident.

For instance, stakeholders have been informed that a California Public Records Act request to the Contra Costa County Hazardous Materials Program submitted days after the November 19,

<sup>5</sup> *Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 285



COMMENT LETTER: 4

2023 fire at the Marathon Martinez biofuels refinery, asking for information regarding the incident, is not going to be fulfilled until December 21, nearly two weeks after the public comment period for the Project Draft REIR will be closed. The County has made no effort to make that information available to the public in a timely manner, nor has the County extended the public comment period in order that the County provide the public with the requested public records. Clearly those records and information about the fire incident will be critical for the provision of informed public comment on the Draft REIR, but the County is not facilitating the acquisition of this information in order that it be submitted to the public record, despite clear public safety considerations. The County is recklessly ushing forward with the Phillips 66 project against all logic. Normally a major fire would lead responsible parties to want to gather more information, but the County seems to be comfortable with avoiding that responsibility.

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There are other matters related to the Project on which new information has emerged, but the County has failed to bring into the environmental review process, while also curtailing the opportunity for the public to provide this new information.

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There are variety of elements of the project for which new information has emerged but the County has failed to address this new information. Examples include:

- The apparently evolving plans for the carbon plant that have not been accurately described in the Project documentation; whether it be for electrode manufacturing or for hydrogen production the variety of uses of the carbon plant have not been accurately described in any of the versions of the EIR for the Project;
- There is substantial new science<sup>6</sup> exposing the climate and land use impacts from feedstocks that will be utilized for the Project;
- The wastewater treatment plant in Rodeo is being subject to new requests related to the Project, yet the Draft REIR makes no mention of these changes, nor has any previous version of the EIR made mention of changes to plans for wastewater management at the Project;
- Concerning the fire and flaring incidents at the Marathon Martinez refinery, the County is failing to adequately to make appropriate plans to effectively take into account the new information from regulatory agencies that sheds important light on the recent incidents that have implications for the environmental review of the Phillips 66 refinery conversion project.

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Because of these and other failures to take into consideration and enter into the public record new information with high levels of relevance to the Project, the County must revise the Draft REIR to include relevant new information and recirculate the draft REIR for public comment.

<sup>6</sup> <https://environment-review.yale.edu/us-policy-promoting-biofuels-may-have-worsened-climate-change-study-finds>

COMMENT LETTER: 4

**Conclusion**

It is apparent that the County is failing to protect the public interest in this matter. The rush to move the Project forward reflects a disturbing pattern of disregard for community stakeholders who have engaged on the environmental review of the Project. The County has misrepresented the order of the court regarding the Project and the County has failed to produce a Draft REIR that responds appropriately to the order of the court. The County also seems to fail to recognize the significance of the simple fact that their management of the CEQA review of the Project was ruled illegal and that the FEIR had to Decertified. The County is showing neither remorse nor humility before the concerned public in the management of the environmental review of the Project. The County has repeatedly marginalized the community stakeholders and independent experts who have provided informed comment to the County regarding the risks and threats of the Project and the failures of the County to fulfill the obligations of bedrock California environmental law. This is in sum a grave failure to protect the public interest.

Our organization is disturbed by the manner in which the County has decided that rushing forward with the project is more important than respecting the knowledge and expertise of the community members who have engaged with this process. We contend that the CEQA process surrounding the Phillips 66 refinery conversion project will be studied in the future as a case study in a crisis in climate and energy governance. Right when we need public agencies and government officials to act in the public interest, they do the opposite. We register our opposition to and dismay with the manner with which Contra Costa County has handled this entire affair.

Our expectation is that County will respect the law and will revise the Draft REIR of the Project to include relevant new information and to comply with the Court order, and to then recirculate the revised documents for further public comment.

Attentively,



Gary Graham Hughes  
Americas Program Coordinator  
Biofuelwatch  
[garyhughes.bfw@gmail.com](mailto:garyhughes.bfw@gmail.com)  
+1-707-223-5434

11

**Response to Comment 1**

The County disagrees with this general assessment. Refer to the other responses to comments to this letter, which provide additional information or clarification to comments that request specific information.

**Response to Comment 2**

Refer to Master Response No. 2: Piecemealing, and Master Response No. 3 Cumulative Impacts.

**Response to Comment 3**

Refer to Master Response No. 2: Piecemealing, and Master Response No. 4: Feedstock Analysis.

**Response to Comment 4**

The County understands the desire for an extension of the public comment period on the Draft REIR for the project. The County has been reviewing this project for over three years, including multiple public hearings and extensive agency and public outreach related to the project and its potential environmental impacts. Given the limited scope of the REIR, and the extent of review, analysis, and public and agency outreach the County has already conducted, after careful consideration the County decided not to extend the public comment period beyond the CEQA required 45-day noticing period.

In addition, the public will have an opportunity to submit comments at the County Board of Supervisors meeting to be held on January 16, 2024. These comments will be considered by the Board of Supervisors during consideration of the EIR certification and Project approval.

**Response to Comment 5**

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

Regarding receipt of public records, the County's policy for responding to requests for public records is provided on the County website: [How to Request the County's Public Records | Contra Costa County, CA Official Website](#) (link). As noted, once a request is made, each County department will respond directly to requests it receives. If a department receives a request for records that it does not possess, it will notify you that it has no responsive records and, if it can do so, will forward the request to departments that may possess the requested records. County staff will make every reasonable effort to make the records promptly available upon the payment of any applicable fees. If County staff cannot respond immediately, they will tell you when you reasonably can expect a response. For this particular request, it is expected the information will be available on December 21, 2023.

**Response to Comment 6**

Refer to Response to Comment 5.

**Response to Comment 7**

Refer to Master Response 6: Carbon Plant and H Cycle.

## **Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

### ***Response to Comment 8***

Analyses of climate and land use impacts were not identified in the Statement of Decision and peremptory writ of mandate as requiring reconsideration. These analyses have not been revised or recirculated in the Draft REIR. On page 3 of the Draft REIR, and pursuant to CEQA Guidelines Section 15088.5(f)(2), reviewers were notified that their comments should be limited to the revised chapters or sections of the Draft REIR. Therefore, since this is not a comment on the Draft REIR no further response is required.

Refer to Master Response No. 4: Feedstock Analysis.

Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations.

### ***Response to Comment 9***

To the County's knowledge, and confirmed by Phillips 66 (Brent Eastep, personal communication, December 14, 2023), there have been no new Project-related requests of the Central Contra Costa Sanitary District wastewater treatment plant. As described in the 2022 EIR, Chapter 3, Project Description, the Rodeo Refinery has an onsite Wastewater Treatment Plant (Unit 100) to treat its water. Phillips 66 does not currently or in the future require the use of any other wastewater treatment plant. Facility wastewater flows through various pipelines to the Wastewater Treatment Plant and is treated to meet the limitations set forth in the Rodeo Refinery's NPDES discharge permit (Order R2-2016-0044) issued by the San Francisco Bay RWQCB. Phillips 66 is implementing a Project-specific Construction Site Monitoring Program that has been incorporated into the Project SWPPP to address and limit water quality impacts during construction and demolition activities. The 2022 EIR concluded no significant impacts related to wastewater treatment would occur as a result of the Project.

### ***Response to Comment 10***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

### ***Response to Comment 11***

Refer to the previous responses. The comment is noted.

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**Comment Letter 5. Community Energy Resource (November 28, 2023)**

COMMENT LETTER: 5

COMMUNITY ENERGY  
reSOURCE

28 November 2023

Joseph Lawlor, Project Planner  
Community Development Division  
Contra Costa County Department of Conservation and Development  
30 Muir Road, Martinez CA 94553  
[joseph.lawlor@dcd.cccounty.us](mailto:joseph.lawlor@dcd.cccounty.us)

**Draft Revised Environmental Impact Report for the Rodeo Renewed Project, State Clearinghouse# 2020120330, County File No. CDLP20-02040**  
**Preliminary Initial Request for Further Review and Request to Extend Public Comment**


Mr. Lawlor,

Within months of first operation the first refinery conversion to process a very different type of oil into so-called “renewable” diesel in the County has led to the predictable—and predicted by prior comment—significant hazard impact, a refinery fire in a converted hydrotreating plant that hospitalized a plant worker.<sup>1</sup> The “Rodeo Renewed” project poses the same set of new hazards.

Before properly approving the Rodeo project the County will need to include a full analysis of this potential for significant hazard impact, including hazard prevention and mitigation, in the Revised Environmental Impact Report (RDEIR) for the Phillips 66 Rodeo refinery project. Including that analysis is feasible; it already is underway.<sup>1</sup> Delaying until after permit approval risks foreclosing otherwise feasible mitigation, which would be improper and appear reckless.

Accordingly, this preliminary comment advises and requests that update to the RDEIR, as well as an extension of the comment period to allow ample time for public review.

In Health,

  
Greg Karras  
Community Energy reSource

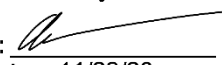
Copy: Interested agencies and individuals

1. 72-Hour Report, Martinez Renewables Incident No. 23-11-19-01; attached hereto

**COMMENT LETTER: 5**

**ATTACHMENT B  
72 HOUR FOLLOW-UP NOTIFICATION REPORT FORM  
CONTRA COSTA HEALTH SERVICES HAZARDOUS MATERIALS  
PROGRAMS**

For CCHSHMP Use Only:

Received By:   
 Date Received: 11/22/23  
 Incident Number: 23-11-19-01  
 Copied To: \_\_\_\_\_  
 Event Classification Level: 2

**INSTRUCTIONS:** A hardcopy and an electronic copy of this report is to be submitted for all Public Health Advisory – Level 2 and Public Protective Actions Required – Level 3 incidents or when requested by CCHSHMP. See Attachment B-1 for suggestions regarding the type of information to be included in the report. Attach additional sheets as necessary. Forward the completed form to:

**ATTENTION:**  
 Hazardous Materials Programs Director  
 Contra Costa Health Services Hazardous Materials  
 Programs 4585 Pacheco Boulevard, Suite 100  
 Martinez, CA 94553

**INCIDENT DATE:** Sunday, November 19, 2023  
**INCIDENT TIME:** 12:21 AM  
**FACILITY:** Martinez Renewables

**PERSON TO CONTACT FOR ADDITIONAL INFORMATION**

Anne Partmann Phone number 925-372-3006

- I. **SUMMARY OF EVENT:**  
 At approximately 00:21 on November 19, 2023, a fire erupted from a furnace in the 2 HDO Unit. Operators present at the scene initiated nearby fixed fire monitors, and board operators shut down the furnace and depressurized the unit to the emergency flare system. A facility wide emergency and community warning system (CWS) Level 2 was called. The fire was extinguished at approximately 1:15. The burn site was investigated for remaining hot spots and mitigated by nearby fixed fire monitors. An all clear was sounded at approximately 2:00.
- II. **AGENCIES NOTIFIED, INCLUDING TIME OF NOTIFICATION:**
  - A CWS Level 2 was issued on Sunday November 19, 2023, at 00:29.
  - CalOES (Control No. 23-7184) was notified on Sunday November 19, 2023, at 01:04.
  - U.S. Chemical Safety Board was notified on Sunday November 19, 2023, at 21:42
- III. **AGENCIES RESPONDING, INCLUDING CONTACT NAMES AND PHONE NUMBERS:**
  - Contra Costa County Hazardous Materials Program
  - Contra Costa County Fire Protection District
  - CalOSHA, Keith Kotterbay
- IV. **EMERGENCY RESPONSE ACTIONS:**  
 On-site Emergency Response Team (ERT) personnel were utilized to fight the fire. The fire was extinguished by shutting the furnace down and depressurizing the unit. Fixed fire monitors were utilized to keep the fire localized and prevent it from spreading to nearby equipment.
- V. **IDENTITY OF MATERIAL RELEASED AND ESTIMATED OR KNOWN QUANTITIES:**  
 Initial release estimates include approximately 207,300 pounds of renewable diesel and 2,200 pounds of hydrogen. The estimates are anticipated to change as the investigation progresses.



**Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

**COMMENT LETTER: 5**

VI. **METEOROLOGICAL CONDITIONS AT TIME OF EVENT** including wind speed, direction, and temperature:  
Average wind direction was from 266 degrees (W), average wind speeds were less than 10 miles per hour (MPH), and average temperature was 53 degrees Fahrenheit.

VII. **DESCRIPTION OF INJURIES:**  
One employee suffered burn injuries and was taken to the hospital where he was admitted for treatment.

VIII. **COMMUNITY IMPACT** including number of off-site complaints, air sampling data during event, etc.:  
Ground level monitors (GLM) and open path fence-line monitors did not detect any parameters above background conditions. No off-site complaints were received.

IX. **INCIDENT INVESTIGATION RESULTS**

Is the investigation of the incident complete at this time? \_\_\_\_\_ Yes  X  No If the answer is no, submit a 30 day final or interim report.

If the answer is yes, complete the following:

X. **SUMMARIZE INVESTIGATION RESULTS BELOW OR ATTACH COPY OF REPORT:**  
A detailed investigation is underway to determine the root cause of the incident.

XI. **SUMMARIZE PREVENTATIVE MEASURES TO BE TAKEN TO PREVENT RECURRENCE INCLUDING MILESTONE AND COMPLETION DATES FOR IMPLEMENTATION:**  
Preventative measures will be determined as part of the investigation.

***Response to Comment 1***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

**Comment Letter 6. Community Energy Resource (December 8, 2023)**

Corrected typos in cc re comment–File CDLP20-02040

COMMENT LETTER: 6

G Karras <gkarrasconsulting@gmail.com>

Sat 12/9/2023 2:32 PM

To: Joseph Lawlor <Joseph.Lawlor@dcd.cccounty.us>

Cc: Tracy W Scott <Tracy.W.Scott@usw5.org>; Tracy Scott <tscott@usw5.org>; Nicole Heath <Nicole.Heath@cchealth.org>; Michael Kent <michael.kent@cchealth.org>; dan.tillema@csb.gov <dan.tillema@csb.gov>; Dfung@baaqmd.gov <Dfung@baaqmd.gov>; Suma Peesapati <speesapati@baaqmd.gov>; Gregory Solomon <gsolomon@baaqmd.gov>; Clair Brown <clairbrown@gmail.com>

1 attachments (10 MB)

File CDLP20-02040 Comment on RDEIR 8 Dec 2023 V2.pdf;

Mr. Lawlor,

The comment emailed to you yesterday before the 4 pm comment deadline, which the County declined to extend, was visually proofread shortly thereafter, when four typographic errors were found. Separately, I was informed that multiple unnamed agencies have "a substantial interest" in the outcome of related requests for some of the same information sought by comments in prior requests to the County. The typos were found before copying the comment to interested agencies. The four typos were corrected as listed below (and no other changes were made) in the comment version 2 which is being copied to interested agencies, and is attached for your convenience as well. Again, the corrections make no substantive change to the comment; this email is sent to you as a courtesy and to promote transparency.

Greg Karras

Typographic corrections in 8 December comment (Karras and Brown) version 2:

Page 1, last paragraph, first line: missing word "responses" added

Page 3, first paragraph, first line: missing word "and" added

Page 4, second paragraph, fifth line: word "Table" replaced with word "Chart"

Page 5, first paragraph, second line: missing letter added changing "A" to "At"

Attachment to this email: 8 December 2023 comment version 2

Agencies copied via this email:

United Steelworkers Local 5

Contra Costa Health Hazardous Materials Division

US Chemical Safety and Hazard Investigation Board

Bay Area Air Quality Management District

--

Greg Karras, G Karras Consulting

Community Energy reSource

(415) 902-2666

[www.energy-re-source.com](http://www.energy-re-source.com)

COMMENT LETTER: 6

COMMUNITY ENERGY  
reSOURCE

8 December 2023

Joseph Lawlor, Project Planner  
Community Development Division  
Contra Costa County Department of Conservation and Development  
30 Muir Road, Martinez CA 94553  
[joseph.lawlor@dcd.cccounty.us](mailto:joseph.lawlor@dcd.cccounty.us)

**Comments of Greg Karras and Clair Brown on the Draft Revised Environmental Impact Report (“RDEIR”) for the oil refinery feed switch project that Phillips 66 has dubbed “Rodeo Renewed,” State Clearinghouse# 2020120330, County File No. CDLP20-02040**

Mr. Lawlor,

New information confirms the reasonable potential that the Phillips 66 Rodeo refinery conversion project would result in significant impacts described in comment on the initial EIR for this project. That now-invalidated EIR ignored the warning. The RDEIR again fails to identify, analyze or mitigate these significant potential refinery flare, fire, and explosion impacts. It must be updated to include, report to the public, and analyze the new information identified below and then recirculated to provide adequate opportunity for public comment.

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As a threshold matter, note the strength of new evidence we attach. It includes publicly verified observations of consequences from doing the same thing in the same way Phillips 66 proposes at similar scale, and in the same jurisdiction where government safeguards appear equal. Both the Marathon Martinez refinery and Phillips 66 Rodeo refinery are switching to make diesel and other refined fuels from biomass-based triglycerols instead of petroleum. Both are converting existing hydro-conversion units to the same new process technology—hydrotreated esters and fatty acids (HEFA). The scale of each project would link two existing hydrogen plants to three or four hydro-conversion units. Both are subject to requirements in the same jurisdictions, notably the Bay Area Air District flare rules and County Industrial Safety Ordinance. Thus equal public protections apply, and relatively robust reporting rules provide publicly verified data.

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Indeed, the most important relevant difference may be that Marathon began refining 100 percent biomass-based triacylglycerol oils in January 2023 while Phillips 66 is yet to do so at Rodeo.

We seek the County’s responses to each individual comment enumerated below with respect to project-specific impacts, cumulative impacts, and interdependencies among disclosed and undisclosed components of the project.

[www.energy-re-source.com](http://www.energy-re-source.com)

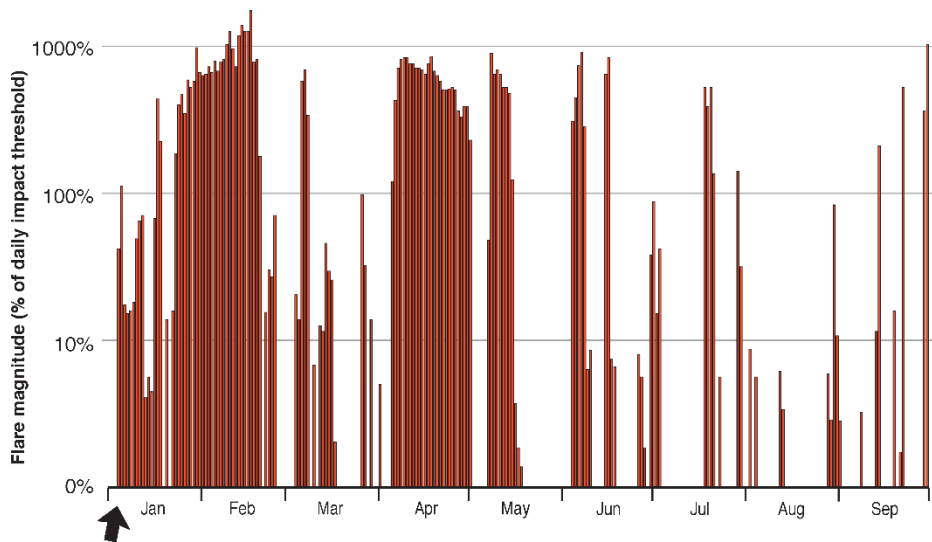
415 • 902 • 2666

**COMMENT LETTER: 6**

Comments of Greg Karras and Clair Brown  
 Phillips 66 Rodeo RDEIR  
 8 December 2023

**1. New information confirms the project potential to result in frequent significant flaring.**

Daily flare activity data reported by the Marathon Martinez refinery pursuant to Bay Area Air Quality Management District Rule 12-11 for flaring from 1 January 2023 through 30 September 2023, the most recent month when these data were reported publicly, are appended hereto as Exhibit A. Marathon first commissioned its Martinez refinery conversion project and began processing 100 percent biomass-based feed at this refinery in January 2023. This is the first observed flaring from full refinery conversion to HEFA technology reported under Bay Area Air District rules. Chart 1 shows the frequency and magnitude of this post-conversion flare activity.



**Frequency and magnitude of flaring at the Marathon Martinez 'renewable diesel' refinery, Jan–Sep 2023.** Flaring frequency shown averaged 20 days per month. Magnitude shown as percentage of BAAQMD cause analysis threshold; 0.5 million cubic feet of vent gas flared (BAAQMD Rule 12-12). Flaring exceeded threshold an average of ten days per month. **Arrow:** the converted biofuel refinery first started up in Jan 2023. Data: BAAQMD Rule 12-11 reports (see Exhibit A).

Flaring at the converted HEFA refinery began immediately, recurred frequently, often exceeded the daily significance threshold established by the Air District (100% in Chart 1) and exceeded ten times that significance threshold (1000% in Chart 1) repeatedly. *See* Exhibit A. During the 273 days from January through September 2023 the refinery flared on 178 days (mean: 20 days per month; Exh. A). It flared in excess of the Air District significance threshold on 86 days (mean: 10 days per month; Exh. A). It flared in excess of ten times the significance threshold on 8 days (Exh. A).

New information therefore demonstrates a reasonable potential for the Rodeo project, if and when it is commissioned, to result in frequent significant flaring.

**COMMENT LETTER: 6**

Comments of Community Energy reSource  
Phillips 66 Rodeo RDEIR  
8 December 2023

**2. New information shows significant flaring recurs frequently despite current safeguards.**

All Determination and Reporting of Cause reports provided by Marathon for significant flaring incidents during January through September 2023 pursuant to the requirements of Bay Area Air Quality Management District Rule 12-12 are appended hereto as Exhibit B. Refiners are required by Air District regulations, among other things, to report the “results of an investigation to determine the primary cause and contributing factors for the flaring event” and “measures that were considered or implemented to prevent recurrence.” §12-12-406. Per Air District rules some Reporting of Cause reports define flare incidents spanning more than one day. Despite these requirements significant flare incidents recurred frequently. Marathon provided 18 reports under §12-12-406 for flare incidents from January through September 2023. Exh. B. Six of these incidents started in January; two started in February; one started in March; one started in April; one started in May; two started in June; two started in July and three incidents started in September. *Id.*

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**3. New information further demonstrates interdependence of Rodeo and Nustar projects**

During at least 13 significant flaring incidents over only nine months a disruption of the critical real-time balance between hydro-conversion units that feed hydrogen and hydrogen plants that produce hydrogen within the new HEFA refinery was a contributing factor. Exh. B. Incidents during which “hydrogen imbalance” was a contributing factor started on 23 January, 24 January, 27 January, 30 January, 7 February, 10 February, 6 March, 5 April, 7 May, 4 June, 15 June, 18 July and 29 July 2023. *Id.*

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This new information demonstrates interdependence among HEFA refining units—including that of Unit 250 hydrotreater that depends on Nustar pipeline feed at Rodeo with the Rodeo hydrogen plants. Moreover, it shows how this interdependence can result in an upset in one part of the processing system escalating across the refinery with potentially catastrophic consequences.

**4. New information confirms causal mechanisms for significant process hazard impacts**

New information in Exhibit B confirms several of the underlying hazards of HEFA refinery conversion that comment on the DEIR identified as evidence that the Rodeo project could cause significant flaring, fire, and explosion impacts. Compare Marathon Determination and Reporting of Cause reports in Exhibit B to FEIR Comment 36, FEIR pp. 3-450 to 3-455; 3-561 to 3-568.

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**5. New information confirming HEFA refinery fire hazard: 11 November 2023 incident**

A 72-hour report on a fire that was discovered on 11 November 2023 on the feed pump of the 2-HDO (hydro-conversion) Unit, a converted hydrocracking unit at the Marathon refinery is appended hereto as Exhibit C. This new information confirms that HEFA refining at Rodeo could result in refinery fires, and, represents yet another “near miss” warning that the RDEIR ignores at our peril.

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**COMMENT LETTER: 6**

Comments of Community Energy reSource  
Phillips 66 Rodeo RDEIR  
8 December 2023

**6. New information confirming HEFA fire significant impact: 19 November 2023**

A 72-hour report on a fire that “erupted from a furnace” in the 2-HDO Unit, triggered a Community Warning System alert a few seconds after midnight and hospitalized a refinery worker on 19 November 2023 is appended hereto as Exhibit D. The fire burned for more than an hour before it was extinguished. Exh. D. The HEFA hydro-conversion unit was depressurized to the flare after the fire (*Id.*), showing once again that reliance on safety flares alone does not prevent every incident from escalating to more serious or potentially catastrophic consequences. One of us has been informed that the Chemical Safety Board has opened an investigation. Tragically, the fact of this incident confirms that HEFA processing causes significant fire impacts.

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**7. New information disproves FEIR impact conclusions the RDEIR relies upon**

First, FEIR did not dispute prior comment that Air District thresholds indicate significance; rather, it dismissed prior comment that the switch to HEFA refining had reasonable potential to result in continued flaring at current incident rates or increased rates. *See* FEIR at 3-46. New information proves that the switch to HEFA refining *has increased flaring rates* as shown by data reported in exhibits A and B and Chart 1 and documented in comment 1 above. Moreover, prior comment provided undisputed evidence for a pre-conversion average rate of significant flaring incidence of approximately ten incidents per year. In contrast, as shown in Exhibit B and discussed in comment 2, new evidence documents 18 such incidents over nine months at the converted HEFA refinery—an annualized incident rate of 24, more than double that pre-HEFA baseline. This shows reasonable potential for the Rodeo project to increase the frequency of significant flare incidents, and thereby result in a significant impact.

Second, new information in Exhibit B disproves the FEIR rationale for dismissing prior comment regarding the potential for significant flare and hazard impacts. The FEIR concluded that Rodeo project flaring and process hazard impacts would be less than significant (Master Response 5) based in part because it would remove some fired heaters and furnaces from service and/or reduce firing rates. Despite prior comment showing that the company itself drew the opposite conclusion in its Flare Minimization Plan (see Exhibit E hereto), the RDEIR carries forward this erroneous conclusion. The Marathon FEIR made essentially the same error, claiming that reducing the number of refinery process units and firing rates in those that remain would mean “process safety and flaring risks with the Project would be similar or reduced compared to petroleum processing at the Refinery.” County File CDLP20-02046; FEIR at 3-42, 3-43.

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Now, in fact, new information shows that after switching to HEFA refining, Marathon identified underlying conditions that were or could become hazardous due to *the same factor the RDEIR relies on to erroneously conclude less-than-significant impact* as contributing factors for significant flaring in at least seven incidents. Exh. B. Marathon found that using a larger number of process units would help to reduce fuel gas or hydrogen imbalance in its investigations of flaring incidents that started on 17 January, 23 January, 24 January, 5 April, 7 May, 4 June and 15 June 2023. *Id.* Again, however, the RDEIR carries forward the FEIR’s erroneous conclusion.

**COMMENT LETTER: 6**

Comments of Community Energy reSource  
Phillips 66 Rodeo RDEIR  
8 December 2023

**8. A crucial implication of this new information**

In sum, new information reported here documents reasonable potential for significant refinery flare and process safety hazards to result from the project. At the same time the Court’s decision (appended to the RDEIR) provides the County a new opportunity to review and—if it so chooses—a new opportunity to condition any project approval on project design changes. As the US Chemical Safety Board advised in the aftermath of the tragically disastrous Chevron Richmond refinery crude unit fire,

“It is simpler, less expensive, and more effective to introduce inherently safer features during the design process of a facility rather than after the process is already operating. Process upgrades, rebuilds, and repairs are additional opportunities to implement inherent safety concepts.”

Interim Investigation Final Report at 40; <https://www.csb.gov/chevron-richmond-refinery-fire/>

We urge you to ensure that this critically important opportunity to protect community and worker health and safety will not be irreversibly lost.

Respectfully,

Greg Karras  
Community Energy reSource

Clair Brown  
UC Berkeley Professor and Contra Costa County resident

Copy: Interested agencies and individuals

Attachments included in this comment document:

Exhibit A. Post-conversion flare activity (8 pages)

Exhibit B. Post-conversion flare causal analyses (65 pages)

Exhibit C. Post-conversion refinery fire on 11 November 2023 (3 pages)

Exhibit D. Post-conversion refinery fire on 19 November 2023 (3 pages)

Exhibit E. Evidence for fuel gas imbalance flaring (2 pages)

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COMMENT LETTER: 6

**P66 FEIR Process Hazards and Flaring Response**

4.3.2 Previously undisclosed evidence for fuel gas-imbalance flaring known to Phillips 66

The FEIR concludes that project flaring impacts would be less than significant (Master Response 5) and does not change the project description, which calls for the removal of multiple currently operating process units, including fired heaters or furnaces, from service. The FEIR fails to disclose that this type of reduction in the numbers of interconnected and interrelated equipment and process units in the new biorefinery could *cause* impacts by contributing to specific process and flaring hazards in hydro-conversion reactors.<sup>6</sup>

Specifically, other refiners often rely on multiple large furnaces, heaters, or turbines that are net fuel gas consumers to control fuel gas imbalances and overpressures and mitigate resultant flaring. Reducing the number and fuel consumption capacity of fired sources such as the furnaces, heaters and turbines reduces the availability and effectiveness of that safeguard significantly. Further, the FEIR suggests reduced firing for project process units—hydro-conversion process units<sup>7</sup>—that are large net fuel gas producers, thus potentially worsening fuel gas imbalance hazards by adding net gas producers while subtracting net gas consumers.

Review of causal analysis reports for the frequent environmentally significant refinery flare incidents provided in DEIR comment<sup>8</sup> would reveal substantial evidence for the potential significance of removing this de facto process hazard and flare minimization safeguard.

Moreover, Phillips 66 has identified this hazard to air quality officials outside the present CEQA review—the need for fuel gas consuming equipment to prevent and mitigate fuel gas imbalance flaring and limitations of sufficient fuel gas consumers to do so—in far more specific detail than provided in the DEIR and FEIR. Its currently approved Flare Minimization Plan, which shows Phillips 66 has identified this same flaring cause and discussed it more candidly outside the EIR, is appended hereto.<sup>9</sup> This important evidence for project potential to result in significant impacts associated with flaring was not disclosed, included or evaluated in the DEIR or FEIR.

11

<sup>6</sup> See Comment 36, Attachment C, part 5 for details of hydrogen-related and damage mechanism hazards.

<sup>7</sup> FEIR at 3-45.

<sup>8</sup> See Comment 36, Attachment C, part 5 and Attachment 26 thereto.

<sup>9</sup> Phillips 66 FMP, 2020. Phillips 66 San Francisco Refinery, Rodeo, California, BAAQMD Plant 16, Flare Minimization Plan – 2020 Revision. Public Version. October 2020. Appended hereto as “Phillips 66 FMP.”

Attachments to Comment Letter 6 supporting the commenters comments can be found in their entirety on the County's website: <https://www.contracosta.ca.gov/RodeoRenewed> (link)

***Response to Comment 1***

Community Energy Resource resubmitted its comment letter to correct typographical errors found on the original submittal. The resubmitted letter is Comment Letter 6.

***Response to Comment 2***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

***Response to Comment 3***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

***Response to Comment 4***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

***Response to Comment 5***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

***Response to Comment 6***

Refer to Master Response No. 2: Piecemealing and Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

***Response to Comment 7***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

***Response to Comment 8***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

***Response to Comment 9***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards. This comment mischaracterizes Phillips 66's Flare Minimization Plan (FMP) as being inconsistent with the Draft REIR by referring to a prior comment to the 2022 EIR. The FMP is consistent with the 2022 EIR, its responses to comments, and the 2023 REIR Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

Also refer to Master Response No. 7: Scope of the Draft REIR and County Obligations.

**Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

***Response to Comment 10***

As discussed in Master Response 5: Marathon Renewable Fuels Operations and Hazards, the County does not consider the incident at Chevron Richmond Refinery as being directly related to the Project.

Also refer to the 2022 Final EIR, Master Response No. 5: Renewable Fuels Processing.

***Response to Comment 11***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

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**Comment Letter 7. Community for a Better Environment**

**COMMENT LETTER: 7**

December 8, 2023

Via electronic mail, [references sent via sharepoint link]

Joseph Lawlor  
Project Planner  
Contra Costa County  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
joseph.lawlor@dcd.eccounty.us

*Re: Phillips 66 Rodeo Renewed Project (File No. LP20–2040) – Comments Concerning Draft Revised Environmental Impact Report*

Dear Mr. Lawlor:

I am writing on behalf of the Center for Biological Diversity, Communities for a Better Environment, the organizations’ respective members, and the public to provide the following comments regarding the Draft Revised Environmental Impact Report (“REIR”) for the Phillips 66 Rodeo Renewed Project (County File no. LP20—2040) (“the Project”).

As a preliminary matter, we are dismayed that the County continues to support this dangerous project that will result in harms to our health, environment, and climate. California’s shift away from fossil fuel production and refining is a chance to reimagine the future for Contra Costa County and its residents. Decommissioning the Phillips 66 Rodeo refinery could be a central component to addressing environmental justice and the decades of industrial pollution disproportionately borne by low-income communities of color. Instead, the County’s approval of the Project would extend frontline communities’ exposure to pollution for decades. The County’s assessment acknowledges that “the differences in criteria pollutant emissions” between the petroleum refining and biofuel refining “is small” and in some cases *increase* local air pollution.<sup>1</sup>

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In addition, the County should reverse its embrace of so-called “renewable” biofuel refining. The evidence of environmental and climate damage that will result from creating one of the world’s largest biofuel refineries stands in stark contrast to the rosy greenwashing promoted by Phillips 66. The increased demand for biofuel feedstocks and induced land use changes will result in substantial greenhouse gas emissions, higher food prices, habitat destruction, and other serious harms. Swapping out one form of harmful energy production for a different form of harmful energy production does not constitute progress.

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Finally, as described below, the REIR again fails to meet CEQA’s requirements to provide the public with adequate information about the extent of adverse environmental impacts attributable to this Project. Despite the ruling by the Contra Costa County Superior Court determining that the 2021 EIR’s CEQA violations affected the entire analysis of the project, the REIR is

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<sup>1</sup> Rodeo Renewed Project Draft Revised Environmental Impact Report, County File No. CDLP20-02040, State Clearinghouse No. 2020120330, October 2023, at 16 (hereinafter “REIR”).

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improperly limited to specific sections, and does not summarize how those sections have changed. Moreover, the County is obligated to consider new information and changed circumstances when conducting a subsequent environmental review. We have included information the County must consider prior to certification.

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**I. The EIR should be recirculated in full.**

The County is obligated to recirculate the EIR in full as the Superior Court judgment found CEQA deficiencies run throughout the entire EIR and directed the County to set aside the certification of the entire EIR. The County justifies releasing this incomplete REIR by stating the REIR “need only address those issues specified in the Statement of Decision as necessary to achieve compliance with CEQA.”<sup>2</sup> To support this statement, the County cites to Cal. Code Regs. tit. 14 § 15088.5(c): “If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified.” However, the Court held that “the piecemealing and cumulative impact issues affect the entire analysis of the project” and set aside certification of the entire EIR.<sup>3</sup> The Court made no findings of severability.<sup>4</sup> Given that the Court stated the CEQA deficiencies of piecemealing a cumulative impact affect the entire analysis, the revision cannot be limited to “a few chapters or portions of the EIR.”

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The County’s errors in the EIR should be rectified with substantial changes throughout the document. It cannot circumvent this requirement by insisting that no changes need to be made.

The Court was very clear that the County’s CEQA violations affect the entirety of the EIR and are not limited to discrete sections. Additionally, new information is available that requires full analysis (see section IV below) under Cal. Code Regs. tit. 14 § 15088.5(a). Finally, the County’s decision not to recirculate certain portions of the EIR are not supported by substantial evidence.<sup>5</sup> To comply with the Statement of Decision and CEQA requirements under Cal. Code Regs. tit. 14 § 15088.5, the County must recirculate the EIR in full and reopen the comment period to allow the public the opportunity to review the complete REIR.

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It does not appear that the County is conducting a thorough review of the entire EIR as directed by the Court, given that the County took only two months to issue this partial REIR. Because the concerns raised in previous comment letters have not been fully addressed, commentors attach and incorporate by reference our previous comments and references.

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<sup>2</sup> REIR, at 3.

<sup>3</sup> *Communities for a Better Environment v. County of Contra Costa*, Statement of Decision, July 20, 2023 (pp. 17-19, 29) (hereinafter “Statement of Decision”).

<sup>4</sup> In fact, the trial court may exclude a portion of an EIR or an approval only if the Court “finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division.” *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2017) 17 Cal. App. 5th 1245, 1256; Pub. Resources Code § 21168.9(b).

<sup>5</sup> 14 Cal. Code Regs., § 15088.5(e).

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**II. The County should extend the comment period to allow for additional evaluation of significant impacts.**

The County is providing the minimum comment period allowable on this complex project that has significant potential impacts on the environment and the environmental health of surrounding communities. Several community members have requested extensions to allow for further review, which we understand the County has denied. The County's refusal to extend the deadline prejudices its own evaluation in several respects.

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First, a full evaluation of Phillips 66's claims about the interconnections between different parts of the refinery requires time and expertise. The public and the County would benefit from allowing experts adequate time to fully assess the revisions made to the REIR.

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Second, there have been recent accidents at nearby refineries, including the Marathon biofuel refinery in Martinez. Investigations into the cause of those accidents are still ongoing. The results of those investigations would likely inform the County's evaluation of how likely and how dangerous similar incidents would be at the Phillips 66 facility once operations begin. There would also be an opportunity to lessen the likelihood or severity of accidents at the Phillips 66 facility by identifying the causes that led up to these accidents at the Marathon refinery and others nearby.

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**III. The County has failed to provide a summary of changes.**

Even if partial recirculation was permissible in this situation, the County has not met CEQA's requirement to provide the public with a summary of changes between the prior EIR and the REIR.<sup>6</sup> The County asserts that Appendix C fulfills the requirement, but Appendix C shows only the changes between the 2022 draft EIR and the 2022 final EIR. Failing to provide a summary document to the public deprives potential commentors of access to an understanding of the changes incorporated in the REIR. Simply stating "the remaining content of the 2022 EIR is valid"<sup>7</sup> does not inform the public as to the changes made to between the decertified EIR and the REIR and does fulfill CEQA requirements.<sup>8</sup>

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The County must provide the summary of changes required under CEQA and reopen the comment period to allow the public the opportunity to review with the full set of required materials.

**IV. The REIR fails to correct errors in the prior EIR.**

In addition to the procedural deficits in the REIR's limited scope and publication, the REIR also fails to comply substantively with the Superior Court's decision by inadequately addressing the prior EIR's insufficiencies related to piecemealing, cumulative impacts, and odor mitigation.

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<sup>6</sup> 14 Cal. Code Regs., § 15088.5(g).

<sup>7</sup> REIR, at 1.

<sup>8</sup> 14 Cal. Code Regs., § 15088.5(g).



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**A. Improper Piecemealing**

The Superior Court found that the County's "failure to consider the changes to the NuStar facility in the EIR [...] was improper piecemealing."<sup>9</sup> The County's subsequent declarations presented in Appendix B to the REIR do not support the County's position that the increased transport capacity at the NuStar facility exceeding the processing capacity at Unit 250 is somehow a separate project from the project contemplated by the REIR.

The Superior Court explained that the legal standard for a project is a separate one is determined by scrutinizing whether or not "two projects were 'related in (1) time, (2) physical location and (3) the entity undertaking the action.'"<sup>10</sup> The improvements to the NuStar facility were completed just two years ago, after planning for Rodeo Renewed had begun. The increased transport capacity at the NuStar Facility is adjacent to and, critically, connected by a half-mile pipeline to the rest of the Refinery. While NuStar is a separate entity from Phillips 66, the two companies already have operational agreements in place to move feedstock from NuStar's terminal to Phillip 66's Unit 250 processing site via that same pipeline.

Said differently, the Superior Court cited another consistent case in explaining that "only 'where the second activity is independent of, and not a contemplated future part of, the first activity, that the two activities may be reviewed separately.'"<sup>11</sup> While Unit 250 is limited to processing 12,000 barrels per day ("bpd"), the NuStar rail terminal's capacity of 45,000 bpd of biofuel feedstock is nearly quadruple what Unit 250 calls for. The County has not, and cannot, explain how NuStar transport capacity exceeding Unit 250's own processing capacity by a factor of 4, augmented just two years ago adjacent to the same Refinery and physically connected by pipeline by companies already doing business together, was not a contemplated future part of NuStar's transport capacity exceeding what Unit 250 could process. The NuStar terminal and Unit 250 are properly understood, rather, as a foundation for further biofuel facility conversion at the greater Rodeo Refinery.

Furthermore, the connection between NuStar, Unit 250, and the rest of the refinery are more evident considering Phillips 66's Pathways Report describes integration between Unit 250 and the refinery. (See Section V, below.)

The declarations that describe present-day activities and public plans do not constitute substantial evidence of independent facilities.<sup>12</sup> Declarations that, to date, the only feedstock moved in the NuStar pipeline is that which goes to Unit 250 does not address where feedstock will go once the rest of the Refinery has been converted. There is nothing binding or restricting in any of the declarations or project permitting that will ensure that these allegedly separate projects do, in fact, remain separate.

<sup>9</sup> Statement of Decision, at 10.

<sup>10</sup> Statement of Decision, at 6 (quoting *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214).

<sup>11</sup> *Id.* at 7 (quoting *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, at 285 (citing *Tuolumne County*)).

<sup>12</sup> REIR, Appendix B.



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The County has not explained why it has not, as a condition to approval of the REIR, imposed restrictions (1) that the NuStar rail terminal may not send feedstock to any other part of the Rodeo Refinery apart from Unit 250, (2) that any feedstock sent to Unit 250 does not exceed the 12,000 bpd current capacity, and (3) that any feedstock sent to Unit 250 must be processed by that Unit, and no others at the Rodeo Refinery. Failure to put these enforceable limits in place results in improper piecemealing of the Project designed to evade environmental review as required by law.

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**B. Cumulative Impacts**

*1. Unit 250*

The Superior Court found the EIR further violated CEQA “by failing to include Unit 250 in the cumulative impact analysis.”<sup>13</sup> “A couple of footnotes regarding Unit 250’s renewable fuels processing does not sufficiently explain the cumulative impact of Unit 250 along with the Project.”<sup>14</sup> The County has since turned a couple footnotes into a couple paragraphs, and repurposes snippets of those paragraphs throughout the rest of Section 6.4 of the REIR.<sup>15</sup> This haphazard approach does not meet the Court’s demands.

The County provided unsourced figures for six pollutants at Unit 250, comparing a 5-year pre-biofuels conversion average and a 12-month operational period dataset, without attempting to explain how those figures were estimated, with zero technical citations to other literature to establish their veracity and reasonableness and no description of any instruments or procedures involved.<sup>16</sup> This falls far short of an analysis of Unit 250’s own impacts, let alone an assessment of the cumulative impacts of Unit 250 as part of the larger Rodeo Renewed Project.

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The County can and should estimate pollutants based on the operationalized practices of Unit 250 since 2021. The County may also look to the Marathon Refinery, which also recently underwent a conversion to a biofuels refinery, and analyze those feedstocks and their impacts as a projection for Unit 250. Yet, there is no discussion of the cumulative impacts for odor, or discussion of feedstock composition that is directly related to odor impacts, in discussion of air quality or in any other element of the cumulative impacts as a result of Unit 250 and Rodeo Renewed.<sup>17</sup> Unit 250 represents 15-20% of the entire Refinery’s capacity, and its contributions to odor impacts and air quality demands real and robust analysis under the CEQA Guidelines and caselaw, analysis that the County continues to neglect as it remains derelict in its duty under California law. The County must obtain and analyze data related to Unit 250’s feedstock as it relates to air quality and odor impacts as among the cumulative impacts of the Rodeo Renewed Project.

Cumulative greenhouse gas emissions are also insufficiently disclosed. Phillips 66 submitted a Pathway Report that includes information on the source of Unit 250’s feedstock, much of which

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<sup>13</sup> Statement of Decision, at 12.

<sup>14</sup> Id.

<sup>15</sup> REIR at 16-17.

<sup>16</sup> Id.

<sup>17</sup> Id. at 20-21.

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will come from Argentinian soybeans. (See Section V.) The cumulative greenhouse gas emissions from Unit 250’s feedstock, combined with the refinery’s, will be substantial, but the REIR fails to provide an adequate assessment of these cumulative emissions.

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2. Recent Related Contra Costa County Refinery Pollutant Releases

The County must also consider the cumulative impacts on air quality of the Project combined with the recent emissions from the other Contra Costa County refineries. This includes the two large fires at the Marathon Refinery in Martinez in November, 2023.<sup>18</sup> The County must conduct an independent root cause analysis of those incidents; only after that analysis can the County then conduct a cumulative impact analysis to understand the full risks and impacts associated with this Project. The County also need to take into account the flaring at the Chevron Refinery in Richmond that sent a black plume of smoke over the Bay from a four flare incident that lasted 10 hours.<sup>19</sup> The former EIR’s assessment is now out-of-date and inadequate in light of these recent incidents.

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In addition, the FBI and US EPA are jointly investigating a major accident at the nearby PBF refinery in Martinez following an incident in which the refinery released a metal-laden dust that blanketed the surrounding communities in November 2022.<sup>20</sup> The nearby Chevron refinery in Richmond also had a major accident that degraded the region’s air quality. The cumulative air quality impacts analysis for the Phillips 66’s Project should be updated to include PBF’s major accident and other refinery pollution events that have occurred since the EIR was certified.

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C. Odor Mitigation

The County violated CEQA again “by allowing deferred mitigation for the odor impacts” of the Rodeo Renewed Project.<sup>21</sup> Deferring such mitigation may be appropriate in limited circumstances, but only where the lead agency shows it is impractical or infeasible to detail those measures while certifying an EIR.<sup>22</sup> The Superior Court understood the County’s draft Odor Mitigation Plan’s as evidence of the feasibility of adopting odor mitigation measures at the time of EIR certification.<sup>23</sup>

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<sup>18</sup> Goldberg, T., “Federal Agency Probes Marathon’s Martinez Refinery After Two Large Fires Last Month,” *KQED*, December 5, 2023, <https://www.kqed.org/news/11968786/recent-fires-at-marathons-martinez-refinery-spark-major-safety-concerns>.

<sup>19</sup> “Richmond Chevron refinery flaring draws violation notices from air quality regulators,” *CBS News*, November 29, 2023, <https://www.cbsnews.com/sanfrancisco/news/richmond-chevron-refinery-flaring-draws-violation-notices-from-air-quality-regulators/>.

<sup>20</sup> Briscoe, T. “FBI investigating hazardous fallout from Bay Area refinery,” *LA Times* (May 26, 2023) available at <https://www.latimes.com/environment/story/2023-05-26/fbi-investigating-hazardous-fallout-from-bay-area-refinery>; BAAQMD Incident Report, available at <https://www.baaqmd.gov/~media/files/compliance-and-enforcement/incident-reports/2022/updated-incident-report-pbf-mrc-120922-draft-eg-pdf.pdf?la=fil-ph&rev=26aa2da8823e4d11b06437a9be2e9717>

<sup>21</sup> Statement of Decision, at 28.

<sup>22</sup> *Id.* at 26.

<sup>23</sup> *Id.*

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The agency must also then adopt specific performance standards the mitigation will achieve, and [...] identify the type(s) of potential actions that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.<sup>24</sup>

Deferred mitigation may be described by committing to mitigation via another regulatory agency permit.<sup>25</sup> The County’s prior air quality mitigation measure, AQ-4, did not properly incorporate BAAQMD approval as a condition of the Project.<sup>26</sup>

As the County acknowledges, the “key element of controlling odors is to engineer control measures into the facility design.”<sup>27</sup> Given that feedstocks vary significantly in their odor impacts, designing odor controls ought to be informed by the predicted odors based on feedstock estimates, which the County continues to refuse to require as part of the Project. The design elements and attempts at mitigation measures must be supplemented by additional feedstock information and controls before the REIR is certified. Phillips 66’s Pathways Report provides additional information about future feedstock. This information should be incorporated into the County’s odor mitigation plan.

The County must also align requirements in the Odor Prevention and Management Plan (“OPMP”) and its mitigation measures. For example, the OPMP states that, “odor prevention and management would be supported by the facility’s existing Leak Detection and Repair (LDAR) programs and its Fenceline Monitoring program” and “employee observations and self-inspections” will help identify odors.<sup>28</sup> Yet mitigation measure AQ-5 in the REIR requires actions only after receiving “offsite odor complaints.”<sup>29</sup> AQ-5 must also require action if odors are detected through LDAR, fenceline monitoring, employee observations, and self-inspections.

AQ-5 also provides that “[e]quipment identified as causing odorous emissions will be taken out of service as soon as practicable and no later than 24 hours.”<sup>30</sup> Having noxious odors for 24 hours is quite severe. The County should shorten this timeframe.

The mitigation measures also require more changes. It continues to lack the requisite measurable standards and is otherwise not enforceable. The County must rewrite the Odor Mitigation Plan to have measurable standards. Reliance on off-site citizen reporting is insufficient as a backstop for a complex and sophisticated refinery. The County must require on-site and fenceline automatic monitoring and reporting.

**V. The Phillips 66 Pathways Report demonstrates the REIR’s deficiency.**

Phillips 66 has disclosed information that the County must consider in reevaluating this Project’s environmental impacts. In Phillips 66’s LCFS Pathway Report, it discloses for the first time that

<sup>24</sup> Id. at 26-27 (quoting CEQA Guidelines § 15126.4(a)(1)(B) (2022)).

<sup>25</sup> Id. at 27.

<sup>26</sup> Id. at 28.

<sup>27</sup> REIR, at 10.

<sup>28</sup> REIR, Appendix E at 7-8.

<sup>29</sup> REIR, at 12.

<sup>30</sup> Id.



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it plans to process Argentinian soybean oil for its renewable diesel at the refinery.<sup>31</sup> It provides estimates of greenhouse gas emissions from feedstock production, feedstock transportation, fuel production, indirect land use, and tailpipe emissions.<sup>32</sup> The County has previously claimed it could not provide an accurate description of the Project because it claimed the type of feedstock and the origin of feedstocks would be too speculative. The County can no longer claim this is so. Phillips 66 describes the feedstocks for Unit 250 as being “soybean oil, canola oil distillers’ corn oil, and used cooking oil (UCO).”<sup>33</sup>

Phillips 66 states that it will receive soybean oil from “three soybean oil pathways, one for US oil received direct by rail, another for US oil that is received via rail and barge, and this new pathway for soybean oil received by vessel from Argentina.”<sup>34</sup> Phillips 66 also states that it made its calculations using “operating data from the period August 2021 to July 2023.”<sup>35</sup> CARB staff was provided with “24 months of renewable diesel production data” including a time period in which Phillips 66 processed Argentinian soybeans. The County should obtain this information and conduct its own analysis based on this data.

The County has also claimed that it cannot assess the indirect land use change impacts of the Phillips 66 project, but Phillips 66 itself provides models for indirect land use for feedstock from Argentina.<sup>36</sup> The County can no longer argue that it assessing ILUC impacts is speculative for this project. The project proponent itself has provided estimates, which should be independently examined by the County and incorporated into the EIR. Phillips 66 claims renewable diesel produced from Argentinian soybeans will result in 61.98gCO<sub>2</sub>e/MJ.<sup>37</sup>

The land use changes resulting from this project are foreseeable and the County must address the extent to which the refinery conversion will be contributing to the climate crisis. Argentina’s ILUC impacts are particularly concerning. The expansion of soybean production in the Gran Chaco region, for example, has rapidly deforested the area. Imperiled species such as the Chacoan peccary are losing habitat.<sup>38</sup>

The new information also affects the County’s cumulative impacts analysis. The greenhouse gas emissions attributable to both the refinery and Unit 250 will be significantly higher if Phillips 66 is relying on Argentinian imports for a significant portion of feedstock. The impact of using larger vessels required to transport soybean oil from South America is has also not been



<sup>31</sup> Phillips 66 Company, CARB LCFS Fuel Pathway Report, Argentinian Soybean Oil Renewable Diesel, Nov. 22, 2023, available at [https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0520\\_report.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0520_report.pdf) (hereinafter “P66 Pathways Report”).

<sup>32</sup> Id. at i., Table ES-1.

<sup>33</sup> Id. at i.

<sup>34</sup> Id. at 3.

<sup>35</sup> Id. at 1

<sup>36</sup> Id. at 21.

<sup>37</sup> Id. at 22.

<sup>38</sup> Greenfield, P., “Deforestation piles pressure on South America’s elusive Chacoan peccary,” The Guardian, (Jan. 31, 2023. available at <https://www.theguardian.com/environment/2023/jan/31/chacoan-peccary-gran-chaco-deforestation-south-america-aoe>.

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evaluated. Ship strikes and the risk and severity of accidents should be re-examined based on this new information.

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Finally, the Pathways Report confirms that Unit 250, NuStar, and the refinery are not independent. “Unit 250 uses hydrogen from either the Rodeo refinery or the third-party hydrogen plant owned and operated by Air Liquide”<sup>39</sup> Feedstocks processed at Unit 250 are “stored at the Rodeo refinery in Tanks [redacted].”<sup>40</sup> “Phillips 66 blends the renewable diesel into the diesel fuel produced at the refinery.”<sup>41</sup> By extension, the NuStar facility, which supplies feedstock to Unit 250, is all part of the same project. The superior court’s finding that the record was too limited to make a determination on piecemealing has not been corrected. In fact, the new information provided by Phillips 66 only confirms that Unit 250, NuStar, and the refinery work in concert to process feedstock and produce biofuels.

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The County must not certify the REIR until it obtains information from Phillips 66 that is requisite to fully assess the environmental impacts of the proposed project. Confidential business information claims should be thoroughly scrutinized and weighed against the public’s interest in knowing what environmental impacts will result from this project.

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**VI. CEQA requires the County to consider new information.**

An agency must prepare a subsequent EIR if: (1) the project changes are substantial and require major revisions to the EIR due to either new significant environmental effects or a substantial increase in the severity of significant effects identified in the EIR; (2) substantial changes in the circumstances surrounding the project require major revisions to the EIR; or (3) new information of substantial importance shows that the project will have a significant effect not discussed in the EIR, significant effects discussed in the EIR will be substantially more severe, mitigation measures or alternatives found to be infeasible will be feasible and would substantially reduce a significant effect, or mitigation measures or alternatives considerably different from those discussed in the EIR would substantially reduce a significant effect.<sup>42</sup>

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Here, the REIR ignores substantial changes in the circumstances surrounding the project require major revisions to the EIR and new information that reveals environmental impacts that were not discussed in the County’s prior review.

**A. Recent fires at the Martinez Marathon Biofuels Refinery demonstrate the danger to refinery workers and surrounding communities.**

Recent major fires at the Marathon Renewable Fuels facility constitute new information regarding the severe safety and pollution ramifications of converting refineries to biofuel. Both incidents are under investigation and the root cause analysis must be incorporated and analyzed in this REIR as new information. But these dangerous accidents highlight the dangers associated with biofuel refining.

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<sup>39</sup> P66 Pathways Report, at 3.

<sup>40</sup> Id. at 5.

<sup>41</sup> Id. at 19.

<sup>42</sup> Cal. Pub. Res. Code § 21166; Cal. Code Regs. tit. 14, § 15162(a).

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Two major fires occurred at the Marathon facility in Martinez, CA within eight days of each other this past month.<sup>43</sup> On November 11, 2023, a Marathon called a facility-wide emergency as a feed pump was on fire.<sup>44</sup> Marathon’s initial report estimated 4.8 barrels of renewable fuels feedstock were released.<sup>45</sup> On November 19, 2023, a major fire in the same unit when a furnace erupted and burned for nearly an hour.<sup>46</sup> The fire resulted in severe injuries to one work who sustained third-degree burns to more than 80% of his body and faces a 10% chance of survival.<sup>47</sup> More than a dozen workers were forced to evacuate.<sup>48</sup> Marathon’s initial report estimated 207,300 pounds of renewable diesel and 2,200 pounds of hydrogen were released, though estimates are likely to change through investigation.<sup>49</sup>

These disastrous events at Marathon in recent weeks constitute new information providing evidence of the type of dangers we and other concerned commenters have repeatedly warned against: biofuel refining is incredibly dangerous to communities, workers, and the environment. Tragically, these fires were predicted in a comment letter on the Marathon DEIR submitted by 20 organizations (CBD and CBE among them) on December 17, 2021: “The County ignored available information indicating a possible heightened threat of process upsets associated with processing of biofuel feedstocks, creating greater risk for workers and the community... There is a risk of upsets, fires, explosions, and flaring.”<sup>50</sup> These accidents provide significant new information that the risks to the communities nearby Phillips 66’s biofuel refinery are more severe than previously recognized by the County. Experiencing two major accidents within such a short period of time, so soon after Marathon began refining biofuels, has changed the circumstances under which this project is being proposed. The County must incorporate the new information resulting from the fire investigations at Marathon in this REIR to fully assess the safety of this project. Doing so would enable the public and the County to understand the true extent of the risk to workers and the community and could reveal ways to mitigate those risks.

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**B. New information is available regarding feedstocks.**

The County has argued that it cannot accurately assess the environmental impacts of the biofuels refinery because it the mix of feedstock was speculative at the time it conducted its original EIR for this project. Commentors provided evidence at the time, but today there is even more supporting evidence the County can use to project the mix of biofuels for the Phillips 66 refinery.

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<sup>43</sup> Goldberg, “Federal Agency Probes Marathon’s Martinez Refinery,” *KQED*, December 5, 2023.

<sup>44</sup> 72 Hour Follow-Up Notification Report Form, Martinez Renewable Fuels, Contra Costa Health Services Hazardous Materials Program, November 14, 2023, Attachment B, <https://cchealth.org/hazmat/pdf/Martinez-Renewables-Incident-2023-1111-72hr-report.pdf>.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> Goldberg, “Federal Agency Probes Marathon’s Martinez Refinery,” *KQED*, December 5, 2023.

<sup>48</sup> Id.

<sup>49</sup> 72 Hour Follow-Up Notification Report Form, Martinez Renewable Fuels, Contra Costa Health Services Hazardous Materials Program, November 14, 2023, Attachment B.

<sup>50</sup> Zapanta, M. et al., “Re: Martinez refinery renewable fuels project (File No. CDLP20-02046) – comments concerning draft environmental impact report,” December 17, 2021, at ii, iii, 7.



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For example, the Marathon biofuels refinery in Martinez has been refining biofuels at a capacity of 260 million gallons per year in the first quarter of 2023.<sup>51</sup> Marathon announced that it expects a 730 million gallon per year production capacity at the facility by the end of the year. The REIR does not indicate that the County attempted to obtain this information.

Marathon has also submitted a Low Carbon Fuel Standard (LCFS) Pathway Report to the California Air Resources Board.<sup>52</sup> It discloses the types of feedstocks that the facility will process and their geographic origins. It also appears to provide the “weighted average” feedstock emission factor,<sup>53</sup> demonstrating that Marathon knows the estimated volumes of each type of feedstock. Large portions of the Pathway Report are redacted under a claim of confidential business information, but the County need not acquiesce to these dubious claims considering this information is crucial to understanding the risks to community health and the environment. The County should require Marathon and Phillips 66 to provide this information to the public. At minimum the County must obtain this information and assess the impacts of the Phillips 66 project in light of the new information about the feedstock mix.

As discussed in Section V, Phillips 66 has also submitted its own Pathways Report to CARB containing information related to feedstocks. The County can no longer claim the mix of feedstocks or their origin are speculative.

**C. New information is available on climate impacts.**

New studies reveal more severe impacts of biofuel refining. Though Phillips 66 and the County have promoted this Project as an environmentally friendly alternative to crude oil refining, new studies demonstrate that those benefits do not exist and, in many ways, exacerbate environmental harm.

One study found that any potential benefits from meeting corn ethanol production goals would be more than negated through the increase in global greenhouse gas emissions attributable to indirect effects.<sup>54</sup>

<sup>51</sup> Stokes, F., “Marathon: Phase II of Martinez Conversion on Track to be completed by 2023,” *ChemAnalyst*, August 4, 2023, <https://www.chemanalyst.com/NewsAndDeals/NewsDetails/marathon-phase-ii-of-martinez-conversion-on-track-to-be-completed-by-2023-19033>.

<sup>52</sup> Martinez Renewables LLC, “CARB LCFS Fuel Pathway Report,” July 26, 2023, [https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0506\\_report.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0506_report.pdf); see also Martinez Renewables LLC, “Low Carbon Fuel Standard Tier 2 Pathway Application,” December 4, 2023, [https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0506\\_summary.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0506_summary.pdf).

<sup>53</sup> *Id.* at 8.

<sup>54</sup> Brandao, M., Indirect effects negate global climate change mitigation potential of substituting gasoline with corn ethanol as a transportation fuel in the USA,” 4 *Frontiers in Climate* (2022).

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Greenhouse gas lifecycle estimates by CARB show processing soybean oil, corn oil, canola oil and other feedstocks are *more* climate damaging than most California oil fields.<sup>55</sup> Corn ethanol results in higher emissions than cellulosic (switchgrass) ethanol.<sup>56</sup> But the REIR fails to consider any mitigation measures that would require the refiner to use a lower carbon intensity feedstock.

These findings are backed by a recent sustainability study in Malaysia, which found that the greenhouse gas emissions of biodiesel-fueled vehicles are higher than those of gasoline-fueled vehicles indicating that biofuels do not necessarily yield emissions benefits of petroleum.<sup>57</sup> Substituting biodiesel for gasoline would not lead to a reduction in greenhouse gas emissions for the transport sector in the Malaysian context.

Much of the greenhouse gas emissions are a result of indirect land use changes. Increasing the production of biofuels will convert otherwise undisturbed land to cropland. In a literature review of studies estimating land use change attributable to the U.S. Renewable Fuel Standard, it was found that between 0.01 and 2.45 million acres of net cropland expansion occurred per billion-gallon increase in biofuels.<sup>58</sup>

Higher demand for feedstocks will also result in higher prices for food. In a study of 57 developing countries, it was found that the impact of biofuel production on food security worsens as population growth increases, as more people need food to survive while also increasing the demand for biofuels as an alternative energy source.<sup>59</sup> There is also the burden on agricultural resources with more land and water allocated to biofuel cultivation rather than food production.<sup>60</sup>

**Conclusion**

The faulty REIR continues to omit critical information about the extent of environmental harm that will result from this dangerous project. We urge the County to reject this ill-conceived project and instead move the count toward an equitable, healthy, and sustainable future. At minimum, the County should recirculate the REIR after re-evaluating the concerns raised in this letter.



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<sup>55</sup> Compare Marathon Pathways Report (2023), p. 17, Table 8-1, with CARB Annual Crude Oil Life Cycle Assessment (2020) [https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/crude-oil/2019\\_crude\\_average\\_ci\\_value\\_final.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/crude-oil/2019_crude_average_ci_value_final.pdf).

<sup>56</sup> Mignone, B. et al., “Changes in global land use and CO<sub>2</sub> emissions from US bioethanol production: What drives differences in estimates between corn and cellulosic ethanol?” 13 *Climate Change Economics* 2250008 (2022).

<sup>57</sup> Kosai, S. et al., “Estimation of Greenhouse Gas Emissions of Petrol, Biodiesel and Battery Electric Vehicles in Malaysia Based on Life Cycle Approach,” 14 *Sustainability* 5783 (2022).

<sup>58</sup> Austin, K.G. et al., “A review of domestic land use change attributable to U.S. biofuel policy,” 159 *Renewable and Sustainable Energy Reviews* 112181 (2022). Biofuels considered included corn ethanol, biodiesel, cellulosic ethanol, soy biodiesel, and other first- and second-generation biofuels.

<sup>59</sup> Subramaniam, Y., “Population growth, biofuel production, and food security,” *Green and Low-Carbon Economy* (2023).

<sup>60</sup> *Id.*



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Thank you for your consideration of these Comments.

Respectfully submitted,



Kerry Guerin  
Sarah Chen Small  
Communities for a Better Environment



Hollin Kretzmann  
Victoria Bodgan Tejeda  
Center for Biological Diversity

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**Response to Comment 1**

The comment is noted. Also refer to Letter 1, Response 2.

**Response to Comment 2**

Analyses related to feedstock demand and land use changes, greenhouse gas emissions, higher food prices, habitat destruction and other issues were not identified in the Statement of Decision and peremptory writ of mandate as requiring reconsideration. These analyses have not been revised or recirculated in the Draft REIR. On page 3 of the Draft REIR, and pursuant to CEQA Guidelines Section 15088.5(f)(2), reviewers were notified that their comments should be limited to the revised chapters or sections of the Draft REIR. Therefore, since this is not a comment on the Draft REIR no further response is required.

For information addressing the issues raised by the commenter, refer to Master Response No. 4: Feedstock Analysis and the 2022 EIR Master Response No. 4, Land Use and Feedstocks and Section 4.8, Greenhouse Gas Emissions.

Also refer to Master Response No. 7: Scope of the Draft REIR and County Obligations.

**Response to Comment 3**

Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations.

Regarding a summary of changes, the Draft REIR summarizes changes to the 2022 EIR in the introductory discussions of each revised section. Refer to the Draft REIR pages 3, 8 and 14.

**Response to Comment 4**

Refer to Master Response No. 2: Piecemealing, and Master Response No. 7: Scope of the Draft REIR and County Obligations.

**Response to Comment 5**

Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations.

**Response to Comment 6**

Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations.

**Response to Comment 7**

The Draft REIR summarizes changes to the 2022 EIR in the introductory discussions of each revised section. Refer to the Draft REIR pages 3, 8 and 14. The County has been reviewing this project for over three years, including multiple public hearings and extensive agency and public outreach related to the project and its potential environmental impacts. In particular, the County has been working to review and update its analysis since the Court issued its Statement of Decision on July 21, 2023.

## **Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

### ***Response to Comment 8***

The County understands the desire for an extension of the public comment period on the Draft REIR for the project. As noted above, the County has been reviewing this project for over three years, including multiple public hearings and extensive agency and public outreach related to the project and its potential environmental impacts. Given the limited scope of the REIR, and the extent of review, analysis, and public and agency outreach the County has already conducted, after careful consideration the County decided not to extend the public comment period beyond the CEQA required 45-day noticing period.

In addition, the public will have an opportunity to submit comments at the County Board of Supervisors meeting to be held on January 16, 2024. These comments will be considered by the Board of Supervisors during consideration of the EIR certification and Project approval.

### ***Response to Comment 9***

Refer to Master Response No. 2: Piecemealing.

### ***Response to Comment 10***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

### ***Response to Comment 11***

The Draft REIR summarizes changes to the 2022 EIR in the introductory discussions of each revised section. Refer to the Draft REIR pages 3, 8 and 14.

### ***Response to Comment 12***

Refer to Master Response No. 1: Odor Mitigation, No. 2: Piecemealing, and Master Response No. 3: Cumulative Impacts. Also refer to Letter 1, Response 2 and Letter 7, Response 18 (below).

### ***Response to Comment 13***

Refer to Master Response No. 2: Piecemealing, and Master Response No. 7 Scope of the Draft REIR and County Obligations.

### ***Response to Comment 14***

Refer to Master Response No. 3: Cumulative Impacts.

### ***Response to Comment 15***

Refer to Master Response No. 3: Cumulative Impacts and Master Response No. 4: Feedstock Analysis.

### ***Response to Comment 16***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards, and Master Response No. 3: Cumulative Impacts.

***Response to Comment 17***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards, and Master Response No. 3: Cumulative Impacts.

***Response to Comment 18***

Refer to Master Response No. 1: Odor Mitigation, Master Response No. 2: Piecemealing, and Master Response No. 3: Cumulative Impacts. Also refer to Letter 1, Response 2.

***Response to Comment 19***

Refer to Master Response No. 4: Feedstock Analysis.

***Response to Comment 20***

Refer to Master Response No. 4: Feedstock Analysis.

***Response to Comment 21***

Refer to Master Response No. 4: Feedstock Analysis, Master Response No. 3: Cumulative Impacts, and Master Response No. 7: Scope of the Draft REIR and County Obligations.

***Response to Comment 22***

Refer to Master Response No. 2: Piecemealing.

***Response to Comment 23***

The comment is noted.

***Response to Comment 24***

Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations.

***Response to Comment 25***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards, and Master Response No. 7: Scope of the Draft REIR and County Obligations.

***Response to Comment 26***

Refer to Master Response No. 4: Feedstock Analysis, and Master Response No. 7: Scope of the Draft REIR and County Obligations.

***Response to Comment 27***

Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations, and Master Response No. 4: Feedstock Analysis.

**Rodeo Renewed Project, Final Revised Environmental Impact Report**

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***Response to Comment 28***

The comment is noted.

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**Comment Letter 8. Contra Costa Building and Construction Trades Council**

COMMENT LETTER: 8

## Contra Costa Building and Construction Trades Council

2727 Alhambra Ave. Suite 5  
Martinez, CA 94553  
FAX (925) 372-7414



Bill Whitney  
C.E.O.  
Phone (925) 228-0900

November 3, 2023

Contra Costa County  
Department of Conservation and Development  
Community Development Division  
ATTN: Joseph Lawlor Jr.  
30 Muir Road  
Martinez, CA 94553

Dear Mr. Lawlor:

On behalf of the 35,000 men and women of the Contra Costa Building and Construction Trades Council, we write to you today to offer our strong and unwavering support for the Phillips 66 Rodeo Renewed project at the San Francisco Refinery in Rodeo.

In response to the Draft Revised EIR, we officially submit these public comments to be entered into the record.

Rodeo Renewed is a renewable transportation fuels project in Contra Costa County that positions Phillips 66 to be a world leader in renewable energy production while preserving, family-wage jobs and helping to improve local air quality. **We believe that the Draft Revised EIR is a factual and accurate representation of this positive and responsible plan.**

Approval of this project will provide new green jobs for the working men and women of the Contra Costa Building Trades, of which 65% of our members are women and men of color, and indigenous people, it will serve the best interests of Contra Costa County, the Bay Area and California as a whole. Rodeo Renewed will help achieve California's low-carbon goals.

Phillips 66's Rodeo Refinery has been operating in Rodeo for 127 years, and the Contra Costa Building Trades, recognizes and applauds Phillips 66's decades-long record of creating thousands of working-class jobs for the middle-class Americans. As we advance, Phillips 66 is critically important to sustaining the vibrancy of the local Contra Costa economy. Jobs are what sustains local economies. Phillips 66's long legacy of providing family-wage jobs, must not be curtailed, or derailed.

Rodeo Renewed will support more than 500 construction jobs and 650 renewable energy jobs upon completion. It is also known that projects like this have a multiplier effect. Thousands of additional jobs are supported or created for each job the refinery provides (construction and post-construction).

Contra Costa County must encourage and embrace the utilization of new technologies that will support society's transition to new green energy sources and create real, new, and green jobs while **preserving** local, middle-class,

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family-wage jobs. For this reason, the Contra Costa Building and Construction Trades Council stands in solidarity with Phillips 66 as it ushers in the next generation of renewable fuel production in California. We ask that the Contra Costa County Board of Supervisors votes to approve the Rodeo Renewed Project Draft Revised EIR.

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I appreciate your consideration,



Bill Whitney, CEO  
Contra Costa Building and Construction Trades Council

Cc: Honorable Contra Costa County Supervisor Diane Burgis  
Honorable Contra Costa County Supervisor Federal D. Glover, Vice Chair  
Honorable Contra Costa County Supervisor John M. Gioia, Chair  
Honorable Contra Costa County Supervisor Candace Andersen  
Honorable Contra Costa County Supervisor Ken Carlson

**Rodeo Renewed Project, Final Revised Environmental Impact Report**

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***Response to Comment 1***

The comment is noted. Refer to Master Response No. 8: Non-CEQA Topics and Project Merits.

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Rodeo Renewed Project, Final Revised Environmental Impact Report

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**Comment Letter 9. Council of Industries**

COMMENT LETTER: 9

Phillips 66's Rodeo Renewed Project; Draft Revised EIR - in Support

Katrinka Ruk <kpruk@sbcglobal.net>

Mon 11/20/2023 3:51 PM

To: Joseph Lawlor <Joseph.Lawlor@dcd.cccounty.us>

Cc: John Gioia <John.Gioia@bos.cccounty.us>; federal.glover@bos.cccounty.us <federal.glover@bos.cccounty.us>; Diane Burgis <Diane.Burgis@bos.cccounty.us>; Supervisor Candace Andersen <SupervisorAndersen@bos.cccounty.us>; Ken Carlson <Ken.Carlson@bos.cccounty.us>; David Schoenthal <david.b.schoenthal@p66.com>

1 attachments (2 MB)

P66 Revised EIR, support ltr 11.20.23.pdf;



**COUNCIL OF INDUSTRIES**

**P.O. BOX 70088, PT. RICHMOND, CA 94807**

**(510)215-9325**

**501(C)(6) FED ID# 94-0672760**

November 13, 2023

Contra Costa County

Department of Conservation and Development

Community Development Division

ATTN: Joseph Lawlor Jr.

30 Muir Road

Martinez, CA 94553

Dear Mr. Lawlor

On behalf of the Council of Business & Industries (COI), we offer our strong support of Phillips 66's Rodeo Renewed project at the San Francisco Refinery in Rodeo. In response to the Draft Revised EIR, we officially submit these public comments to be entered into the record.

Rodeo Renewed is among the first renewable transportation fuels projects in Contra Costa County and positions Phillips 66 to be a world leader in renewable energy production while preserving, family-wage jobs and helping



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to improve local air quality. We fully support Rodeo Renewed and believe the Draft EIR is an accurate representation of this positive and responsible plan.

Approval of this project will not only serve the best interests of the members of COI, but Contra Costa County, the Bay Area and California as a whole. Rodeo Renewed will help achieve California's low-carbon goals while also creating renewable energy jobs.

Phillips 66's Rodeo Refinery has been operating in Rodeo for 127 years, and we want to ensure its ability to contribute to the Contra Costa County economy for many years to come is retained. This includes its long legacy of providing family-wage jobs, not only for the men and women within the refinery, but also for the support of the COI, numerous contractors, vendors, and the surrounding community.

Rodeo Renewed will help support our local economy by creating more than 500 construction jobs, during the conversion, and supporting approximately 650 renewable energy jobs upon completion. As essential workers, the refinery is vital to keeping California moving. Projects like this also have multiplier effects, meaning for each job the refinery provides, many additional jobs are supported. The benefits extend well beyond the immediate employment within the refinery.

We appreciate the robust discussions surrounding the overall energy transition in California, and we want to be part of this great effort. But we must be thoughtful in our approach and utilize new technologies that support the transition while preserving local, family-wage jobs and supporting the local economy.

Therefore, COI stands in solidarity with Phillips 66 as it ushers in the next generation of renewable fuel production in California. We ask that Contra Costa County approve the Rodeo Renewed project.

Thank you for your consideration,

Katrinka Ruk

Executive Director

Council of Business & Industries (COI)

Cc: Honorable Contra Costa County Supervisor Diane Burgis

Honorable Contra Costa County Supervisor Federal D. Glover, Vice Chair

Honorable Contra Costa County Supervisor John M. Gioia, Chair

Honorable Contra Costa County Supervisor Candace Andersen

Honorable Contra Costa County Supervisor Ken Carlson

Katrinka Ruk  
Executive Director  
Council of Business & Industries  
510)260-4820 cell



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## Rodeo Renewed Project, Final Revised Environmental Impact Report

### 3 Responses to Comments

#### COMMENT LETTER: 9

Office Hours: Monday/Tuesday/Thursday  
<http://www.councilofindustries.com>

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***Response to Comment 1***

The comment is noted. Refer to Master Response No. 8: Non-CEQA Topics and Project Merits.



**Comment Letter 10. The Industrial Association of Contra Costa County**

COMMENT LETTER: 10



November 3, 2023

Department of Conservation and Development  
ATTN: Joseph Lawlor Jr.  
Community Development Division  
30 Muir Road  
Martinez, CA 94553

Dear Mr. Lawlor

On behalf of the Industrial Association of Contra Costa County (IACCC) we offer our strong support of Phillips 66's Rodeo Renewed project at the San Francisco Refinery in Rodeo. The IACCC represents over 50 small, medium-size, and large companies throughout Contra Costa County and the surrounding region. Our goal is to promote and support our member companies, and work with them, our communities, and our elected officials to ensure the continued success of the manufacturing and industrial business segment in our region. In response to the Draft Revised EIR, we officially submit these public comments to be entered into the record.

Rodeo Renewed is among the first renewable transportation fuels projects in Contra Costa County and positions Phillips 66 to be a world leader in renewable energy production while preserving, family-wage jobs and helping to improve local air quality. **We fully support Rodeo Renewed and believe the Draft EIR is an accurate representation of this positive and responsible plan.**

Approval of this project will most certainly serve the best interests of the working men and women in Contra Costa County, the Bay Area and California as a whole. Rodeo Renewed will help achieve California's low-carbon goals while also creating renewable energy jobs.

Phillips 66's Rodeo Refinery has been operating in Rodeo for 127 years, and we want to ensure its ability to contribute to the Contra Costa County economy for many years to come is retained. This includes its long legacy of providing family-wage jobs, not only for the men and women within the refinery, but also for other IACCC member companies, numerous contractors, vendors, and the surrounding community.

Rodeo Renewed, will help support our local economy by creating more than 500 construction jobs during the conversion, and supporting ~650 renewable energy jobs upon completion. Projects like this also have multiplier effects, meaning for each job the refinery provides, many additional jobs are supported. The benefits extend well beyond the immediate employment within the refinery.



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We appreciate the robust discussions surrounding the overall energy transition in California, and we want to continue to be part of this important effort. Achieving success will require us to be thoughtful in our approach, and utilize new technologies that support the transition while preserving local, family-wage jobs and supporting the local economy.

Therefore, the Industrial Association of Contra Costa County (IACCC) stands with Phillips 66 as it ushers in the next generation of renewable fuel production in California. We ask that Contra Costa County approve the Rodeo Renewed project.

Thank you for your consideration,



**Mark Hughes**  
**Executive Director**  
**Industrial Association of Contra Costa County**

Cc: Honorable Contra Costa County Supervisor Diane Burgis  
Honorable Contra Costa County Supervisor Federal D. Glover, Vice Chair  
Honorable Contra Costa County Supervisor John M. Gioia, Chair  
Honorable Contra Costa County Supervisor Candace Andersen  
Honorable Contra Costa County Supervisor Ken Carlson

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**Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

***Response to Comment 1***

The comment is noted. Refer to Master Response No. 8: Non-CEQA Topics and Project Merits.

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**Comment Letter 11. International Brotherhood of Boilermakers Local 549**



COMMENT LETTER: 11

**International Brotherhood of Boilermakers • Iron  
Ship Builders • Blacksmiths • Forgers & Helpers  
LOCAL LODGE 549**

**Randy Thomas**  
Business Manager/Secretary Treasurer



2191 Piedmont Way • Pittsburg, California 94565 • phone: (925) 427-4121 • fax: (925) 427-5980

November 3, 2023

Department of Conservation and Development  
Community Development Division  
ATTN: Joseph Lawlor Jr.  
30 Muir Road  
Martinez, CA 94553

Dear Mr. Lawlor:

On behalf of the 735 members of the Boilermakers Local 549 we offer our strong support of Phillips 66's Rodeo Renewed project at the San Francisco Refinery in Rodeo. In response to the Draft Revised EIR, we officially submit these public comments to be entered into the record.

Rodeo Renewed is among the first renewable transportation fuels projects in Contra Costa County and positions Phillips 66 to be a world leader in renewable energy production while preserving, family-wage jobs and helping to improve local air quality. **We fully support Rodeo Renewed and believe the Draft EIR is an accurate representation of this positive and responsible plan.**

Approval of this project will not only serve the best interests of the working men and women of Boilermakers Local 549, but Contra Costa County, the Bay Area and California as a whole. Rodeo Renewed will help achieve California's low-carbon goals while also creating renewable energy jobs.

Phillips 66's Rodeo Refinery has been operating in Rodeo for 127 years, and we want to ensure its ability to contribute to the Contra Costa County economy for many years to come is retained. This includes its long legacy of providing family-wage jobs, not only for the men and women within the refinery, but also for the members of Boilermakers Local 549, numerous contractors, vendors, and the surrounding community.

Rodeo Renewed will help support our local economy by creating more than 500 construction jobs, during the conversion, and supporting ~650 renewable energy jobs upon completion. As essential workers, the refinery is vital to keeping California moving. Projects like this also have multiplier effects, meaning for each job the refinery provides, many additional jobs are supported. The benefits extend well beyond the immediate employment within the refinery.

We appreciate the robust discussions surrounding the overall energy transition in California, and we want to be part of this great effort. But we must be thoughtful in our approach and utilize new

COMMENT LETTER: 11

technologies that support the transition while preserving local, family-wage jobs and supporting the local economy.

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Therefore, the members of Boilermakers Local 549 stand in solidarity with Phillips 66 as it ushers in the next generation of renewable fuel production in California. We ask that Contra Costa County approve the Rodeo Renewed project.

Thank you for your consideration,



Randy Thomas  
Boilermakers Local 549  
Business Manager/ Secretary Treasurer

Cc: Honorable California Governor Gavin Newsom

Honorable United States Senator Alex Padilla

Honorable United States Congressman John Garamendi  
Honorable United States Congressman Mark DeSaulnier  
Honorable United States Congressman Josh Harder  
Honorable United States Congressman Eric Swalwell

Honorable California State Senator Nancy Skinner  
Honorable California State Senator Bill Dodd  
Honorable California State Senator Steven Glazer

Honorable California State Assemblymember Tim Grayson  
Honorable California State Assemblymember Lori Wilson  
Honorable California State Assemblymember Buffy Wicks  
Honorable California State Assemblymember Rebecca Bauer-Kahan

Honorable Contra Costa County Supervisor Diane Burgis  
Honorable Contra Costa County Supervisor Federal D. Glover, Vice Chair  
Honorable Contra Costa County Supervisor John M. Gioia, Chair  
Honorable Contra Costa County Supervisor Candace Andersen  
Honorable Contra Costa County Supervisor Ken Carlson

**Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

***Response to Comment 1***

The comment is noted. Refer to Master Response No. 8: Non-CEQA Topics and Project Merits.

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**Comment Letter 12. International Brotherhood of Electrical Workers Local 302**

COMMENT LETTER: 12

Local Union No. 302

**INTERNATIONAL BROTHERHOOD  OF ELECTRICAL WORKERS**

REGULAR MEETING 4TH WEDS. EACH MONTH



EXECUTIVE BOARD MEETS 3RD WEDS. EACH MONTH

1875 ARNOLD DRIVE • MARTINEZ, CALIFORNIA 94553-4239  
TELEPHONE (925) 228-2302 • FAX (925) 228-0764

November 16, 2023

Department of Conservation and Development  
Community Development Division  
ATTN: Joseph Lawlor Jr.  
30 Muir Road  
Martinez, CA 94553

Dear Mr. Lawlor

On behalf of the 1,760 members of the IBEW Local Union 302 we offer our strong support of Phillips 66's Rodeo Renewed project at the San Francisco Refinery in Rodeo. In response to the Draft Revised EIR, we officially submit these public comments to be entered into the record.

Rodeo Renewed is among the first renewable transportation fuels projects in Contra Costa County and positions Phillips 66 to be a world leader in renewable energy production while preserving, family-wage jobs and helping to improve local air quality. **We fully support Rodeo Renewed and believe the Draft EIR is an accurate representation of this positive and responsible plan.**

Approval of this project will not only serve the best interests of the working men and women of IBEW Local Union 302, but Contra Costa County, the Bay Area and California as a whole. Rodeo Renewed will help achieve California's low-carbon goals while also creating renewable energy jobs.

Phillips 66's Rodeo Refinery has been operating in Rodeo for 127 years, and we want to ensure its ability to contribute to the Contra Costa County economy for many years to come is retained. This includes its long legacy of providing family-wage jobs, not only for the men and women within the refinery, but also for the members of IBEW Local Union 302, numerous contractors, vendors, and the surrounding community.

Rodeo Renewed, will help support our local economy by creating more than 500 construction jobs, during the conversion, and supporting ~ 650 renewable energy jobs upon completion. As essential workers, the refinery is vital to keeping California moving. Projects like this also have multiplier effects, meaning for each job the refinery provides, many additional jobs are supported. The benefits extend well beyond the immediate employment within the refinery.

COMMENT LETTER: 12

We appreciate the robust discussions surrounding the overall energy transition in California, and we want to be part of this great effort. But we must be thoughtful in our approach and utilize new technologies that support the transition while preserving local, family-wage jobs and supporting the local economy.

Therefore, the members of IBEW Local Union 302 stand in solidarity with Phillips 66 as it ushers in the next generation of renewable fuel production in California. We ask that Contra Costa County approve the Rodeo Renewed project.

Thank you for your consideration,



Tom Hansen  
Business Manager  
Financial Secretary

TH:nlp  
Opeiu#29:afl-cio

Cc: Honorable Contra Costa County Supervisor Diane Burgis  
Honorable Contra Costa County Supervisor Federal D. Glover, Vice Chair  
Honorable Contra Costa County Supervisor John M. Gioia, Chair  
Honorable Contra Costa County Supervisor Candace Andersen  
Honorable Contra Costa County Supervisor Ken Carlson

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**Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

***Response to Comment 1***

The comment is noted. Refer to Master Response No. 8: Non-CEQA Topics and Project Merits.

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**Comment Letter 13. Iron Workers Local 378**

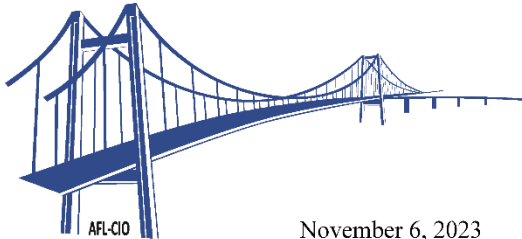
COMMENT LETTER: 13

**IRON WORKERS LOCAL 378**

**UNION OFFICE OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING**

3120 Bayshore Road, Benicia CA 94510 | www.ironworkers378.org

P. (707) 746-6100 | F. (707) 746-0979



November 6, 2023

**Jason Gallia**  
*Business  
Manager/Financial  
Secretary-Treasurer*

**Jason Lindsey**  
*President/Business  
Agent*

**James Ashcroft**  
*Business Agent*

**Ken Miller**  
*Business Agent/  
Organizer*

Department of Conservation and Development  
ATTN: Joseph Lawlor Jr.  
Community Development Division  
30 Muir Road  
Martinez, CA 94553

Dear Mr. Lawlor:

On behalf of the 1,812 members of Iron Workers Union Local 378, we offer our strong support of Phillips 66's Rodeo Renewed project at the San Francisco Refinery in Rodeo. In response to the Draft Revised EIR, we officially submit these public comments to be entered into the record.

Rodeo Renewed is among the first renewable transportation fuels projects in Contra Costa County and positions Phillips 66 to be a world leader in renewable energy production while preserving, family-wage jobs and helping to improve local air quality. **We fully support Rodeo Renewed and believe the Draft Revised EIR is an accurate representation of this positive and responsible plan.**

Approval of this project will not only serve the best interests of the working men and women of Iron Workers Union Local 378 but Contra Costa County, the Bay Area and California as a whole. Rodeo Renewed will help achieve California's low-carbon goals while also creating renewable energy jobs.

Phillips 66's Rodeo Refinery has been operating in Rodeo for 127 years, and we want to ensure its ability to contribute to the Contra Costa County economy for many years to come is retained. This includes its long legacy of providing family-wage jobs, not only for the men and women within the refinery, but also for the members of Iron Workers Union Local 378, numerous contractors, vendors, and the surrounding community.



COMMENT LETTER: 13


Mr. Joseph Lawlor Jr.  
Page 2  
November 6, 2023

Rodeo Renewed, will help support our local economy by creating more than 500 construction jobs, during the conversion, and supporting ~650 renewable energy jobs upon completion. As essential workers, the refinery is vital to keeping California moving. Projects like this also have multiplier effects, meaning for each job the refinery provides, many additional jobs are supported. The benefits extend well beyond the immediate employment within the refinery.

We appreciate the robust discussions surrounding the overall energy transition in California, and we want to be part of this great effort. But we must be thoughtful in our approach and utilize new technologies that support the transition while preserving local, family-wage jobs and supporting the local economy.

Therefore, the members of Iron Workers Union Local 378 stand in solidarity with Phillips 66 as it ushers in the next generation of renewable fuel production in California. We ask that Contra Costa County approve the Rodeo Renewed project.

Thank you for your consideration,

  
Jason Gallia  
Business Manager/FS-T

Cc: Honorable California Governor Gavin Newsom

Honorable United States Senator Alex Padilla

Honorable United States Congressman John Garamendi  
Honorable United States Congressman Mark DeSaulnier  
Honorable United States Congressman Josh Harder  
Honorable United States Congressman Eric Swalwell

Honorable California State Senator Nancy Skinner  
Honorable California State Senator Bill Dodd  
Honorable California State Senator Steven Glazer

Honorable California State Assemblymember Tim Grayson  
Honorable California State Assemblymember Lori Wilson  
Honorable California State Assemblymember Buffy Wicks  
Honorable California State Assemblymember Rebecca Bauer-Kahan

Honorable Contra Costa County Supervisor Diane Burgis  
Honorable Contra Costa County Supervisor Federal D. Glover, Vice Chair  
Honorable Contra Costa County Supervisor John M. Gioia, Chair  
Honorable Contra Costa County Supervisor Candace Andersen  
Honorable Contra Costa County Supervisor Ken Carlson

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**Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

***Response to Comment 1***

The comment is noted. Refer to Master Response No. 8: Non-CEQA Topics and Project Merits.

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**Comment Letter 14. LiUNA Local 324**



**KEITH LeMOINE**  
*Business Manager  
Secretary-Treasurer*

**LARRY PROCTOR**  
*President*

**TRESTON SHULL**  
*Vice-President*

**EDUARDO ESPINOZA**  
*Recording Secretary*

**JOE CABADA**  
*Executive Board*

**ERIC HOWARD**  
*Executive Board*

**FERNANDO CAMPOS**  
*Executive Board*

611 Berrellesa Street  
Martinez, CA 94553  
(925) 228-0930 Office  
(925) 370-1586 Fax

1005 Fitzuren Road  
Antioch, CA 94509  
(925) 522-0006 Office  
(925) 522-0008 Fax

101 South 12th Street  
Richmond, CA 94804  
(510) 234-1069 Office  
(510) 234-0932 Fax

4727 Mangels Blvd.  
Fairfield CA 94534  
(707) 643-7214 Office  
(707) 643-3047 Fax

P.O. Box 5438  
Santa Rosa, CA 95402  
(707) 542-1107 Office  
(707) 542-6113 Fax



COMMENT LETTER: 14

# LiUNA! LOCAL 324

*Feel the Power*

Department of Conservation and Development  
ATTN: Joseph Lawlor Jr.  
Community Development Division  
30 Muir Road  
Martinez, CA 94553

Dear Mr. Lawlor,

On behalf of the 4600 members of the LiUNA Laborers Local 324 we offer our strong support of Phillips 66's Rodeo Renewed project at the San Francisco Refinery in Rodeo. In response to the Draft Revised EIR, we officially submit these public comments to be entered into the record.

Rodeo Renewed is among the first renewable transportation fuels projects in Contra Costa County and positions Phillips 66 to be a world leader in renewable energy production while preserving, family-wage jobs and helping to improve local air quality. **We fully support Rodeo Renewed and believe the Draft Revised EIR is an accurate representation of this positive and responsible plan.**

Approval of this project will not only serve the best interests of the working men and women of LiUNA Laborers Local 324 but Contra Costa County, the Bay Area and California as a whole. Rodeo Renewed will help achieve California's low-carbon goals while also creating renewable energy jobs.

Phillips 66's Rodeo Refinery has been operating in Rodeo for 127 years, and we want to ensure its ability to contribute to the Contra Costa County economy for many years to come is retained. This includes its long legacy of providing family-wage jobs, not only for the men and women within the refinery, but also for the members of LiUNA Laborers Local 324 numerous contractors, vendors, and the surrounding community.

Rodeo Renewed, will help support our local economy by creating more than 500 construction jobs, during the conversion, and supporting ~650 renewable energy jobs upon completion. As essential workers, the refinery is vital to keeping California moving. Projects like this also have multiplier effects, meaning for each job the refinery provides, many additional jobs are supported. The benefits extend well beyond the immediate employment within the refinery.

*Affiliated with the Laborers' International Union of North America serving  
Contra Costa, Solano, Sonoma, Napa, Lake, Mendocino, Humboldt, and Del Norte Counties*



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We appreciate the robust discussions surrounding the overall energy transition in California, and we want to be part of this great effort. But we must be thoughtful in our approach and utilize new technologies that support the transition while preserving local, family-wage jobs and supporting the local economy. Therefore, the members of LiUNA Laborers Local 324 stand in solidarity with Phillips 66 as it ushers in the next generation of renewable fuel production in California. We ask that Contra Costa County approve the Rodeo Renewed project.

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Thank you for your consideration,



Keith LeMoine  
Business Manager/Secretary Treasurer  
LiUNA Laborers Local 324

Cc: Honorable California Governor Gavin Newsom

Honorable United States Senator Alex Padilla

Honorable United States Congressman John Garamendi  
Honorable United States Congressman Mark DeSaulnier  
Honorable United States Congressman Josh Harder  
Honorable United States Congressman Eric Swalwell

Honorable California State Senator Nancy Skinner  
Honorable California State Senator Bill Dodd  
Honorable California State Senator Steven Glazer

Honorable California State Assemblymember Tim Grayson  
Honorable California State Assemblymember Lori Wilson  
Honorable California State Assemblymember Buffy Wicks  
Honorable California State Assemblymember Rebecca Bauer-Kahan

Honorable Contra Costa County Supervisor Diane Burgis  
Honorable Contra Costa County Supervisor Federal D. Glover, Vice Chair  
Honorable Contra Costa County Supervisor John M. Gioia, Chair  
Honorable Contra Costa County Supervisor Candace Andersen  
Honorable Contra Costa County Supervisor Ken Carlson

**Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

***Response to Comment 1***

The comment is noted. Refer to Master Response No. 8: Non-CEQA Topics and Project Merits.

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**Comment Letter 15. Pacific Gas and Electric Company (October 25, 2023)**

**COMMENT LETTER: 15**

**From:** [PG&E Plan Review](#)  
**To:** [Joseph Lawlor](#)  
**Subject:** Automatic reply: Phillips 66 Rodeo Renewed Revised EIR  
**Date:** Tuesday, October 24, 2023 10:57:08 AM

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Hello,

Thank you for contacting PG&E's Plan Review Team. Due to high volumes of requests for review, expect delays in receiving comments or a project specific response from PG&E. Please see PG&E's general construction restrictions and guidelines for proposed projects around gas and electric facilities and incorporate these preliminary notes into your project design.

**Gas Facilities**

There could be gas transmission pipelines in this area which would be considered critical facilities for PG&E and a high priority subsurface installation under California law. Care must be taken to ensure safety and accessibility. So, please ensure that if PG&E approves work near gas transmission pipelines it is done in adherence with the below stipulations. Additionally, the following link provides additional information regarding legal requirements under California excavation laws: <https://www.usanorth811.org/images/pdfs/CA-LAW-2018.pdf>

1. Standby Inspection: A PG&E Gas Transmission Standby Inspector must be present during any demolition or construction activity that comes within 10 feet of the gas pipeline. This includes all grading, trenching, substructure depth verifications (potholes), asphalt or concrete demolition/removal, removal of trees, signs, light poles, etc. This inspection can be coordinated through the Underground Service Alert (USA) service at 811. A minimum notice of 48 hours is required. Ensure the USA markings and notifications are maintained throughout the duration of your work.

2. Access: At any time, PG&E may need to access, excavate, and perform work on the gas pipeline. Any construction equipment, materials, or spoils may need to be removed upon notice. Any temporary construction fencing installed within PG&E's easement would also need to be capable of being removed at any time upon notice. Any plans to cut temporary slopes exceeding a 1:4 grade within 10 feet of a gas transmission pipeline need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

3. Wheel Loads: To prevent damage to the buried gas pipeline, there are weight limits that must be enforced whenever any equipment gets within 10 feet of traversing the pipe.

Ensure a list of the axle weights of all equipment being used is available for PG&E's Standby Inspector. To confirm the depth of cover, the pipeline may need to be potholed by hand in a few areas.

Due to the complex variability of tracked equipment, vibratory compaction equipment, and cranes, PG&E must evaluate those items on a case-by-case basis prior to use over the gas pipeline (provide a list of any proposed equipment of this type noting model numbers and specific attachments).

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**COMMENT LETTER: 15**

No equipment may be set up over the gas pipeline while operating. Ensure crane outriggers are at least 10 feet from the centerline of the gas pipeline. Transport trucks must not be parked over the gas pipeline while being loaded or unloaded.

4. Grading: PG&E requires a minimum of 36 inches of cover over gas pipelines (or existing grade if less) and a maximum of 7 feet of cover at all locations. The graded surface cannot exceed a cross slope of 1:4.

5. Excavating: Any digging within 2 feet of a gas pipeline must be dug by hand. Note that while the minimum clearance is only 12 inches, any excavation work within 24 inches of the edge of a pipeline must be done with hand tools. So to avoid having to dig a trench entirely with hand tools, the edge of the trench must be over 24 inches away. (Doing the math for a 24 inch wide trench being dug along a 36 inch pipeline, the centerline of the trench would need to be at least 54 inches  $[24/2 + 24 + 36/2 = 54]$  away, or be entirely dug by hand.)

Water jetting to assist vacuum excavating must be limited to 1000 psig and directed at a 40° angle to the pipe. All pile driving must be kept a minimum of 3 feet away.

Any plans to expose and support a PG&E gas transmission pipeline across an open excavation need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

6. Boring/Trenchless Installations: PG&E Pipeline Services must review and approve all plans to bore across or parallel to (within 10 feet) a gas transmission pipeline. There are stringent criteria to pothole the gas transmission facility at regular intervals for all parallel bore installations.

For bore paths that cross gas transmission pipelines perpendicularly, the pipeline must be potholed a minimum of 2 feet in the horizontal direction of the bore path and a minimum of 12 inches in the vertical direction from the bottom of the pipe with minimum clearances measured from the edge of the pipe in both directions. Standby personnel must watch the locator trace (and every ream pass) the path of the bore as it approaches the pipeline and visually monitor the pothole (with the exposed transmission pipe) as the bore traverses the pipeline to ensure adequate clearance with the pipeline. The pothole width must account for the inaccuracy of the locating equipment.

7. Substructures: All utility crossings of a gas pipeline should be made as close to perpendicular as feasible (90° +/- 15°). All utility lines crossing the gas pipeline must have a minimum of 12 inches of separation from the gas pipeline. Parallel utilities, pole bases, water line 'kicker blocks', storm drain inlets, water meters, valves, back pressure devices or other utility substructures are not allowed in the PG&E gas pipeline easement.

If previously retired PG&E facilities are in conflict with proposed substructures, PG&E must verify they are safe prior to removal. This includes verification testing of the contents of the facilities, as well as environmental testing of the coating and internal surfaces. Timelines for PG&E completion of this verification will vary depending on the type and location of facilities in conflict.



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**COMMENT LETTER: 15**

8. Structures: No structures are to be built within the PG&E gas pipeline easement. This includes buildings, retaining walls, fences, decks, patios, carports, septic tanks, storage sheds, tanks, loading ramps, or any structure that could limit PG&E's ability to access its facilities.

9. Fencing: Permanent fencing is not allowed within PG&E easements except for perpendicular crossings which must include a 16 foot wide gate for vehicular access. Gates will be secured with PG&E corporation locks.

10. Landscaping: Landscaping must be designed to allow PG&E to access the pipeline for maintenance and not interfere with pipeline coatings or other cathodic protection systems. No trees, shrubs, brush, vines, and other vegetation may be planted within the easement area. Only those plants, ground covers, grasses, flowers, and low-growing plants that grow unsupported to a maximum of four feet (4') in height at maturity may be planted within the easement area.

11. Cathodic Protection: PG&E pipelines are protected from corrosion with an "Impressed Current" cathodic protection system. Any proposed facilities, such as metal conduit, pipes, service lines, ground rods, anodes, wires, etc. that might affect the pipeline cathodic protection system must be reviewed and approved by PG&E Corrosion Engineering.

12. Pipeline Marker Signs: PG&E needs to maintain pipeline marker signs for gas transmission pipelines in order to ensure public awareness of the presence of the pipelines. With prior written approval from PG&E Pipeline Services, an existing PG&E pipeline marker sign that is in direct conflict with proposed developments may be temporarily relocated to accommodate construction work. The pipeline marker must be moved back once construction is complete.

13. PG&E is also the provider of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs which may endanger the safe operation of its facilities.

**Electric Facilities**

It is PG&E's policy to permit certain uses on a case by case basis within its electric transmission fee strip(s) and/or easement(s) provided such uses and manner in which they are exercised, will not interfere with PG&E's rights or endanger its facilities. Some examples/restrictions are as follows:

1. Buildings and Other Structures: No buildings or other structures including the foot print and eave of any buildings, swimming pools, wells or similar structures will be permitted within fee strip(s) and/or easement(s) areas. PG&E's transmission easement shall be designated on subdivision/parcel maps as "**RESTRICTED USE AREA – NO BUILDING.**"

2. Grading: Cuts, trenches or excavations may not be made within 25 feet of our towers. Developers must submit grading plans and site development plans (including geotechnical reports if applicable), signed and dated, for PG&E's review. PG&E engineers must review grade changes in the vicinity of our towers. No fills will be allowed which would impair



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**COMMENT LETTER: 15**

ground-to-conductor clearances. Towers shall not be left on mounds without adequate road access to base of tower or structure.

3. Fences: Walls, fences, and other structures must be installed at locations that do not affect the safe operation of PG&E's facilities. Heavy equipment access to our facilities must be maintained at all times. Metal fences are to be grounded to PG&E specifications. No wall, fence or other like structure is to be installed within 10 feet of tower footings and unrestricted access must be maintained from a tower structure to the nearest street. Walls, fences and other structures proposed along or within the fee strip(s) and/or easement(s) will require PG&E review; submit plans to PG&E Centralized Review Team for review and comment.

4. Landscaping: Vegetation may be allowed; subject to review of plans. On overhead electric transmission fee strip(s) and/or easement(s), trees and shrubs are limited to those varieties that do not exceed 10 feet in height at maturity. PG&E must have access to its facilities at all times, including access by heavy equipment. No planting is to occur within the footprint of the tower legs. Greenbelts are encouraged.

5. Reservoirs, Sumps, Drainage Basins, and Ponds: Prohibited within PG&E's fee strip(s) and/or easement(s) for electric transmission lines.

6. Automobile Parking: Short term parking of movable passenger vehicles and light trucks (pickups, vans, etc.) is allowed. The lighting within these parking areas will need to be reviewed by PG&E; approval will be on a case by case basis. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications. Blocked-up vehicles are not allowed. Carports, canopies, or awnings are not allowed.

7. Storage of Flammable, Explosive or Corrosive Materials: There shall be no storage of fuel or combustibles and no fueling of vehicles within PG&E's easement. No trash bins or incinerators are allowed.

8. Streets and Roads: Access to facilities must be maintained at all times. Street lights may be allowed in the fee strip(s) and/or easement(s) but in all cases must be reviewed by PG&E for proper clearance. Roads and utilities should cross the transmission easement as nearly at right angles as possible. Road intersections will not be allowed within the transmission easement.

9. Pipelines: Pipelines may be allowed provided crossings are held to a minimum and to be as nearly perpendicular as possible. Pipelines within 25 feet of PG&E structures require review by PG&E. Sprinklers systems may be allowed; subject to review. Leach fields and septic tanks are not allowed. Construction plans must be submitted to PG&E for review and approval prior to the commencement of any construction.

10. Signs: Signs are not allowed except in rare cases subject to individual review by PG&E.

11. Recreation Areas: Playgrounds, parks, tennis courts, basketball courts, barbecue and light trucks (pickups, vans, etc.) may be allowed; subject to review of plans. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear

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**COMMENT LETTER: 15**

PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications.

12. Construction Activity: Since construction activity will take place near PG&E's overhead electric lines, please be advised it is the contractor's responsibility to be aware of, and observe the minimum clearances for both workers and equipment operating near high voltage electric lines set out in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety (<https://www.dir.ca.gov/Title8/sb5g2.html>), as well as any other safety regulations. Contractors shall comply with California Public Utilities Commission General Order 95 ([http://www.cpuc.ca.gov/gos/GO95/go\\_95\\_startup\\_page.html](http://www.cpuc.ca.gov/gos/GO95/go_95_startup_page.html)) and all other safety rules. No construction may occur within 25 feet of PG&E's towers. All excavation activities may only commence after 811 protocols has been followed.

Contractor shall ensure the protection of PG&E's towers and poles from vehicular damage by (installing protective barriers) Plans for protection barriers must be approved by PG&E prior to construction.

13. PG&E is also the owner of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs that may endanger the safe and reliable operation of its facilities.

Thank you,

**Pacific Gas and Electric Company**  
**Plan Review Team**  
Email: [pgeplanreview@pge.com](mailto:pgeplanreview@pge.com)

You can read about PG&E's data privacy practices at [PGE.com/privacy](http://PGE.com/privacy).

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***Response to Comment 1***

Phillips 66 will continue to coordinate with PG&E and other utilities, as appropriate, throughout the permitting process.

**Comment Letter 16. Pacific Gas and Electric Company (October 26, 2023)**

COMMENT LETTER: 16

RE: Phillips 66 Rodeo Renewed Revised EIR

PGE Plan Review <PGEplanreview@pge.com>

Wed 10/25/2023 9:48 AM

To: Joseph Lawlor <Joseph.Lawlor@dcd.cccounty.us>

1 attachments (261 KB)

Initial\_Response\_Letter\_10-25-2023.pdf;

Classification: Public

Dear Joseph Lawlor,

Thank you for submitting the Phillips 66 Rodeo plans. The PG&E Plan Review Team is currently reviewing the information provided. Should this project have the potential to interfere with PG&E's facilities, we intend to respond to you with project specific comments. Attached is some general information when working near PG&E facilities that must be adhered to when working near PG&E's facilities and land rights.

This email and attachment does not constitute PG&E's consent to use any portion of PG&E's land rights for any purpose not previously conveyed. If there are subsequent modifications made to your design, we ask that you resubmit the plans to the email address listed below.

If you have any questions regarding our response, please contact the PG&E Plan Review Team at [pgeplanreview@pge.com](mailto:pgeplanreview@pge.com).

Thank you,



Pacific Gas and Electric Company

Plan Review Team

Email: [pgeplanreview@pge.com](mailto:pgeplanreview@pge.com)

From: Joseph Lawlor <Joseph.Lawlor@dcd.cccounty.us>

Sent: Tuesday, October 24, 2023 10:53 AM

To: PGE Plan Review <PGEplanreview@pge.com>

Subject: Phillips 66 Rodeo Renewed Revised EIR

CAUTION: EXTERNAL SENDER!

This email was sent from an EXTERNAL source. Do you know this person? Are you expecting this email? Are you expecting any links or attachments? If suspicious, do not click links, open attachments, or provide credentials. Don't delete it. **Report it by using the "Report Phish" button.**

Pursuant to the State of California Public Resources Code and the "Guidelines for Implementation of the California Environmental Quality Act of 1970" as amended to date, this is to advise you that the Community

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**COMMENT LETTER: 16**

Development Division of the Department of Conservation and Development of Contra Costa County has prepared a Draft Revised Environmental Impact Report for the Phillips 66 Rodeo Renewed Project. The Notice of Availability for the document may be viewed here: [Notice of Availability for the Rodeo Renewed Project October 24, 2023 \(link\)](#).

Sincerely,



**Joseph W. Lawlor Jr, AICP**

Senior Planner, Current Planning Section  
Community Development Division

[Contra Costa County Department of Conservation and Development](#)  
[30 Muir Road, Martinez, CA 94553](#)

Phone: (925) 655-2872

You can read about PG&E's data privacy practices at [PGE.com/privacy](https://www.pge.com/privacy).

**Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

Attachments to Comment Letter 16 supporting the commenters' comments can be found in their entirety on the County's website: <https://www.contracosta.ca.gov/RodeoRenewed> (link)

***Response to Comment 1***

The comment is noted. Refer to Letter 15, Response to Comment 1.

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**Comment Letter 17. Pacific Gas and Electric Company (November 27, 2023)**



**COMMENT LETTER: 17**

Plan Review Team  
Land Management

PGEPlanReview@pge.com

November 27, 2023

Joseph Lawlor  
County of Contra Costa  
30 Muir Road  
Martinez, CA 94553

Re: Phillips 66 Rodeo Renewed Revised EIR

Dear Joseph Lawlor,

Thank you for providing PG&E the opportunity to review the proposed plans for Phillips 66 Rodeo Renewed Project dated 10/24/2023. Our review indicates the proposed improvements do not appear to directly interfere with existing PG&E facilities or impact our easement rights.

Please note this is our preliminary review and PG&E reserves the right for additional future review as needed. This letter shall not in any way alter, modify, or terminate any provision of any existing easement rights. If there are subsequent modifications made to the design, we ask that you resubmit the plans to the email address listed below.

If the project requires PG&E gas or electrical service in the future, please continue to work with PG&E's Service Planning department: <https://www.pge.com/cco/>.

As a reminder, before any digging or excavation occurs, please contact Underground Service Alert (USA) by dialing 811 a minimum of 2 working days prior to commencing any work. This free and independent service will ensure that all existing underground utilities are identified and marked on-site.

If you have any questions regarding our response, please contact the PG&E Plan Review Team at [pgeplanreview@pge.com](mailto:pgeplanreview@pge.com).

Sincerely,

PG&E Plan Review Team  
Land Management

---

Public

***Response to Comment 1***

The comment is noted. Refer to Letter 15, Response to Comment 1.



**Comment Letter 18. Phillips 66 Community Advisory Panel**

**COMMENT LETTER: 18**

December 6, 2023

Department of Conservation and Development  
ATTN: Joseph Lawlor Jr.  
Community Development Division  
30 Muir Road  
Martinez, CA 94553

Dear Mr. Lawlor,

This letter is on behalf of the following individual members of the Phillips 66 Community Advisory Panel (CAP) who seek to advise you that they, as individuals, support the proposed Rodeo Renewed Project as the preferred alternative evaluated in the Project Environmental Impact Report (EIR).

CAP members meet monthly with management representatives of Phillips 66 Refinery to discuss matters of interest and concern, and to receive updates on refinery operations. Established in 1995, the CAP is an independent, self-governing body whose members include local residents, community organizations, emergency responders, and others from the communities surrounding the refinery. The CAP places a priority on matters dealing with health and safety and the environment, such as the proposed Rodeo Renewed Project.

As CAP members we were able to ask questions regarding potential impacts and mitigations related to the project. Based on this information the following CAP members strongly urge the certification of the EIR and the approval of the company proposed project.

As individuals we support Phillips 66's proposed project as the environmentally superior alternative as it has been designed to protect both the proximate environment and the nearby communities. Certification and approval will allow the refinery to continue to fuel the California and Bay Area economies in a safe and environmentally responsible manner.

We recommend that the County certify the EIR and approve the Rodeo Renewed project.

If you have any questions, please contact Darrell Foote, CAP Facilitator, at 925-229-0440 or email him at [informpr@sbcglobal.net](mailto:informpr@sbcglobal.net).

Sincerely,

  
Celia Davis  
E. Gray  
Barbara Vargen-Kotcheva  
Don Wilson

***Response to Comment 1***

The comment is noted. Refer to Master Response No. 8: Non-CEQA Topics and Project Merits.

**Comment Letter 19. Plumbers & Steamfitters Local Union 342**

COMMENT LETTER: 19



# Plumbers & Steamfitters Local Union 342

935 Detroit Avenue, Concord, CA 94518-2501 ♦ Phone (925) 686-5880 ♦ Fax (925) 685-3710

**CHÉ TIMMONS - BUSINESS MANAGER**

ASSISTANT BUSINESS MANAGER ROBBIE NASH	BUSINESS REPRESENTATIVE MARC LOPEZ	BUSINESS REPRESENTATIVE DAVE HERWAT	BUSINESS REPRESENTATIVE RANDY LOYD
PIPELINE REPRESENTATIVE SCOTT FISK	PLUMBER REPRESENTATIVE TIM KNIGHT	REFRIGERATION REPRESENTATIVE MAT HATTICH	POLITICAL REPRESENTATIVE CHUCK LEONARD
			ORGANIZER ROBERT DOWNS

November 6, 2023

Contra Costa County  
Department of Conservation and Development  
Community Development Division  
ATTN: Joseph Lawlor Jr.  
30 Muir Road  
Martinez, CA 94553

Dear Mr. Lawlor:

On behalf of the 4000 members of Plumbers & Steamfitters Union Local 342 (UA Local 342) we offer our strong support of Phillips 66’s Rodeo Renewed project at the San Francisco Refinery in Rodeo. In response to the Draft Revised EIR, we officially submit these public comments to be entered into the record.

Rodeo Renewed is among the first renewable transportation fuels projects in Contra Costa County and positions Phillips 66 to be a world leader in renewable energy production while preserving, family-wage jobs and helping to improve local air quality. **We fully support Rodeo Renewed and believe the Draft Revised EIR is an accurate representation of this positive and responsible plan.**

Approval of this project will not only serve the best interests of the working men and women of Union UA Local 342, but Contra Costa County, the Bay Area and California as a whole. Rodeo Renewed will help achieve California’s low-carbon goals while also creating renewable energy jobs.

Phillips 66’s Rodeo Refinery has been operating in Rodeo for 127 years, and we want to ensure its ability to contribute to the Contra Costa County economy for many years to come is retained. This includes its long legacy of providing family-wage jobs, not only for the men and women within the refinery, but also for the members of UA Local 342, numerous contractors, vendors, and the surrounding community.

Rodeo Renewed will help support our local economy by creating more than 500 construction jobs, during the conversion, and supporting ~650 renewable energy jobs upon completion. As essential workers, the refinery is vital to keeping California moving. Projects like this also have multiplier effects, meaning for each job the refinery provides, many additional jobs are supported. The benefits extend well beyond the immediate employment within the refinery.

We appreciate the robust discussions surrounding the overall energy transition in California, and we want to be part of this great effort. But we must be thoughtful in our approach and utilize new technologies that support the transition while preserving local, family-wage jobs and supporting the local economy.

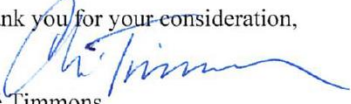


COMMENT LETTER: 19

Therefore, the members of UA Local 342 stand in solidarity with Phillips 66 as it ushers in the next generation of renewable fuel production in California. We ask that Contra Costa County approve the Rodeo Renewed project.

↑  
1  
cont'd

Thank you for your consideration,

  
Ché Timmons  
Business Manager & Financial Secretary

Cc: Honorable California Governor Gavin Newsom

Honorable United States Senator Alex Padilla

Honorable United States Congressman John Garamendi  
Honorable United States Congressman Mark DeSaulnier  
Honorable United States Congressman Josh Harder  
Honorable United States Congressman Eric Swalwell

Honorable California State Senator Nancy Skinner  
Honorable California State Senator Bill Dodd  
Honorable California State Senator Steven Glazer

Honorable California State Assemblymember Tim Grayson  
Honorable California State Assemblymember Lori Wilson  
Honorable California State Assemblymember Buffy Wicks  
Honorable California State Assemblymember Rebecca Bauer-Kahan

Honorable Contra Costa County Supervisor Diane Burgis  
Honorable Contra Costa County Supervisor Federal D. Glover, Vice Chair  
Honorable Contra Costa County Supervisor John M. Gioia, Chair  
Honorable Contra Costa County Supervisor Candace Andersen  
Honorable Contra Costa County Supervisor Ken Carlson

**Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

***Response to Comment 1***

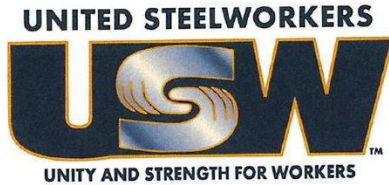
The comment is noted. Refer to Master Response No. 8: Non-CEQA Topics and Project Merits.

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**Comment Letter 20. Steelworkers Local 325**

COMMENT LETTER: 20



Tyson Bagley  
President  
Local 326  
P.O. 278  
Rodeo, CA 94572

November 3, 2023

Contra Costa County Dept. of Conservation &  
Development Community: Development Division  
Attention: Joseph Lawlor Jr., Senior Planner  
30 Muir Road  
Martinez, CA 94553

Dear Mr. Lawlor:

On behalf of the 289 members of the United Steel Workers, Local 326 we offer our strong support of the Phillips 66's Rodeo Renewed project at the San Francisco Refinery in Rodeo. In response to the Draft Revised Environmental Impact Report, we officially submit these public comments to be entered into the record.

Rodeo Renewed is among the first renewable transportation fuels projects in Contra Costa County and positions Phillips 66 to be a work leader in renewable energy production while preserving family-wage jobs and helping to improved local air quality. We fully support Rodeo Renewed and believe the Draft Revised EIR is an accurate representation of this positive and responsible plan.

Approval of this project will not only serve the best interests of the working men and women of USW, Local 326, but Contra Costa County, the Bay Area and California as a whole. Rodeo Renewed will help achieve California's low-carbon goals while also creating renewable energy jobs.

Phillips 66's Rodeo Refinery has been in the Rodeo community for 127 years and we want to ensure its ability to contribute to the Contra Costa County economy for many years to come. This includes its long legacy of providing family-wage jobs, not only for the men and women within the refinery, but also for the members of Local 326, numerous contractors, vendors and the surrounding community.

Rodeo Renewed will help support our local economy by creating more than 500 construction jobs during the conversion and supporting ~650 renewable energy jobs upon completion. As essential workers, the refinery is vital to keeping California moving. Projects like this also have multiplier effects, meaning for each job the refinery provides, many additional jobs are supported. The benefits extend well beyond the immediate employment within the refinery.

We appreciate the robust discussion around the overall energy transition in California, and we want to be part of this great effort. But we must be thoughtful in our approach and utilize new technologies that support the transition while preserving local, family-wage jobs and supporting the local economy.

Therefore, the members of USW, Local 326 stand in solidarity with Phillips 66 as it ushers in the next generation of renewable fuel production in California. We ask that Contra Costa County approve the Rodeo Renewed project.

Sincerely,

Tyson Bagley  
President, USW Local 326

Cc: Honorable Contra Costa County Supervisor Diane Burgis  
Honorable Contra Costa County Supervisor Federal D. Glover, Vice Chair  
Honorable Contra Costa County Supervisor John M. Gioia, Chair  
Honorable Contra Costa County Supervisor Candace Andersen  
Honorable Contra Costa County Supervisor Ken Carlson

***Response to Comment 1***

The comment is noted. Refer to Master Response No. 8: Non-CEQA Topics and Project Merits.



**Comment Letter 21. Brandon**

COMMENT LETTER: 21

Rodeo Renewed

Brandon <brandon94591@yahoo.com>

Wed 10/25/2023 11:55 AM

To: Joseph Lawlor <Joseph.Lawlor@dcd.cccounty.us>

Moving forward as a resident in this area we NEED Rodeo Renewed. Please let this project move forward so we can do our part in saving this planet. ]<sub>1</sub>

***Response to Comment 1***

The comment is noted. Refer to Master Response No. 8: Non-CEQA Topics and Project Merits.

# Rodeo Renewed Project, Final Revised Environmental Impact Report

## 3 Responses to Comments

### **Comment Letter 22. Brennan, Maureen**

Public comment P66 REIR

**COMMENT LETTER: 22**

Maureen Brennan <harpmo@sbcglobal.net>

Thu 12/7/2023 12:09 PM

To: Joseph Lawlor <Joseph.Lawlor@dcd.cccounty.us>

Public Comment regarding REIR for Rodeo Renewed P66 project:

So sad that P66 and the County don't play by the rules. I took photos two years ago of the modification at the NuStar site, and asked an engineer at the site, if this was part of the Rodeo Renewed project. He said "YES." I contacted Gary Kupp with this info., and he immediately denied it was part of the project, and under a different permit that was CEQA negative. As the report says, "Renewable feedstocks will be primarily delivered across the Marine Terminal." That is why they built the pipeline connection to Nustar, Unit 250, part of Rodeo Renewed. Piece-mealing.

1

Another example of this piece-mealing lies with the delayed coker unit. As part of the Fenceline Working Group, I asked Don Bristol if the coker was to be de-commissioned. He said "no." It is to be used for a new P66 project that will manufacture electrodes for a variety of battery usages. He said it would require a new land use permit. Yet, Gary Kupp, at the May 3 2022 permitting meeting with the Board of Supervisors, said the Rodeo Renewed permit would cover any new projects at P66. Piece-mealing.

2

During the Scoping process, P66 said the Carbon Plant would be demolished, and the land offered as Open Space for the community. Not so. P66 has offered 20 acres of this land to H-Cycle for rent, to be used as a Trash to Hydrogen project, with 40% of the hydrogen produced being negotiated for use at P66. Current pipelines for natural gas would be used for transport. This too has environmental impacts; for a different time. More piece-mealing.

3

The REIR praises the reduction of H2S and SO2, a good thing. However, neither report acknowledges increases in NO2, ammonia, and methane at the hydrogen plant (s), a known consequence when hydrocracking at higher temperatures.

4

May I mention, I've never heard response to my original EIR public comments. Now, there are other concerns regarding this REIR. AQ-5 describes an AVO response within an hour of bad smells, Audio, Visual, Olfactory inspection. I chuckled at this, as I historically contact P66 when I smell bad smells, and 3 times, the "AVO" inspector said, "we drove by your neighborhood and saw a dead raccoon," or skunk, or generic animal. Should I trust this unscientific methodology?

5

The reduced refinery "can create odors similar to an animal processing plant," says the REIR. p.15. In addition to filtration, "scrubbing and incineration systems" will be deployed. What is that ?? about. Also the pre-treatment black box, has one arrow out, described as "waste water treatment." Where is that to go? The DEIR is completely lacking details regarding waste water treatment. BAAQMD Rule 8 is being revised more strictly, regarding industrial waste water treatment. Has this been considered?

6

7

Traffic, has been terrible at 3:00pm as workers leave the site for the day. A solid line of cars from Selby Slag site to Cummings Skyway. And the next 2 months there are many more workers coming on board. Significant pollution, unmitigated.

8

Noise and vibrations, were dismissed by Gary Krupp. Page 31 says the bulk of the noise will be during daytime working hours. Absolutely untrue. I am routinely awakened at 2:30am by loud noise. I measure it, typically around 56-58 decibels. Then, the cumulative noise of the train raises this to 62-64 decibels. On the hour, through the early morning. County nuisance ordinances allow no greater than 60 decibels., right on the edge. Gary Kupp said my decibel device was not calibrated. Not true. Calibrated from the factory for two years.

9

These are all cumulative impacts that the community will endure.

Maureen Brennan  
Rodeo CA

### **Response to Comment 1**

Refer to Master Response No. 2: Piecemealing.

### **Response to Comment 2**

Refer to Master Response No. 2: Piecemealing.

### **Response to Comment 3**

Refer to Master Response 6: Carbon Plant and H Cycle.

**Response to Comment 4**

Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations. Also refer to the 2022 EIR Master Response No. 5: Renewable Fuels Processing.

**Response to Comment 5**

All responses to comments on the 2022 EIR were posted on the County's website in March 2022. Also refer to Master Response No. 1: Odor Mitigation.

**Response to Comment 6**

The "scrubbing and incineration systems" are described in the Draft REIR on pages 9-11. Also refer to Master Response No. 1: Odor Mitigation.

**Response to Comment 7**

As described in the 2022 EIR, Chapter 3, Project Description, the Rodeo Refinery has an onsite Wastewater Treatment Plant (Unit 100) to treat its water. Phillips 66 does not currently or in the future require the use of any other wastewater treatment plant. Facility wastewater flows through various pipelines to the Wastewater Treatment Plant and is treated to meet the limitations set forth in the Rodeo Refinery's NPDES discharge permit (Order R2-2016-0044) issued by the San Francisco Bay RWQCB. Phillips 66 is implementing a Project-specific Construction Site Monitoring Program that has been incorporated into the Project SWPPP to address and limit water quality impacts during construction and demolition activities. The 2022 EIR concluded no significant impacts related to wastewater treatment would occur as a result of the Project.

**Response to Comment 8**

The commenter is referred to the 2022 EIR, Section 4.13 Transportation and Traffic, which addresses increased traffic associated with the Project, and Section 4.4, Air Quality, which addresses construction-related air quality impacts. Both impacts were found to be significant but could be mitigated with implementation of the listed mitigation measures.

Analysis related to traffic was not identified in the Statement of Decision and peremptory writ of mandate as requiring reconsideration. These analyses have not been revised or recirculated in the Draft REIR. On page 3 of the Draft REIR, and pursuant to CEQA Guidelines Section 15088.5(f)(2), reviewers were notified that their comments should be limited to the revised chapters or sections of the Draft REIR. Therefore, since this is not a comment on the Draft REIR no further response is required.

Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations.

**Response to Comment 9**

The commenter is referred to the 2022 EIR, Section 4.12, Noise and Vibration, which addresses Project-related construction and operational impacts. Potential noise and vibration impacts were identified as less than significant since levels would not exceed the Caltrans or the County's thresholds of significance.

Analysis related to noise and vibration were not identified in the Statement of Decision and peremptory writ of mandate as requiring reconsideration. These analyses have not been revised or recirculated in the

**Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

Draft REIR. On page 3 of the Draft REIR, and pursuant to CEQA Guidelines Section 15088.5(f)(2), reviewers were notified that their comments should be limited to the revised chapters or sections of the Draft REIR. Therefore, since this is not a comment on the Draft REIR no further response is required.

Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations.

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Rodeo Renewed Project, Final Revised Environmental Impact Report

3 Responses to Comments

**Comment Letter 23. Brown, Clair**

Re: Comment on RDEIR County File CDLP20-02040

COMMENT LETTER: 23

Clair Brown <clairbrown@gmail.com>

Fri 12/8/2023 7:21 PM

To: G Karras <gkarrasconsulting@gmail.com>

Cc: Joseph Lawlor <Joseph.Lawlor@dcd.cccounty.us>

wow! You wrote a powerful report based on evidence that cannot be ignored.

Way to go, Greg!!!

I appreciate your adding my name, although I am not a co-author---only an enthusiastic student learning from you.

I will carefully read your report and make sure I know all the arguments and evidence.

Now that I see it as teacher-student, I feel OK because I have had student co-authors who didn't do any work but followed it carefully.

Super appreciation for all you have been doing for decades to educate lawmakers and state agencies to make more effective and equitable policies.

"When will they ever learn?"

1

On Fri, Dec 8, 2023 at 4:53 PM G Karras <gkarrasconsulting@gmail.com> wrote:

Mr. Lawlor,

Please confirm receipt of the attached comment on the Revised Draft EIR for the Rodeo refinery conversion project.

Thank you.

--

Greg Karras, G Karras Consulting

Community Energy reSource

(415) 902-2666

[www.energy-re-source.com](http://www.energy-re-source.com)

--

*May we heal the earth as we heal ourselves, for the benefit of all.*

Projects: <https://irle.berkeley.edu/center-for-work-technology-and-society/>

My book: *Buddhist Economics: an enlightened approach to the dismal science*, Bloomsbury Press, 2017.

Book trailer (2 min): <https://youtu.be/88RX5A2iezs>

<http://buddhisteconomics.net/>

Follow on <https://twitter.com/BrownClair>

***Response to Comment 1***

The comment is noted. Refer to Comment Letter 6 responses.



**Comment Letter 24. Callaghan, Janet**

**COMMENT LETTER: 24**

Joseph Lawlor, Project Manager  
CCC Department of Conservation and Development  
30 Muir Rd  
Martinez, CA 94553  
[joseph.lawlor@dcd.cccounty.us](mailto:joseph.lawlor@dcd.cccounty.us)

Draft Revised Environmental Impact Report for the Rodeo Renewed Project, State  
Clearinghouse# 2020120330, County File No. CDLP20-02040

Mr. Lawlor and all employees and Board of Supervisors,

I believe it is your duty to represent and serve the public, keep them protected and provide services. Do not believe the risky empty promises and clear blue skies the refinery wants you to believe. I have sat on their fence line committee for many years. Their continued piece-meal tactic of their projects is wrong and deceptive. The EIR is deficient and the county is failing to comply with the order of the court.

1

The county's decision not to give us more time to review during holidays, seems unfair to our affected community. Especially during the Envision 2040. The county is ignoring our requests for more time so that we may continue to make more public comment. A superior court judge ruled that P66 is piece-mealing their projects. What happened recently in Martinez & Chevron can happen here also. The county needs to provide an evacuation plan, in the event of a real emergency as there is only highway 4 and interstate 80. We do not need any more industrial plants on highway 4. Also Nu Star on interstate 80 has its daily risks and lack of maintenance.

2

The County is to represent the citizens impacted by the pollution throughout the whole county and taxpayers. Including the risks to wildlife and our bay salmon and fish life.

3

Are there requirements for when they, P66 clean up the Carbon Plant that covers the road & houses with soot and chemicals? The coke pile on Highway 4 between Hercules & Rodeo has never been encapsulated like it is enclosed in Southern California. Will it cost the County to clean up the mess? Like Selby slag is not cleaned up.

4

You should be asking that now including upfront Bonds and receiving clean up money before granting any authorization. No more industrial sites are needed in and around Rodeo/Hercules.

5

The County needs to protect the health of everyone. We are a medical desert and grocery store desert. Mass transit deprived. Paying taxes for Bart that we don't have.

6

Cancer rates have risen in Contra Costa and premature birth, death and defects.

7

When I moved here 45 years ago, I found this to be a great community where generations of families have lived here. I want future generations to be able to live here as safely as possible. Long ago there was Sequoia Refinery that processed light sulfur crude oil, that smelled like vanilla. Then Pacific Refinery took over processing a different heavy sulfur crude oil and never upgraded the facility. The stench of sulfur that plagued our communities was unbearable until a judge ruled upgrade or shut down. Now homes are on Victoria by the Bay Hercules.

8

Flaring is bad and what do you think happens with hydrogen. Blows up. The noise levels are increasing especially during the night with flaring. Including trains, cars, truck traffic and ruining the roads at local and county property are just some of the cumulative impacts that the communities will endure.

9

Sincerely,  
Janet Callaghan, President. email: [callaghanjvc@gmail.com](mailto:callaghanjvc@gmail.com)  
Rodeo Citizens Association  
P.O.Box 402 Rodeo CA 94572

10

**Response to Comment 1**

The comment is noted. Refer to Master Response No. 2: Piecemealing.

**Response to Comment 2**

The County understands the desire for an extension of the public comment period on the Draft REIR for the project. The County has been reviewing this project for over three years, including multiple public hearings and extensive agency and public outreach related to the project and its potential environmental impacts. Given the limited scope of the REIR, and the extent of review, analysis, and public and agency outreach the County has already conducted, after careful consideration the County decided not to extend the public comment period beyond the CEQA required 45-day noticing period.

In addition, the public will have an opportunity to submit comments at the County Board of Supervisors meeting to be held on January 16, 2024. These comments will be considered by the Board of Supervisors during consideration of the EIR certification and Project approval.

Also refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

**Response to Comment 3**

The comment is noted. Refer to Master Response No. 6: Carbon Plant and H Cycle.

**Response to Comment 4**

The comment is noted.

**Response to Comment 5**

As stated in the Draft REIR, page 19, the Selby Slag Remedial Action Plan and EIR is in final form and pending certification and approval by the Department of Toxic Substances Control. As a result, there are no ongoing remediation activities at the site.

**Response to Comment 6**

The comment is noted.

**Response to Comment 7**

The comment is noted.

**Response to Comment 8**

The comment is noted.

**Response to Comment 9**

The comment is noted. The 2022 EIR, Section 4.9, Hazards and Hazardous Materials, and Master Response No. 5: Marathon Renewable Fuels Operations and Hazards provide detailed analysis of flaring. As discussed, impacts related to flaring are considered less than significant.

**Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

***Response to Comment 10***

The commenter is referred to the 2022 EIR, Section 4.13 Transportation and Traffic, which addresses increased traffic associated with the Project. Impacts were found to be significant but could be mitigated with implementation of the listed mitigation measures.

Also refer to Master Response No. 3: Cumulative Impacts.

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**Comment Letter 25. Davidson, Charles**

**COMMENT LETTER: 25**

From:  
Charles Davidson  
Hercules, CA

To:  
Joseph Lawlor  
Project Manager  
CCC Department of Conservation and Development  
30 Muir Rd  
Martinez, CA 94553  
[joseph.lawlor@dcd.cccounty.us](mailto:joseph.lawlor@dcd.cccounty.us)

Subject: Public Comment on the Revised Environmental Impact Report for the Rodeo Renewed Project (State Clearinghouse# 2020120330, County File No. CDLP20-02040)

Dear Mr. Lawlor,

I am submitting this detailed technical critique concerning the Revised Environmental Impact Report (REIR) for the Rodeo Renewed Project, aligning my observations with previous submissions related to the Phillips 66 project and the Marathon Renewable project, which I have attached.

**Greenhouse Gas Emissions:** The REIR significantly underestimates the greenhouse gas emissions from the production of renewable diesel biodiesel from lipid triglycerides. The process of converting fats, oils, and greases into refinery biodiesel is estimated to emit 30% more kg of CO<sub>2</sub> per barrel at Phillips 66, a figure alarmingly higher than traditional petroleum diesel refining (based upon the project EIR). The figure is 42% higher at Marathon Renewable (based upon their project EIR). This profound under-representation of the carbon footprint of the hydrodeoxygenation reaction in lipid hydrocracking overlooks a critical environmental impact, necessitating a comprehensive reassessment of the REIR and DEIR. (See Part II, starting on page 3 of the attachment to this letter: 11 April 2022 [Updated 4/21/2022] Re: Appeal of Contra Costa County Planning Commission Certification for the Final Environmental Impact Report for the Phillips 66 Rodeo Renewed Project [File No. LP20-2040 and the Contra Costa County Code, section 26-2.2406]).

**Inefficient Land Use:** The REIR fails to adequately address the inefficiency of converting agricultural land for biofuel feedstock, especially soybeans. Producing a mere 57 gallons, or roughly 1.5 barrels of soybean oil per acre annually, results in only about 150 barrels or approximately 24 tons of oil over a century per acre. This pales in comparison to the carbon sequestration potential of natural landscapes. For instance, an acre hosting 25 large, 100-year-old oak trees can sequester up to 1,000 tons of carbon, a stark 40-fold increase in efficiency compared to soybean cultivation.

1

2

COMMENT LETTER: 25

**Safety Concerns in Refinery Projects:** Refinery renewable diesel biofuel projects at Phillips 66 and Marathon Renewable refineries introduce significant and unprecedented risks. Particularly, the exothermic hydrogen runaway reaction poses a greater danger than traditional hydrocracking of petroleum hydrocarbons. The historical instance at the Tosco Refinery, where operators struggled to detect or respond to hot spots in a catalyst bed, leading to a runaway reaction, exemplifies these risks.

3

Safety concerns regarding exothermic hydrogen runaway reactions in HDO units are inadequately addressed. The fatal 1997 Tosco Refinery explosion, which saw temperatures reaching 1,398 degrees Fahrenheit - far exceeding the safe limit of 800 degrees Fahrenheit - underscores the grave risks of such processes. This incident illustrates the heightened safety hazards inherent in the proposed project environment.

The presence of oxygen in lipids creates an enhanced risk scenario. The high pressure, high temperature refinery hydrogen needed in order to crack lipids that are 11 percent oxygen, by weight, may further increase the tendency for marked temperature imbalances and hotspots in the catalyst bed. Just recently, on November 19th, 2023, at Marathon, the HDO unit (furnace) at the Marathon Refinery caught fire and critically injured one employee. Initial release estimates include approximately 207,300 pounds of renewable diesel and 2,200 pounds (i.e., one-metric ton) of hydrogen. Refinery renewable diesel biofuels projects on the scale the Phillips 66 and Marathon Renewable Refineries' are unprecedented and pose an unknown and significant risk.

4

**Carbon Neutrality Claims Regarding Land-Use and CO2 Emission Inefficiencies:** The claim in the REIR, aligned with the Low Carbon Fuel Standard, that renewable diesel biofuel combustion is carbon-neutral, is overly simplistic. This claim fails to acknowledge the comparative inefficiency of biofuel feedstocks in carbon sequestration over a century. By ignoring the natural carbon sequestration potential of land, the report significantly misrepresents lifecycle CO2 calculations.

5

The following position of CARB is based upon factually inaccurate land-use GHG assumptions as a reason for disregarding renewable diesel biofuels combustion during the tailpipe emissions portion of their lifecycle (which is considered to be approximately 75% of the total). CARB states that "the CO2 emitted from vehicles during biofuel combustion is considered carbon neutral, in accordance with IPCC and U.S. EPA GHG inventory guidelines, as the carbon released was uptaken from the atmosphere within a short timeframe by the plant that produced the oil". In this case, for land-use GHG considerations, the DEIR and Revised EIR do not consider the "No Project" alternative of preserving natural lands for natural carbon sequestration, which starkly contrasts with the inefficient agricultural use for soybean farming. By not including tailpipe admissions in the renewable diesel biofuel lifecycle GHGs, the report gives the refinery an unmerited advantage, as tailpipe emissions account for about 75% of the total petroleum diesel lifecycle emissions and they should be for renewable diesel biofuels as well.

6

**COMMENT LETTER: 25**

**Project Piecemealing:** The Revised DEIR does not adequately address the cumulative environmental impact of related projects, like the Nustar Soybean Oil Project and the continued use of the Delayed Coker unit. This fragmented approach potentially obscures the comprehensive environmental impact of these combined initiatives.

7

Another issue that has occurred in relation to the Phillips 66 refinery, since the Rodeo Renewed Project was approved by the Contra Costa County Board of Supervisors in April 2022, is that while their Carbon Plant is slated to close, a company called H-Cycle is requesting the use of that site of a waste-to hydrogen facility. Furthermore, the refinery is now requesting 40% of H-Cycle's hydrogen and hopes to transport it to the refinery as a mixture within existing natural gas pipelines.

8

Will these renewable diesel feedstock solids be used within the H-Cycle facility to produce extra hydrogen This possibility was not mentioned in the Rodeo Renewed Project DEIR. The DEIR noted no adequate description regarding Phillips 66's disposal of solid residues cleaned from the mixed lipid feedstock in the pretreatment facility. These are potential odor and piecemealing issues

9

**Wastewater Treatment Concerns:** There is a concerning lack of detail regarding wastewater treatment, especially for mixed streams from lipid and petroleum processing at the wastewater treatment pond. This poses significant concerns for local residents, necessitating a detailed account of the treatment methods and microorganisms used in bioremediation, given the proximity of residences within 1,000 feet of the project, for which I also made a public comment to BAAQMD on, focusing on potential problematic aerosol emissions and odor. (3)

10

In conclusion, the Rodeo Renewed Project, in its current proposed form, raises significant environmental and safety concerns. I urge a comprehensive reevaluation of its impact, particularly regarding greenhouse gas emissions, land use efficiency, safety risks, and the overall environmental footprint.

11

Thank you for considering my detailed technical comments on this matter.

Sincerely,

Charles Davidson

1) ATTACHED: **ATTACHMENT B: 72 HOUR FOLLOW-UP NOTIFICATION REPORT FORM CONTRA COSTA HEALTH SERVICES HAZARDOUS MATERIALS PROGRAMS.** SUMMARY OF EVENT: At approximately 00:21 on November 19, 2023, a fire erupted from a furnace in the 2 HDO Unit. DESCRIPTION OF INJURIES: One employee suffered burn injuries and was taken to the hospital where he was admitted for treatment. IDENTITY OF MATERIAL RELEASED AND ESTIMATED OR KNOWN QUANTITIES: Initial release estimates include approximately 207,300 pounds of renewable diesel and 2,200 pounds of hydrogen.

**COMMENT LETTER: 25**

2) ATTACHED: 11 April 2022 [Updated 4/21/2022]

Re: Appeal of Contra Costa County Planning Commission Certification for the Final Environmental Impact Report for the Phillips 66 Rodeo Renewed Project (File No. LP20-2040 and the Contra Costa County Code, section 26-2.2406)

3) Begin forwarded message:

**From:** CommentsP66RodeoRenewed <commentsp66rodeorenewed@baaqmd.gov>

**Subject:** RE: UPDATED: ADDED one reference (1b) - Fwd: Charles Davidson public comment to BAAQMD regarding the Phillips 66 Refinery Rodeo Renewed Project's impacts on residents located within 1,000 feet of the project wastewater unit - charlesdavidson@me.com DECEMB

**Date:** January 20, 2023 at 7:38:13 PM PST

**To:** "charlesdavidson@me.com" <charlesdavidson@me.com>

Hi Charles,

Thank you for providing your comments during the public notice period for Air District Application #31157 (Rodeo Renewed Project). Attached please find the Air District's responses to all public comments received during the public notice period. This document will also be posted at: <https://www.baaqmd.gov/permits/public-notices/page-resources/table-data/2022/111522-31157/phillips-66-company-san-francisco-refinery>.

Regards,

Jimmy Cheng  
Senior Air Quality Engineer, Engineering Division  
Bay Area Air Quality Management District



## **Rodeo Renewed Project, Final Revised Environmental Impact Report**

### **3 Responses to Comments**

Attachments to Comment Letter 25 supporting the commenters comments can be found in their entirety on the County's website: <https://www.contracosta.ca.gov/RodeoRenewed> (link)

#### ***Response to Comment 1***

The 2022 EIR, Section 4.8, evaluated the Project's construction and operational GHG emissions, including stationary sources and mobile sources, determining that there would be a reduction in GHG operational emissions. (Table 4.8-5, page 4.8-263.) For additional information regarding renewable fuels process, refer to Master Response No. 5 from the 2022 EIR, Renewable Fuels Processing, which includes discussion of GHG emissions. These GHG analyses remain valid.

Analyses related to renewable fuels processing and GHG emissions were not identified in the Statement of Decision and peremptory writ of mandate as requiring reconsideration. These analyses have not been revised or recirculated in the Draft REIR. On page 3 of the Draft REIR, and pursuant to CEQA Guidelines Section 15088.5(f)(2), reviewers were notified that their comments should be limited to the revised chapters or sections of the Draft REIR. Therefore, since this is not a comment on the Draft REIR no further response is required.

Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations.

#### ***Response to Comment 2***

Section 3.8 of the 2022 EIR and the 2022 EIR's Master Response No. 4: Land Use and Feedstocks discuss at length the land use issues raised in this comment. Refer also to 2023 REIR Master Response No. 4 Feedstocks Analysis.

Analyses related to land use and renewable fuels processing were not identified in the Statement of Decision and peremptory writ of mandate as requiring reconsideration. These analyses have not been revised or recirculated in the Draft REIR. On page 3 of the Draft REIR, and pursuant to CEQA Guidelines Section 15088.5(f)(2), reviewers were notified that their comments should be limited to the revised chapters or sections of the Draft REIR. Therefore, since this is not a comment on the Draft REIR no further response is required.

Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations.

#### ***Response to Comment 3***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

#### ***Response to Comment 4***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

#### ***Response to Comment 5***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards and Master Response No. 4: Feedstock Analysis.

***Response to Comment 6***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards and Master Response No. 4: Feedstock Analysis. Refer also to the 2022 EIR's Master Response No. 4: Land Use and Feedstocks.

***Response to Comment 7***

Refer to Master Response No. 2: Piecemealing and Master Response No. 3: Cumulative Impacts.

***Response to Comment 8***

Refer to Master Response No. 6: Carbon Plant and H Cycle.

***Response to Comment 9***

Refer to Master Response No. 6: Carbon Plant and H Cycle, and Master Response No. 2: Piecemealing.

***Response to Comment 10***

Refer to Letter 4, Response to Comment 9.

***Response to Comment 11***

The comment is noted.

**Comment Letter 26. Luchini, Richard (December 5, 2023)**

**COMMENT LETTER: 26**

To: Joseph Lawlor, Senior Planner

From: Richard Luchini

Date: Dec. 4, 2023

Re: P66 EIR Comment / Offsite Impact

I believe the EIR is flawed in the noise / vibration calculations and assumptions. Direct impact from noise has been created by the construction of the new Bio-fuels Unit. I presently reside at 912 Hawthorne Dr. in Rodeo and have done so for past 38 years. At the end of 2022 I began to notice an unusual mechanical noise intermittently at my home and as the construction of the project has progressed the noise has become louder and more consistent. I worked at the P66 refinery for 44 years and I know the sounds that the refinery produces. The noise is that of the current refinery operations (fans, Pumps, Blowers, etc.), and not that of construction. I believe that the construction and building of the new unit is redirecting the noise that previously went into an unoccupied space. The noise has progressively gotten worse since the construction of the new unit nears completion. The noise is a nuisance and disruptive to everyday life.

1

Identification, mitigation and enforcement requirements need to be implemented in the Conditions of Approval for this project. As stated in the EIR, Contra Costa County has no formal noise ordinance, and therefore enforcement and mitigation measures need to be part of the Conditions of Approval. This should include a new County liaison dedicated to industrial noise control enforcement and abatement.

2

***Response to Comment 1***

The Project's potential noise impacts were fully evaluated in Section 4.12 of the 2022 EIR, including responses to comments. Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations. Analyses related to noise and vibration were not identified in the Statement of Decision and peremptory writ of mandate as requiring reconsideration. These analyses have not been revised or recirculated in the Draft REIR. On page 3 of the Draft REIR, and pursuant to CEQA Guidelines Section 15088.5(f)(2), reviewers were notified that their comments should be limited to the revised chapters or sections of the Draft REIR. Therefore, since this is not a comment on the Draft REIR no further response is required.

***Response to Comment 2***

The comment is noted. See Response to Comment 1.

Rodeo Renewed Project, Final Revised Environmental Impact Report

3 Responses to Comments

**Comment Letter 27. Luchini, Richard (December 7, 2023)**

Phillips 66 Rodeo Renewed Project EIR Comment

COMMENT LETTER: 27

Richard Luchini <loochpolo@gmail.com>

Thu 12/7/2023 1:37 PM

To: Joseph Lawlor <Joseph.Lawlor@dcd.cccounty.us>

Mr. Lawlor,

On Tuesday December 5, 2023 I submitted comments concerning the P66 EIR.

I am pleased to inform you that P66 and I have reached an agreement that shall mitigate the noise issue I had spoken of in my previous email comments.

1

Sincerely,

Richard Luchini

***Response to Comment 1***

The comment is noted.

Rodeo Renewed Project, Final Revised Environmental Impact Report

3 Responses to Comments

**Comment Letter 28 and Attachments. Moore, Mike**

Dear Mr. Lawlor,

COMMENT LETTER: 28

Thank you for your answers to my concerns about an extension. I appreciate you taking the time but I am disappointed you were not able to extend the comment deadline.

I share the concerns raised by the court on the unit 250 and Nu Star terminal "piecemealing". The court noted how closely related that the Unit 250 and Nu Star terminal are related to the Rodeo Renewed Project. I find the Declarations in the Appendix unpersuasive. Both items were converted to handle biofuel feedstocks. In fact, they did it as early as April 2021 prior to the May 2022 approval of the EIR by the Board of Supervisors. Please see attached July 30, 2021 Letter to BAAQMD which details that information. In response to BAAQMD Violation A61096, Phillips 66 stated in an April 2022 letter that it was processing renewable feedstocks and it was applying for a permit for renewable feedstocks(attached). It appears that the Unit-250 and Nu Star Terminal are linked with the Rodeo Renewed Project and should be included.

1

I have another concern that the Carbon Plant disposition has changed between the time the EIR was prepared and now. In the EIR, the Carbon Plant was to be torn down and remediated to a natural state like the surrounding area. It has come to my attention that Santa Clara County will be shipping waste products to the former Carbon Plant in order that those products can be converted to hydrogen for use at the Rodeo Renewed facility. This is completely a new use not discussed in the original EIR. This process needs to be included in the EIR. Otherwise, it would be "piecemealing".

2

My recommendation is that you need to revise and recirculate the EIR to take into account these two issues.

3

Thank you for your assistance. I appreciate your time.

Best Regards,

Mike Moore  
[Mikemoore315@yahoo.com](mailto:Mikemoore315@yahoo.com)  
(925)378-9214

On Friday, December 1, 2023 at 09:30:47 AM PST, Joseph Lawlor <[joseph.lawlor@dcd.cccounty.us](mailto:joseph.lawlor@dcd.cccounty.us)> wrote:

Mike,

Thank you for your follow-up email regarding the Marathon incident. Our department is closely monitoring the situation and will remain informed of the investigation's progress.

**COMMENT LETTER: 28**

In response to your query about the Rodeo Renewed Project Draft REIR comment period, we regret to inform you that the County will not be extending the deadline. The REIR's primary purpose is to address specific sections of the DEIR and FEIR that were deemed insufficient by the Court.

Thank you for your understanding. I look forward to receiving your comments by the December 8<sup>th</sup> deadline.

Sincerely,



**Joseph W. Lawlor Jr, AICP**  
Senior Planner, Current  
Planning Section  
Community Development  
Division  
[Contra Costa County](#)  
[Department of Conservation](#)  
[and Development](#)  
[30 Muir Road, Martinez, CA](#)  
[94553](#)  
Phone: (925) 655-2872

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**From:** Mike Moore <[mikemoore315@yahoo.com](mailto:mikemoore315@yahoo.com)>  
**Sent:** Monday, November 27, 2023 7:17 PM  
**To:** Joseph Lawlor <[Joseph.Lawlor@dcd.cccounty.us](mailto:Joseph.Lawlor@dcd.cccounty.us)>  
**Subject:** Re: Phillips 66 Rodeo Renewed Project – Request for an Extension of Time to Submit Comments

Dear Mr. Lawlor,

Thank you for your response to my letter. I appreciate your answer to my questions.

I want to bring to your attention a recent incident that may have an impact on the Revised Environmental Impact Report (REIR) for the Rodeo Renewed. It may require substantive analysis on your



# Rodeo Renewed Project, Final Revised Environmental Impact Report

## 3 Responses to Comments

part to update the environmental impacts on the Rodeo Renewed Project.

COMMENT LETTER: 28

On the evening of November 19, a furnace fire occurred at the Marathon Refinery in the 2 HDO Unit. An operator suffered burns over an extensive portion of his body. Hydrodeoxygenation (HDO) (also called hydrotreating) is a process also used at the Rodeo Renewed Facility in the U-250 Unit. Bio-fuel HDO requires the removal of more oxygen electrons thereby creating more heat and the possibility of fire. Also, more corrosive chemicals that are used in the biofuel process may cause system shutdowns. These safety concerns were raised in comments on the original EIR. These concerns should be readdressed in the REIR in light of the Marathon fire. The 30-day Marathon root cause report has not yet been published.

4

Because of the inherent danger of hydrotreater due to fire, the cumulative impacts portion will also have to be revisited. The limited scope of the REIR should be increased to include the root cause analysis of the November 19 Marathon Fire and whether there are any significant impacts to the REIR. You should push out the date for the comment period so these issues can be included in the REIR. By waiting, you will provide better evidence to the public on the environmental safety of the bio-fuel HDO.

5

Thank you for your reconsideration in this matter. I have attached the 72 Hour Report on the Marathon Renewables Fire for your information.

Best Regards,

Mike Moore  
[Mikemoore315@yahoo.com](mailto:Mikemoore315@yahoo.com)  
[\(925\)378-9214](tel:(925)378-9214)

On Tuesday, November 21, 2023 at 04:06:35 PM PST, Joseph Lawlor <[joseph.lawlor@dcd.cccounty.u](mailto:joseph.lawlor@dcd.cccounty.u)> wrote:

Dear Mike,

Thank you for your interest in the Rodeo Renewed Project Revised Environmental Impact Report (REIR). We appreciate your engagement and are committed to addressing your concerns.

In response to your questions, we would like to inform you that the County has not yet determined a date for scheduling a public hearing on the REIR. A public notice will be issued in advance to notify all interested parties. At this time, the County cannot will not commit to a

specific time since the timing will be dependent of the scope and extent of comments received on the Draft REIR.

**COMMENT LETTER: 28**

Given the limited scope of the changes outlined in the REIR, the County has decided not to extend the public comment period beyond the current 45-day noticing period. As you are likely aware, the County has been reviewing this project for over three years, including multiple public hearings and extensive agency and public outreach related to the project and its potential environmental impacts. Furthermore, this decision aligns with the Court's directive to focus on select revisions to the Environmental Impact Report (EIR) and not the EIR in its entirety.

If you have any further questions regarding the REIR process or the Court's decision, County staff would be more than happy to provide clarification and assistance.

Sincerely,



**Joseph W. Lawlor Jr, AICP**  
Senior Planner, Current  
Planning Section  
Community Development  
Division  
[Contra Costa County](#)  
[Department of Conservation and  
Development](#)  
[30 Muir Road, Martinez, CA](#)  
[94553](#)  
Phone: [\(925\) 655-2872](tel:(925)655-2872)

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**From:** Mike Moore <[mikemoore315@yahoo.com](mailto:mikemoore315@yahoo.com)>  
**Sent:** Monday, November 20, 2023 5:39 PM  
**To:** Joseph Lawlor <[Joseph.Lawlor@dcd.cccounty.us](mailto:Joseph.Lawlor@dcd.cccounty.us)>  
**Subject:** Phillips 66 Rodeo Renewed Project – Request for an Extension of Time to Submit Comments

Dear Mr. Lawlor:

I am writing in regards to the Draft Revised Environmental Impact Report (Draft REIR) public comment

# Rodeo Renewed Project, Final Revised Environmental Impact Report

## 3 Responses to Comments

process for the environmental impact report (EIR) concerning the Phillips 66 Rodeo Renewed Project (Project). Currently, written public comment is due by December 8, 2023, meeting the minimum requirements of a 45-day comment period, the shortest public comment period allowed by law. The scale and impacts of the project merit that the community have more time to respond to the Draft REIR.

COMMENT LETTER: 28

Accordingly, I am asking you to extend the comment deadline by 90 days, and to set a public meeting date that will take place at least 60 days after the extension of the comment period is announced, so as to allow stakeholders time to prepare meaningful input and assist County staff is doing outreach to maximize public attendance to the meeting.

6

The Draft REIR and the Phillips 66 Project more broadly has raised a host of complex technical issues that that are difficult to understand in the 45 days provided by the County. The issues from the Court's Statement of Decision require in-depth review and analysis: reconsider NuStar terminal as part of the project description; reconsider Unit 250 as part of the cumulative impact analysis; and reconsider the mitigation measures for the Project's odor impacts. The accompanying Appendices are 346 pages long. They contain the Court's Statement of Decision, 3 Declarations with Exhibits, Revisions to the 2022 Draft EIR, BAAQMD Authority to Construct for Permit Application No. 31157, and Phillips 66 Odor Prevention and Management Plan. I would like to be able to inform your process not only with informed input concerning the types of potentially unaddressed environmental harm that may result from this project in the future but also with types of questions that need to be vetted with respect to the recent court. Putting together that type of input, which I believe will be useful to you, will take more time than you have currently afforded the public.

7  
8

Therefore, I respectfully request that you extend the due date for scoping comments by 90 days. We further request that you schedule a public meeting at least 60 days after the extension is announced.

Mike Moore  
[Mikemoore315@yahoo.com](mailto:Mikemoore315@yahoo.com)  
(925) 378-9214

**COMMENT LETTER: 28\_Attachment 1**

**COMMUNITY ENERGY RESOURCE • NATURAL RESOURCES DEFENSE  
COUNCIL • RODEO CITIZENS ASSOCIATION • SUNFLOWER ALLIANCE**

July 30, 2021

Via electronic mail ([jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov))

Jack Broadbent  
Chief Executive Officer  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105

*Re: Phillips 66 refinery (Air District plant no. 21359) - possible unpermitted  
modifications*

Dear Mr. Broadbent:

We are writing to alert you to information indicating that the Phillips 66 Rodeo refinery appears to have engaged in facility modifications without a required permit from the Air District. We are hopeful that you will take appropriate action to investigate and address this, and will keep us informed of your progress.

Specifically, on the company's first quarter earnings call on April 30, Phillips 66 CEO Greg Garland stated, "In April, the company completed its diesel hydrotreater conversion, which will ramp up to 8,000 b/d (120 million gallons per year) of renewable diesel production by the third quarter of 2021." Robert Herman, head of the company's refining segment, added, "So on Unit 250, we started it up here early in April after turnaround to convert the unit to run soybean oil, and so we're running the clean soybean oil out there. And unit came up first time and has run well."<sup>1</sup>

A project of this nature plainly requires authority to construct from the District pursuant to Regulation 2-1-301, as changing the nature of the feedstock for the hydrotreater - and any steps performed to achieve that "conversion" during the referenced turnaround - would qualify as an alteration pursuant to Regulation 2-1-233. Additionally, this change would appear to require, at minimum, an application for a minor Title V permit revision under Regulation 2-6-406, since the facility's current Title V permit references only petroleum as a feedstock. The change may also require review under the California Environmental Quality Act (CEQA), as it does not fall into any exempt category set forth in Regulation 2-1-312.

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<sup>1</sup> See "Phillips 66 Starts Up First Renewable Diesel Unit at Rodeo Refinery," *Platt's S&P Global* April 30, 2021, available at <https://www.spglobal.com/platts/en/market-insights/latest-news/oil/043021-phillips-66-starts-up-first-renewable-diesel-unit-at-rodeo-refinery>. We also have obtained a transcript of the call.

**COMMENT LETTER: 28\_Attachment 1**

However, we see no indication on the District's website that the facility has applied for authority to construct or a Title V revision, or any other type of authorization for this change at Unit 250. We have reviewed documents received in response to a Public Records Act request for permits applied for and/or issued at the facility, but have found no reference in those documents to the hydrotreater project referenced on the earnings call.

We further note that the Unit 250 project is conceptually part and parcel of the Rodeo Renewed project to convert the refinery to biofuel production, and was in fact specifically referred to by Mr. Herman as a dry run for the larger conversion. Mr. Herman stated on the call with respect to the Unit 250 project, "It's a learning curve around some of the products -- how to handle the product coming off the unit and everything before we get to the big projects." However, the application for authority to construct submitted in May 2021 in connection with the Rodeo Renewed project does not include changes to this unit.

We would add, in this regard, that the permit application for the Rodeo Renewed project does not include a request to increase in hydrogen production at the Air Liquide facility, even though it is fairly clear based on our analysis that additional hydrogen generation capacity will be necessary to produce the volume of product contemplated in the project application. We hope the District will ensure that this omission does not result in additional unpermitted activity at the refinery.

These are not mere paperwork concerns on our part. The conversion of the refinery from processing crude to processing biofuel feedstocks will likely result in additional air emissions associated with the increased inputs of hydrogen necessary to process soybean oil and other renewable feedstocks. In particular, the new soy oil feed requires increased per-barrel hydrogen inputs for deoxygenation, boosting exothermic reaction heat and thus the risk of runaway reactions. Hydrogen-related runaway reactions already result in recurrent flaring, according to Phillips 66 causal reports pursuant to Air District Regulation § 12-12-406. The choice of product slate generated from the soy feedstock can also potentially increase emissions, another reason it is essential that the District fully evaluate the feedstock shift. Members and constituencies of the signatory organizations will be directly impacted by these pollutant increases.

We request that you please review the situation and advise us what steps you plan to take to ensure that Phillips 66 complies with Air District regulations in any activities associated with its biofuel conversion project. If we have somehow overlooked a valid permit for the project at Unit 250, please let us know that as well.

Very truly yours,

Greg Karras  
Community Energy reSource  
[kkarrasconsulting@gmail.com](mailto:kkarrasconsulting@gmail.com)

Charles Davidson  
Rodeo Citizens Association  
[charlesdavidson@mc.com](mailto:charlesdavidson@mc.com)

Ann Alexander  
Natural Resources Defense Council  
[aalexander@nrdc.org](mailto:aalexander@nrdc.org)

Shoshana Wechsler  
Sunflower Alliance  
[swechs@sonic.net](mailto:swechs@sonic.net)

**COMMENT LETTER: 28\_Attachment 1**

cc:

Supervisor John Gioia  
[John.Gioia@bos.cccounty.us](mailto:John.Gioia@bos.cccounty.us)

Greg Nudd  
[gnudd@baaqmd.gov](mailto:gnudd@baaqmd.gov)

Veronica Eady  
[veronica@baaqmd.gov](mailto:veronica@baaqmd.gov)

Gary Kupp  
[gary.kupp@dcd.cccounty.us](mailto:gary.kupp@dcd.cccounty.us)

Rodeo Renewed Project, Final Revised Environmental Impact Report

3 Responses to Comments



COMMENT LETTER: 28\_Attachment 2

PHILLIPS 66  
SAN FRANCISCO REFINERY  
1380 San Pablo Avenue  
Rodeo, CA 94572  
phone 501.245.4476  
fax 510.245.4476



PROVIDING ENERGY. IMPROVING LIVES.

April 28, 2022

ESDR-191-22  
05-B-01-C

Via E-Mail – Compliance@BAAQMD.gov

Mr. Jeff Gove - Director of Compliance and Enforcement  
Bay Area Air Quality Management District  
375 Beale Street  
San Francisco, CA 94105

DEVIATION  
BAAQMD DEV.# 6918  
DATE REC'D 0428/2022

**Subject: 30 Day Deviation Report 024-22  
BAAQMD NOV A61096  
Phillips 66 San Francisco Refinery – Plant No. A0016**

Director:

Please refer to the attached table for the deviation report per Title V Permit Section I.F for the following deviation:

024-22 – Plant A0016, 30 Day Deviation Report

If you have any questions, or require additional information on any of this deviation, please contact Wilma Dreessen at (510) 245-5893.

Sincerely,



Jennifer Ahlskog  
Environmental Team Lead

Attachment

cc: Jeff Gove, BAAQMD Dir of Compliance & Enforcement, via e-mail ([jgove@baaqmd.gov](mailto:jgove@baaqmd.gov))  
Jeremy Kerns, BAAQMD Inspector, via e-mail ([jkerns@BAAQMD.gov](mailto:jkerns@BAAQMD.gov))

**COMMENT LETTER: 28\_Attachment 2**

**BAAQMD Title V Permit  
30 Day Deviation Summary Report**

**A0016**

**Phillips 66 Company San Francisco Refinery**

Facility Address:  
1380 San Pablo Ave  
Rodeo, CA 94572

Mailing Address:  
1380 San Pablo Ave  
Rodeo, CA 94572

Contact: Wilma Dreessen

Title: Senior Environmental Consultant

Phone: 510-245-5893

Deviation No: 024-22

Source Number(s): 460 - U250 Diesel Hydrotreater

Event Started: Not applicable  
Stopped: Not applicable  
First Discovered: 3/30/22 9:00 a.m.

Abatement Device(s):  
Emission Point(s):

May have resulted in a deviation from:  
Permit:  
BAAQMD Rule(s): 2-1-301;2-1-302  
Other:

**Event Description:**

BAAQMD personnel issued Violation Notice (VN) A61096 to Phillips 66 on 3/30/22 regarding Unit 250 (S460). The Violation Notices allege violations of Regulation 2 Rule 1 Section 301 – No Authority to Construct and Section 302 – No Permit to Operate. Per BAAQMD instructions and direction, Phillips 66 reported this allegation as a potential Title V Deviation.

**Probable Cause:**

Phillips 66 believes the current Permit to Operate authorizing Unit 250 operations allows Phillips 66 to process a wide range of feedstocks in the unit, including renewable feedstocks. For that reason and through other regulatory analysis, Phillips 66 did not seek a permit amendment prior to processing renewable feedstocks in Unit 250.

**Corrective Actions or Preventative Steps Taken:**

In accordance with the VN instructions and discussions with BAAQMD, a permit application was submitted to the BAAQMD Phillips 66 Permit Engineer, Mr. Jimmy Cheng, on April 22, 2022 (185-ESDR-22) to provide additional information regarding Unit 250 operations and the company's determinations regarding the unit's permitting status.

**Response to Comment 1**

Refer to Master Response No. 2: Piecemealing.

**Response to Comment 2**

Refer to Master Response No. 6: Carbon Plant and H Cycle.

**Response to Comment 3**

Comment is noted. Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations.

**Response to Comment 4**

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.



## **Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

### ***Response to Comment 5***

The County understands the desire for an extension of the public comment period on the Draft REIR for the project. The County has been reviewing this project for over three years, including multiple public hearings and extensive agency and public outreach related to the project and its potential environmental impacts. Given the limited scope of the REIR, and the extent of review, analysis, and public and agency outreach the County has already conducted, after careful consideration the County decided not to extend the public comment period beyond the CEQA required 45-day noticing period.

In addition, the public will have an opportunity to submit comments at the County Board of Supervisors meeting to be held on January 16, 2024. These comments will be considered by the Board of Supervisors during consideration of the EIR certification and Project approval.

### ***Response to Comment 6***

See Response to Comment 5.

### ***Response to Comment 7***

Refer to Master Response No. 2: Piecemealing.

### ***Response to Comment 8***

Refer to Master Response No. 3: Cumulative Impacts.

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**Comment Letter 29. Pygeorge, Janet**

COMMENT LETTER: 29

Re: Phillips 66 Rodeo Renewed Revised EIR

JANET PYGEORGE <pypy@sbcglobal.net>

Tue 10/24/2023 12:16 PM

To: Joseph Lawlor <Joseph.Lawlor@dcd.cccounty.us>

Been stinking lately. Late at night.

Sneaky I think.

JLP down wind.

1

Sent from my iPhone

On Oct 24, 2023, at 10:36 AM, Joseph Lawlor <Joseph.Lawlor@dcd.cccounty.us> wrote:

Pursuant to the State of California Public Resources Code and the "Guidelines for Implementation of the California Environmental Quality Act of 1970" as amended to date, this is to advise you that the Community Development Division of the Department of Conservation and Development of Contra Costa County has prepared a Draft Revised Environmental Impact Report for the Phillips 66 Rodeo Renewed Project. The Notice of Availability for the document may be viewed here: [Notice of Availability for the Rodeo Renewed Project October 24, 2023 \(link\)](#).

Sincerely,

<image001.png>

***Response to Comment 1***

Refer to Master Response No. 1: Odor Mitigation, and Response to Comment Letter 1 from the BAAQMD.

**Comment Letter 30. Rieser, Nancy**

**COMMENT LETTER: 30**

Public Comment regarding REIR for Rodeo Renewed P66 project (State Clearing House #2020120330, County File # CDLP20-02040)

Nancy Rieser <gofindnancy@yahoo.com>

Fri 12/8/2023 2:23 PM

To: Joseph Lawlor <Joseph.Lawlor@dcd.cccounty.us>

Cc: Ken Szutu <kenszutu@gmail.com>; Maureen Brennan <harpmo@sbcglobal.net>; Charles Davidson <charlesdavidson@me.com>; GREG KARRAS <gkarrasconsulting@gmail.com>; Jan Warren <jbwarren@gmail.com>; Janet Callaghan <callaghanjvc@gmail.com>; Shoshana Wechsler <swechs@sonic.net>; Janet at Sunflower Alliance <sunflowerjsj@gmail.com>

*(If you would be so kind as to circle back to me and acknowledge receipt of this email, I would appreciate it.)*

Dear Mr. Lawlor,

My name is Nancy Rieser. I live in Crocket, a town downwind from P66.

Below are critical issues that need to be properly addressed in a recirculated EIR.

**1. Two examples of piecemealing of the project**

*First:* On several energy market/industry websites, the P66 company touted Unit 250 as the center of its Biofuel process at the Rodeo refinery.

The EIR document is silent about Unit 250, thus failing to correctly analyze the hydrogen process and ignoring its potential impact.

*Second:* In early scoping materials, P66 said that it would demolish the carbon plant along Highway 4 and return it to back to its former, natural state.

The EIR document is silent about the new plans for a hydrogen processing plant. We just learned that the H-Cycle Group from Pittsburg will be taking over that site and turning it into a waste-to-hydrogen plant, sending 40% of its finished hydrogen product to P66 through pipelines that will run under a major American freeway and homes. The EIR is silent about the hydrogen plant and does **not** address the dangers of embrittlement of those same pipelines due to the presence of hydrogen.

**2. Wastewater treatment is inadequately addressed.**

EIR documents reference the need for additional wastewater treatment, however: The EIR is silent about which treatment facility will do that processing. Is the current P66 wastewater treatment center currently running at capacity? If so, does P66 expect the Rodeo Sanitary district to pick up the slack?

If yes, that would dramatically change the status of the residential wastewater treatment facility and would be a serious concern to the residents of that community.

**3. Impacts from feedstocks are inadequately addressed.**

Past P66 documents do recognize that there will be an odor similar to odors emitted from animal-rendering plants.

What the EIR materials fail to adequately address: Unlike other counties that are home to slaughterhouses and animal rendering operations, Contra Costa County does not have an odor ordinance. This begs the question: What recourse will residents have when the odor is so strong -- and unpleasant -- that it will make ordinary life unbearable and eventually lower home property values?

**4. Impact of the use of slurry oil is not addressed**

On the same industry websites that stated Unit 250 was to be a part of the new P66 biofuel process, the company boasted of its plan to use recycled slurry oil during refining, as a cost-saving measure.

The EIR fails to address two basic facts:

*First:* Slurry oil has a higher level of heavy metal content than the dirtiest of crudes.



COMMENT LETTER: 30

*Second:* Heavy metals are neurotoxins.

Shortly after the biofuel project began in late Spring of last year: Cars in downwind neighborhoods started to be coated with a glittery, metallic particulate matter, baked into a thin yellowish film onto the car glass windows.

In early fall, the community collected samples and had them analyzed at McCampbell Analytical -- the same lab used by BAAQMD and County Hazmat after the Thanksgiving night refinery release in Martinez. Not only that, our samples were assigned to the same project manager.

Our Heavy Metals test results (CAM CCR 17 Metals) had the same chemical signatures as the samples collected by the same 2 agencies after the Martinez Thanksgiving night release, analyzed by the same lab. In fact, some of the Crockett test hits were higher. (We invited UC Davis to come to our neighborhood to collect samples. We can share those results as soon as the results are available to us.)

*It should also be noted:*

**After the October judicial directive that ordered P66 to cease its renewal biofuel refining until a proper EIR could be completed, the refinery operations immediately fell silent.**

**You know what else immediately stopped? The glittery particulate matter ceased to coat our cars for several weeks.**

Now two months later, P66 is flaring. Steam and smoke are drifting from the stacks. So is the glitter drifting back down on our cars, but in a much smaller amount, thank God.

Coincidence? I think not.

In closing:

The refinery's sleight-of-hand/piecemealing and its turning a blind eye to the project's obvious dangers and negative health impacts essentially throw the health and safety of Northern California residents under the bus.

This EIR must address the above issues and be recirculated for public review.

Mr. Lawlor, if you would be so kind as to circle back to me and acknowledge receipt of this email, I would appreciate it.

Nancy Rieser  
444 Alhambra Street  
Crockett, CA 95425  
510-322-1459

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## **Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

### ***Response to Comment 1***

Unit 250 is addressed in the 2022 EIR and the Draft REIR in revised Chapter 6.4, Cumulative Impacts. Also refer to the 2022 EIR Master Response No. 5: Renewable Fuels Processing, and 2023 REIR Master Response No. 3: Cumulative Impacts, and Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

### ***Response to Comment 2***

Refer to Master Response No. 6: Carbon Plant and H Cycle.

### ***Response to Comment 3***

Refer to Letter 4, Response to Comment 9.

### ***Response to Comment 4***

Refer to Master Response No. 1: Odor Mitigation.

### ***Response to Comment 5***

Phillips 66 reports that there is currently no plan for use of slurry oil by the Project.

The 2022 EIR, Section 4.9, Hazards and Hazardous Materials and 2022 EIR Master Response No. 5: Renewable Fuels Processing, fully addressed potentially significant hazards and hazardous materials impacts. These impacts were determined to be less than significant. Also see Master Response No. 4: Feedstock Analysis of this Final REIR.

In addition, analyses related to hazards and hazardous materials were not identified in the Statement of Decision and peremptory writ of mandate as requiring reconsideration. These analyses have not been revised or recirculated in the Draft REIR. On page 3 of the Draft REIR, and pursuant to CEQA Guidelines Section 15088.5(f)(2), reviewers were notified that their comments should be limited to the revised chapters or sections of the Draft REIR. Therefore, since this is not a comment on the Draft REIR no further response is required.

Refer to Master Response No. 7: Scope of the Draft REIR and County Obligations.

### ***Response to Comment 6***

See Response to Comment 5.

### ***Response to Comment 7***

The comment is noted. Also refer to Master Response No. 2: Piecemealing and Master Response No. 7: Scope of the Draft REIR and County Obligations.

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**Comment Letter 31. Warren, Jan**

**COMMENT LETTER: 31**

December 8, 2023

Joseph Lawlor, Project Planner  
Community Development Division  
Contra Costa County Department of Conservation and Development  
30 Muir Road, Martinez, CA 94553  
[Joseph.lawlor@dcd.cccounty.us](mailto:Joseph.lawlor@dcd.cccounty.us)

Draft Revised Environmental Impact Report for the Rodeo Renewed Project, State Clearinghouse #2020120330, County File No. CDLP20-02040  
Preliminary Initial Request for Further Review and Request to Extend Public Comment

Dear Mr. Lawlor

The Rodeo Renewed Facility advertised, with the combination of Unit 250 pretreated feedstock, and Unit 240 and 246 pretreatment feedstock, to be the largest refinery of renewable feedstocks in the world. This was part of the early promotion and slide presentation to those near the RRF project and the community in Contra Costa County. Scaling of technology is where difficulties arise.

Around September 30, 2023 a decision by Phillips 66 was made whether to mothball 1 storage tank and crude distillation unit to begin the reduction of refining fossil fuels.

Next in the transition plan is to start the "turn around" in January 2024 with the intension to be completed by March 2024 to no longer process crude oil for liquid transportation fuel.

This appears to explain why members of the public requests for an extension date for comments was denied. Instead, we have been told that a date will be chosen for community input on the draft REIR sometime in January. That seems backward.

**FEEDSTOCKS**

Early on in the process language was 9,000 bpd of pretreated feedstock from NuStar and at some point, it was changed to 12,000 bpd. It is acknowledged in the FEIR that NuStar sought and received approval to receive capacity of approximately 45,000 bpd of pretreated feedstock.

Pretreated renewable feedstocks directed via new pipeline from NuStar facility and processed at Unit 250 at Rodeo Renewed Project.

Renewable feedstocks arrive by barge, rail, pipeline, and rail and stored at Selby Terminal.

On page 58 Jolie Rhinehart, Vice-President of Phillips 66, states the increased renewable feedstock capacity is well beyond what was required for Unit 250.

Unit 250 has processed pretreated renewable feedstocks since 2021 and has received an annualized basis of approximately 12,000 bpd.

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COMMENT LETTER: 31

Ms. Rhinehart states on p. 59 that purchasing raw feedstocks is vital as raw feedstocks significantly improves the economic incentive because pretreated renewable feedstocks are overall more costly to purchase than raw feedstock.

This highlights why Unit 250, using pretreated feedstock, is part of the Rodeo Renewed Project because it could be operating sooner, even at more cost per barrel. Phillips 66 was even willing to pay for a violation to start building Unit 250 before a permit was issued. This is part of the piecemealing consideration. Will Unit 250 continue to be used to process pretreated feedstock at a higher cost because of a contract with NuStar and others.

Feedstocks were originally listed as soybean oil, corn oil, and other renewable fuels. After Phase I cooking oil and greases, tallow and inedible corn oil was added. The draft REIR includes emerging and other next-generation feedstocks. I think emerging and other next-generation feedstocks should be removed. Next generation can't even be described, which is a requirement of CEQA. The community has repeatedly been told, and has sometimes seen in documents, that palm oil will not be used as a feedstock at Rodeo Renewed Project. Please add this statement back in to the draft REIR.

The public was notified of a new REIR on October 24, 2023 with a deadline for comments on December 8, 2023. Marathon has been processing feedstock a little longer than Phillips 66. For the record from the BAAQMD site, 20 flaring incidents have been recorded since January 1, 2023, and the year isn't over.

The dates are: 1/5, 1/17, 1/23, 1/24, 1/27, 1/30, 2/9, 2/20, 3/6, 3/15, 4/5, 4/19, 5/7, 6/4, 6/15, 7/18, 7/29/ 9/14, 9/22 and 9/29.

After being notified of the draft REIR Marathon had a fire incident on 11/11/23 which injured workers and left one worker with 80% burns over his body. This incident was followed with another incident at the Marathon incident on 11/29/23. Lots of hydrogen is used in processing feedstocks and Phillips will be producing more renewable product than Marathon.

I ask you to delay scheduling a court date until the draft REIR has been presented to the public.

Thanks for your consideration,

Jan Warren  
3202 Primrose Lane  
Walnut Creek, CA 94598

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## **Rodeo Renewed Project, Final Revised Environmental Impact Report**

3 Responses to Comments

### **Response to Comment 1**

The County's scheduling of the CEQA process is not affected by Phillips 66's refinery scheduling.

The County understands the desire for an extension of the public comment period on the Draft REIR for the project. The County has been reviewing this project for over three years, including multiple public hearings and extensive agency and public outreach related to the project and its potential environmental impacts. Given the limited scope of the REIR, and the extent of review, analysis, and public and agency outreach the County has already conducted, after careful consideration the County decided not to extend the public comment period beyond the CEQA required 45-day noticing period.

In addition, the public will have an opportunity to submit comments at the County Board of Supervisors meeting to be held on January 16, 2024. These comments will be considered by the Board of Supervisors during consideration of the EIR certification and Project approval.

### **Response to Comment 2**

Refer to Master Response No. 2: Piecemealing.

### **Response to Comment 3**

Refer to Master Response No. 2: Piecemealing.

### **Response to Comment 4**

The comment is noted.

### **Response to Comment 5**

As the Draft REIR and Master Response No. 2 explains, the changes to the NuStar rail terminal modified the existing facility by adding equipment that can accommodate pretreated renewable feedstocks. There was not an increase in the facility's capacity (45,000 barrels per day maximum) and there was no expansion of the rail spur tracks (Contra Costa County 2022c, pages 17 and 21). The changes to the facility gave the Selby Terminal the "capacity" – i.e., the ability – to handle pretreated renewable feedstocks; there was not a change in "capacity" in terms of the volume of materials or railcar traffic overall that can be handled by the facility. *Id.* As commenters have noted, there are a number of renewable fuels facilities in the region, including Unit 250. The evidence does not support a conclusion that the modifications to the NuStar rail terminal were done in connection with or contemplation of the Rodeo Renewed Project. Rather, the evidence in the County's records demonstrates that the Project and the NuStar rail terminal are wholly independent: they are independently owned and will be independently operated, and, most importantly, the Project will in no way be relying on NuStar for its feedstocks or any other materials. See Appendix B of the Draft REIR – Decl. of Lashun Cross, page 3; Decl. of Jolie Rhinehart, pages 2-3.

Refer to Master Response No. 2: Piecemealing and Master Response No. 7: Scope of the Draft REIR and County Obligations.

***Response to Comment 6***

The comment is noted. Refer to 2022 EIR Master Response No. 4: Land Use and Feedstocks and 2023 REIR Master Response No. 7: Scope of the Draft REIR and County Obligations and Master Response No. 4: Feedstocks Analysis.

***Response to Comment 7***

Refer to Master Response No. 5: Marathon Renewable Fuels Operations and Hazards.

***Response to Comment 8***

The REIR will be presented to the County Board of Supervisors on January 16, 2024. Future court dates related to the Project are unknown at this time.

Rodeo Renewed Project, Final Revised Environmental Impact Report


3 Responses to Comments

**Comment Letter 32. Webster, Ronald**

COMMENT LETTER: 32

From: [Webster, Ronald](#)  
To: [Joseph Lawlor](#)  
Subject: Re: Phillips 66 Rodeo Renewed Revised EIR  
Date: Tuesday, October 24, 2023 11:01:02 AM

Attachments: image001.png

It's a good idea for all sir  1  
Sent from my iPhone

On Oct 24, 2023, at 12:59, Joseph Lawlor <[Joseph.Lawlor@dcd.cccounty.us](mailto:Joseph.Lawlor@dcd.cccounty.us)> wrote:

This email is from an external sender and originated from outside of Brandenburg.

Pursuant to the State of California Public Resources Code and the "Guidelines for Implementation of the California Environmental Quality Act of 1970" as amended to date, this is to advise you that the Community Development Division of the Department of Conservation an

<[https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.com%2Fv3%2F\\_\\_https%3A%2F%2Fus.report.cybergraph.mimecast.com%2Falertdetails%2F%3Fdep%3D530x22xTIYMb64HKECvppA\\*3D\\*3D73sWfTnsyhrGKt\\*2FnayoE8mM\\*2Bi\\*2BWX4oiJ0ILs hIEqDNwYEo5EZskcYtuEU0101z6QO65KWNkiAWnxv9weeFVXfAVVzsdIM45rFxcu8hpdHnsyydP0JKnXsAq\\*2B2MKhSR3YgowOsnljcCHXtMhwj7e0UdgKLeuLiNSoy6\\*2FNc6V7T0UNHQCY6vY6CpT\\*2FqRjWPwZNX8zhIbYUYNcFpLXuqCqzrMhPyqjji\\*2Fzq\\*2FvckkAetw7HPit\\*2Bw9mAOCbGVIsatqAzXe01fGkP5uScKObmPnDnb7AXBHEtT4d1kNc76lg7Du5K8EoAApva15PQToHL7dPXEJto8elvrCN6H1k7nThIUuqibUySfJgqmKVHYVqxI99I7Ni3I41ShuhNyTERTNJEiBtXqzbb1n4hzy5Q21PznUtOBNXCw02a9h0AD5IST0F8w4ngMZC4c18YCafQXudh5wLEddZyrfJbfoZhrdPtsOEY8hfhRWaeoc8BdofeZBvcwxfCS\\*2F0TuCnDSg\\*2BKbC\\_%3BJSUIJSUIJSUIJSUIJQ!!OZEuhTV5Po1-](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.com%2Fv3%2F__https%3A%2F%2Fus.report.cybergraph.mimecast.com%2Falertdetails%2F%3Fdep%3D530x22xTIYMb64HKECvppA*3D*3D73sWfTnsyhrGKt*2FnayoE8mM*2Bi*2BWX4oiJ0ILs hIEqDNwYEo5EZskcYtuEU0101z6QO65KWNkiAWnxv9weeFVXfAVVzsdIM45rFxcu8hpdHnsyydP0JKnXsAq*2B2MKhSR3YgowOsnljcCHXtMhwj7e0UdgKLeuLiNSoy6*2FNc6V7T0UNHQCY6vY6CpT*2FqRjWPwZNX8zhIbYUYNcFpLXuqCqzrMhPyqjji*2Fzq*2FvckkAetw7HPit*2Bw9mAOCbGVIsatqAzXe01fGkP5uScKObmPnDnb7AXBHEtT4d1kNc76lg7Du5K8EoAApva15PQToHL7dPXEJto8elvrCN6H1k7nThIUuqibUySfJgqmKVHYVqxI99I7Ni3I41ShuhNyTERTNJEiBtXqzbb1n4hzy5Q21PznUtOBNXCw02a9h0AD5IST0F8w4ngMZC4c18YCafQXudh5wLEddZyrfJbfoZhrdPtsOEY8hfhRWaeoc8BdofeZBvcwxfCS*2F0TuCnDSg*2BKbC_%3BJSUIJSUIJSUIJSUIJQ!!OZEuhTV5Po1-)

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Pursuant to the State of California Public Resources Code and the "Guidelines for Implementation of the California Environmental Quality Act of 1970" as amended to date, this is to advise you that the Community Development Division of the Department of Conservation and Development of Contra Costa County has prepared a Draft Revised Environmental Impact Report for the Phillips 66 Rodeo Renewed Project. The Notice of Availability for the document may be viewed here: Notice of Availability for the Rodeo Renewed Project October 24, 2023  
(link)<<https://www.contracosta.ca.gov/DocumentCenter/View/80822/Notice-of-Availability-Rodeo-Renewed-Project-CDLP20-02040-10242023>>.

Sincerely,  
<image001.png>

***Response to Comment 1***

The comment is noted.

## **4 County-Initiated Updates and Errata to the Draft REIR**

### **4.1 INTRODUCTION**

In accordance with CEQA Guidelines Section 15132(a), this chapter of the Final REIR provides changes to the Draft REIR that have been made to update, refine, or clarify Project information and mitigation measures presented in the Draft REIR. The edits are made either in response to a comment received on the Draft REIR or initiated by County staff.

### **4.2 TEXT CHANGES TO THE DRAFT REIR**

New text is indicated in double underline and text to be deleted is reflected by a strike through. Text changes are presented in the page order in which they appear in the Draft REIR. As indicated in Chapter 1, Introduction, the entirety of the REIR consists of the Draft REIR, together with this Response to Comments / Final EIR document, including all appendices. Therefore, the Draft REIR changes presented in this chapter are incorporated in and supersede corresponding original text in the Draft REIR.

### **4.3 IMPLICATION OF CHANGES TO THE DRAFT REIR**

Pursuant to CEQA Guidelines Section 15088.5(a), recirculation of a Draft EIR is required only if:

1. a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
2. a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance;
3. a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it; or
4. the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

None of the changes to the Draft EIR identified in this document meet any of the above conditions. Therefore, recirculation of any part of the Draft REIR is not required. The information presented in the Draft REIR and this document support this determination by the County.

#### ***List of Appendices***

Appendix E, Phillips 66 Odor Prevention and Management Plan, of the Draft REIR, is revised as follows. Appendix E is replaced in its entirety with the revised Odor Prevention and Management Plan included as Appendix C in this Final REIR.



**Rodeo Renewed  
Odor Prevention and Management Plan**

**Date: ~~October 2023~~ January 2024**





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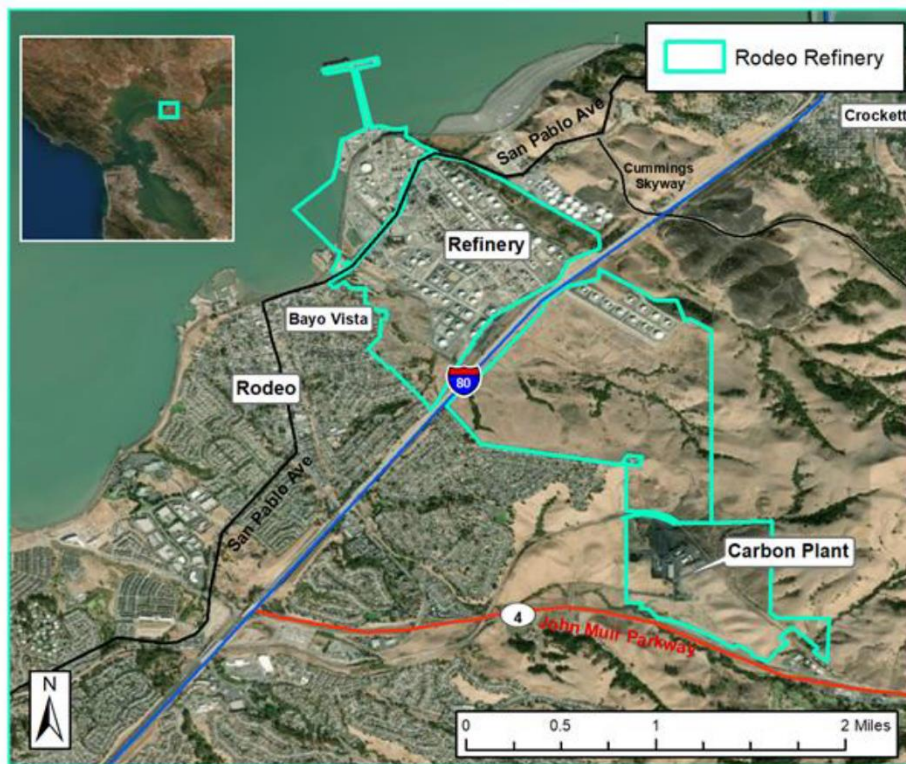
<b>1.0</b>	<b><i>Introduction</i></b>	<b>3</b>
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## 1.0 Introduction

As shown in Figure 1-1, the Rodeo Refinery comprises approximately 1,100 acres of land, but the Rodeo Site is the 495-acre, developed portion of the property northwest of Interstate 80. The remaining portion of the Rodeo Refinery, southeast of I-80, consists of a tank farm and undeveloped land. The Rodeo Site is bordered by San Pablo Bay on the north and west, Interstate 80 on the southeast, the NuStar Energy tank farm on the northeast, and the Bayo Vista residential area of Rodeo to the southwest.

Figure 1-1 Rodeo Refinery and Vicinity



Service Layer Credits: Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

### 1.1 Background

The objective of the Rodeo Renewed project is to modify certain existing facilities and install new essential supporting facilities (e.g., feedstock pretreatment, etc.) to allow receipt and processing of a variety of renewable feedstocks, such as used cooking oil (UCO), international waste Fat Oil & Grease (FOG), beef tallow, soybean oil, etc. for producing renewable fuels.

# Rodeo Renewed Project, Final Revised Environmental Impact Report

## 4 County-Initiated Updates and Errata to the Draft REIR



### Rodeo Renewed Odor Prevention and Management Plan

Phillips 66 is planning to utilize as much existing equipment and infrastructure as possible for receiving, transferring, and storing future feedstocks and products. The project also includes a new renewable feedstock pretreatment unit (PTU, BAAQMD Source No. S600) as an element of the Rodeo Renewed Project.

The current Phillips 66 Rodeo refinery has two existing hydrocrackers (Units 240 and 246, BAAQMD Source Nos. S307 and S434, respectively) that will be converted for producing renewable naphtha, renewable diesel, and renewable jet fuel with minimal modifications.

Environmentally-responsible construction and operation, which preserves the natural characteristics and environmental features, is a primary objective of the project design. The project will comply with all federal and local environmental, health, and safety regulations and will incorporate good engineering practice and operation/maintenance policies and procedures to minimize environmental emissions and discharges.

**Figure 1-2. Rodeo Site Plot Plan and Project Equipment.**



### 1.2 Purpose of the Odor Prevention and Management Plan

This Odor Prevention and Management Plan (OPMP, Plan) will become an integrated part of daily operations at the Rodeo Renewed Facility ("Facility"), to effect diligent identification and remediation of any potential odors generated by the Facility. The purpose of this Plan plan is to outline procedures that facility personnel shall use to address odor issues, facility wide.

The Plan odor management plan will include continuous evaluation of the overall system performance, identifying any trends to provide an opportunity for improvements to the Plan plan, and updating the odor management and control strategies as necessary. This OPMP will be maintained, updated, and operated as reviewed and approved by Contra Costa County. All records associated with the OPMP will be kept for five (5) years.



## 2.0 Design Considerations for Odor Management

The first step in the process of controlling odors is designing active odor control measures into the facility. Techniques that can be used to reduce odor generation including reduction of volatile organic compounds (VOCs) and odor generation by covering appropriate units with closed sealed covers, using fixed roof or floating roof storage tanks, reducing fugitive emissions, controlling and mitigating system upsets, and using scrubbing, and incineration systems for vent gas streams.

Phillips 66 will also routinely employ Best Management Practices (BMPs) on a daily basis to ensure that odors are not generated during the transfer and delivery of renewable feedstocks and removal of PTU sludge.

- Renewable feedstock will be offloaded after it arrives at the Facility as soon as practical for timely processing.
- Sludge from the PTU evaporator (S615) will not be stored overnight in trucks prior to removal from the facility.
- Trucks delivering renewable feedstocks, whether in tanks or other containers, will offload the materials as soon as practical upon arrival and will not be used to store the materials overnight.
- In certain cases, railcars delivering renewable feedstocks will need to be stored for a short time on-site prior to unloading. In these cases, however, the railcars will remain sealed with all tank ports closed, vapor tight, and unheated, effectively limiting the potential to generate odors while on-site. In addition, all railcars are inspected (as described in Section 3) upon arrival at the Facility for any leaks and/or odors.
- Upon offloading, potential odors from the railcars will be controlled using the system described below.

The main focus are the areas where the renewable feedstocks are first unloaded from trucks, railcars, and marine vessels to Tank 100 (TK-100 [S97]) and at the feedstock PTU.

Railcar unloading (S70) odor abatement includes a pipe header system tied to a new activated carbon canister system. The system will have redundant blowers that provide suction to the header ensuring that railcars connected to the system will operate at slightly negative pressure, so potential odors are not released to the environment. The new activated carbon canister system contains two beds in series to ensure that odorous components are reduced to below detectable levels prior to release to the atmosphere. Any breakthrough that occurs on the first canister is controlled by the second canister and the saturated bed can be replenished without disrupting the odor abatement control of the rail unloading system. All railcars undergoing preheating or offload operation will be continuously attached to the odor abatement system until all contents are offloaded.

TK-100 is being repurposed to store renewable feedstocks with a fixed roof and new tank vent system that utilizes a nitrogen inert gas blanket. TK-100 will receive renewable feedstock from marine vessel and railcar unloading. The TK-100 vent system will be used to control any vapors generated while material is being unloaded from a marine vessel or railcar into TK-100. The TK-100 vent system operates either as in-breathing nitrogen when feeding the PTU or as out-breathing to the carbon canisters when receiving material into the tank. The blanket gas will be discharged via new blowers through activated carbon canisters for odor abatement prior to release to atmosphere. Both blowers and the carbon canisters have on-line spares. The TK-100 vent system is designed with push-pull pressure control that can be set to



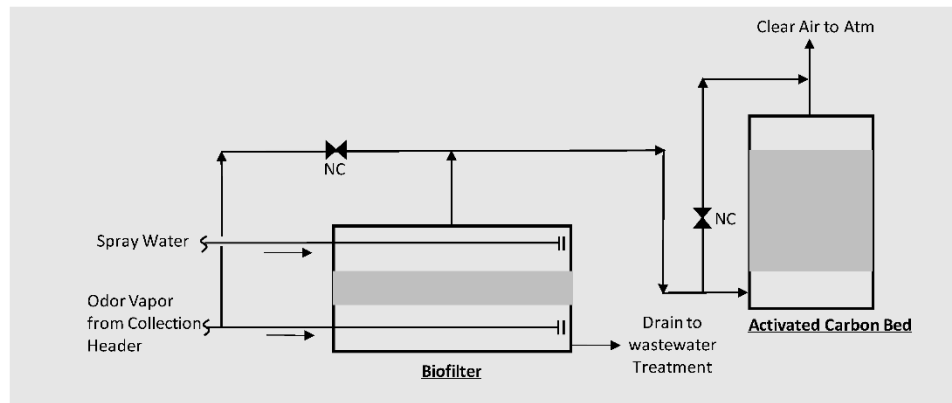


operate at a slight negative pressure. This ensures that no untreated odor is released to the atmosphere. The carbon canisters are designed with two beds in series to ensure that potential odorous components are controlled prior to release to the atmosphere. Full sparing of the carbon canisters will ensure that odor abatement of TK-100 will not be disrupted when one set of carbon beds is saturated and require replenishment. BAAQMD Authority to Construct permit condition number 27819 includes monitoring, inspection, and changeout frequency requirements for the TK-100 carbon canisters.

Other storage tanks that will be used to store untreated renewable feedstocks are connected to the existing tank vapor control system. The existing vapor control system on these tanks consists of a fixed roof with a natural gas blanket used to maintain a constant pressure in the tank vapor space (head space). Any vapors generated in these tanks are pulled out of the tanks by vapor recovery compressors and routed into the Facility fuel gas system. By controlling the pressure in the tanks and routing vapors to the Facility fuel gas system, vapors and potential odors are combusted and thus prevented from being released to the atmosphere.

The Odor Abatement System at the PTU includes an odor-vapor collection system and an odor-vapor treatment unit, which consists of a biofilter (A622, A624) followed by an activated carbon adsorption bed (A623, A625). The biofilter reduces odorous constituents from the collected vapor and the residual components discharged from the biofilter will be further treated by the activated carbon bed. A simplified Block Flow Diagram for the Odor Abatement System is shown in Figure 1.3.

**Figure 1.3. Simplified PTU Odor Abatement System**



**Odor-Vapor Collection System**

Using a suction fan/blower, the Odor Abatement System will draw vapors from the head space of all ambient liquid tanks/vessels in the PTU that could have potential odor-causing vapors. The system is designed for five air exchanges per hour of head space volume to effectively prevent the emission of odorous vapors to the atmosphere prior to treatment. All vessels and tanks directly venting to the odor abatement system will operate under a slight vacuum to ensure no odor is released to the atmosphere from an individual source. For the vessels operated under vacuum, the non-condensable vapor discharged from the vacuum ejectors and blowers will also be directed to the Odor Abatement System for odorous constituent removal.

**Biofilter**

Azzuro's Biotrickling filter technology with activated carbon bed combined system has been selected as the Odor Management System at the PTU. The multi-stage Biotrickling reactor is sized and optimized to maximize the contact time with the highest contact area available. This system has been utilized successfully in several sectors including municipal wastewater units, agriculture and food processing units, biogas desulphurization processing solutions, petrochemical, rendering plants and cellulose processing facilities.

The heart of the system is the patented spacious wire pac media, which has a unique structural design with high surface area per volume ratio, with a high odor removal efficiency (>99%). It is compression resistant (does not shrink) and has an excellent resistance to low pH and organic solvents, thus allowing for a longer life with a 20-year warranty. This media creates a substrate for the bacteria to colonize and flourish, and in doing so, creates the maximum surface area for bacteria to be in contact with the recovered air. This system also does not require water recirculation as it is able to maintain favorable conditions for the bacteria on the media.

The system has three stages to mitigate odorous components in the air flow:

- Stage 1 – inorganic odors are oxidized at the low pH by autotrophic bacteria
- Stage 2 – all other odorous components like fatty acids, and VOCs are biologically oxidized at a neutral pH by heterotrophic bacteria
- Stage 3 – the final stage consists of activated carbon treatment as a polishing stage.

The PTU odor abatement includes two parallel biofilters that allow for one of the biofilters to be isolated for maintenance while the other is in operation. This redundancy ensures sources in the PTU are abated at all times in the event one biofilter is isolated for maintenance. The redundant activated carbon beds alone are sized to provide sufficient odor abatement for the entire PTU in the unlikely event both biofilters are offline at the same time. This will allow additional flexibility and redundancy if both biofilters are to be temporarily offline during maintenance periods without shutting down the complete system.

This technology was selected based on proven history of operating in multiple industries for over 20 years. The system is a product based on years of research and development and has proven superior performance, both in industrial and municipal applications.

**Activated Carbon Adsorption Bed**

An activated carbon adsorption bed is a proven technology for removing odorous constituents from vapor streams. Activated carbon beds alone are designed to be sufficient for odor abatement; however, the proposed 2-stage system with biofilter and activated carbon bed provides a robust solution for odor abatement during steady state operations and maintenance. During normal operation when both biofilters are operational, the carbon polishing stage has very minimal adsorption loading. This extends the useful life of the carbon adsorption bed for several years before replenishment is required, thereby reducing the generation of non-hazardous waste. BAAQMD Authority to Construct permit condition number 27649 includes monitoring, inspection, and changeout frequency requirements for the activated carbon beds.



### 3.0 Odor Monitoring and Inspection Program

The odor monitoring and inspection program described below has been designed to provide guidance for the proactive identification and documentation of odors through self-inspections and odor compliant investigations. In addition, this program outlines the general methods by which odor sources can be identified and resolved.

#### 3.1 Identifying the Presence of Odor

The first step in the process of controlling odors is to determine if the odors are present and have the potential to cause a nuisance. This is done through employee training, routine employee observations, self-inspections, and odor complaint investigations. All odor complaints are directed to the Facility Shift Organization (Shift Superintendent on duty) at (510) 245-4070.

##### Employee Training

Training is provided to the Facility Shift Organization annually and includes training on the Facility's Refinery Emergency Operating Procedure (REOP)-11-Operations (OPS) EMERGENCY - Odor Complaint Investigation and Community Warning System (CWS) Notification Requirements (REOP-11) procedure (incorporated by reference, see additional discussion below under Odor Complaint Investigation) for general odor investigation, equipment isolation, fence line and ground level monitoring equipment and tank transfers as they relate to potential odors. Operators are trained on unit specific odor investigations as well as equipment isolation, and vessel/piping opening and cleaning requirements. The procedures and training provide guidance on how to identify the source of potential odors and as well as response to spills and loss of containment. Training is updated and refreshed annually.

##### Daily Routine Employee Observations

When any on-site facility employee detects an odor that has sufficient intensity or volume that it could lead to detection off-site and potentially cause a nuisance, it will be reported to Shift Supervision to investigate to determine the source of the odors. In addition, Operators complete monitoring and inspection rounds every day twice per 12-hour shift (i.e., four times per day) where they walk through the Facility and will report any noticeable odors, or other issues that could lead to odors (e.g., gas or liquid leaks), to the Shift Supervision. Once the source of an odor is determined, the Facility staff will respond to mitigate or otherwise control the odor source and restore the area to normal operations. Such on-site investigation, reporting, and remediation of odors are inherent components of the site's standard operating procedures.

##### Self-Inspection

The primary objective of this method is to identify and mitigate odors from the facility before the odors can result in off-site migration. This is accomplished through routine operational self-inspections. The self-inspections will be performed at random times with daily and weekly variability until meaningful trend data is collected to ensure that trending data is not biased by a pattern in self-inspection.

##### Odor Complaint Investigation

Phillips 66 strives to be a good neighbor and a contributor to the local community. All odor complaints received by the facility will be promptly investigated. Investigations by facility staff will begin within one (1) hour, or as soon as is practical, within the confines of proper safety protocols and site logistics. The



goal of an investigation will be to determine if an odor originates from the facility and, if so, to determine the specific source and cause of the odor, and then to remediate the odor by taking corrective actions. Upon receipt of an odor complaint, the REOP-11 procedure ~~Facility's REOP-11 OPS EMERGENCY – Odor Complaint Investigation and CWS Notification Requirements procedure~~ will be followed.

The REOP-11 procedure includes corrective action steps to investigate, identify, stop and prevent further odorous releases. Initiated upon receiving an odor complaint from inside or outside the Facility, the Shift Superintendent on duty determines what corrective action to take, and each of the Operating Departments makes separate odor inspection tours to identify unusual odors or typical low-level odors with a higher intensity than normal. The real time ground level monitor and fenceline monitor data will be reviewed for suspect readings. Odor complaints from outside the Facility are documented using the Incoming Call Log by the Shift Superintendent on duty. The general telephone number for the Phillips 66 Rodeo Refinery is (510) 245-4070.

Sources or processes determined or suspected to contribute to offsite odors shall be mitigated or otherwise controlled as soon as practicable and, if initiated by an offsite complaint, then no later than within 24 hours of receiving the offsite odor complaint. REOP-11 will be updated as necessary to correct for and prevent repeat odor incidents.

### 3.2 Preventive Odor Management

Preventive Odor management and relief system management are interrelated. Preventive Odor management, for the purposes of this Plan, will be the temporary measures employed during any facility maintenance activity that has the potential to generate odors, such as opening of vessels or piping.

Prior to any maintenance activities, standard pre-job planning and procedures have been developed and are in place at the Facility for the safe flushing and cleanout of the equipment, vessels, piping, etc., prior to opening the system for maintenance work. Equipment must be depressurized and flushed into an enclosed receiving system, such as vapor recovery vessels. Typical cleaning will include steam, chemical cleaning, and a water wash/rinse. Pre-job planning involves operations, maintenance, and any trade/craft involved in the maintenance to ensure all of the proper safeguards are in place and understood. This prevents any odor causing issues. ~~Having~~ Several other programs, such as Leak Detection and Repair (LDAR) and Fenceline Monitoring, also work in conjunction and support the overall odor management program at the facility.





## 4.0 Administrative Procedures

### 4.1 Recordkeeping and Retention

OPMP records will be retained for a period of five (5) years. These records will include, but not be limited to:

- Employee Training Attendance and Certification of Completion
- Logs of Odor Control Equipment Maintenance and Repairs
- Logs of Daily Routine Employee Observations
- Logs of Random Self-Inspections
- Documentation of Odor Complaint Investigations
- Documentation of Remedial/Corrective Actions and Resolutions

Phillips 66 will develop forms for Facility use that provide specific record formats to ensure data consistency. OPMP records will be kept on site in a secure location with other operating records and are available upon agency request.

### 4.2 Plan Updates

The OPMP will be updated as necessary to accommodate changing operating procedures at the Facility and to improve odor prevention and control protocols as warranted. The updated OPMP will be submitted in draft form to Contra Costa County for review and comment prior to finalization consistent with any comments received.

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# **APPENDIX A**

## **Mitigation Monitoring and Reporting Program**

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## MITIGATION MONITORING AND REPORTING PROGRAM

### Phillips 66 Rodeo Renewed Project

#### Introduction

The California Environmental Quality Act (CEQA) requires a Mitigation Monitoring and Reporting Program (MMRP) for projects where mitigation measures are a condition of project approval and development. The Contra Costa County Conservation and Development Department prepared an Environmental Impact Report in response to Phillips 66 application for a land use permit to modify the existing Rodeo Refinery into a repurposed facility that would process renewable feedstocks into renewable diesel fuel, renewable components for blending with other transportation fuels, and renewable fuel gas.

#### Project Overview

Repurposing of the Rodeo Refinery would assist California in meeting its stated goals of reducing greenhouse gas emissions and ultimately transitioning to carbon neutrality. It would also provide a mechanism for compliance with California's Low-Carbon Fuel Standard and Cap and Trade programs and the federal Renewable Fuels Standard, while continuing to meet regional market demand for transportation fuels.

The Project would produce up to 55,000 bbl/d of a variety of renewable transportation fuels from renewable feedstocks. The Rodeo Refinery as a whole post-Project would produce up to 67,000 bbl/d. To maintain current facility capacity to supply regional market demand for transportation fuels, including renewable and conventional fuels, the post-Project facility configuration could receive, blend, and ship up to 40,000 bbl/d of gasoline and gasoline blendstocks.

Because the Project would discontinue processing crude oil at the Rodeo Refinery, other sites owned and operated by Phillips 66 located throughout the state would be affected. Therefore, the Project consists of activities at the following four sites:

- Rodeo Site—is within the Rodeo Refinery where the proposed modifications would occur.
- Carbon Plant—is within the Rodeo Refinery in nearby Franklin Canyon and would no longer be necessary. It would be demolished.
- Santa Maria Refinery—is located in San Luis Obispo County and would no longer be necessary to provide semi-refined feedstock to the Rodeo Refinery. It would be demolished.
- Pipeline Sites—these collect crude oil for the Santa Maria Refinery and deliver semi-refined feedstock to the Rodeo Refinery and, therefore, would not be necessary. The pipelines would be cleaned and taken out of service or sold.

#### Purpose of the MMRP

This MMRP has been prepared in conformance with CEQA (Public Resources Code section 21081.6) and CEQA Guidelines section 15097. The MMRP is based on the information and mitigation measures contained in the EIR for the Project. Pursuant to Public Resources Code section 21081.6(b), each of the mitigation measures identified in the MMRP will be included as enforceable permit terms in any permit issued by Contra Costa County. The purpose of this MMRP is to:

- Verify compliance with the mitigation measures identified in the EIR;
- Provide a framework to document implementation of the mitigation measures included in the EIR;
- Provide a record of mitigation requirements;
- Identify monitoring and enforcement agencies;
- Establish and clarify administrative procedures for the clearance of mitigation measures;
- Establish the frequency and duration of monitoring; and
- Utilize the existing agency review processes wherever feasible.

Phillips 66 as the Permittee shall be responsible for implementing each mitigation measure and shall be obligated to provide verification to the appropriate monitoring and enforcement agencies that each mitigation measure has been implemented. The Permittee shall maintain records demonstrating compliance with each mitigation measure. Such records shall be made available to the Contra Costa County Conservation and Development Department upon request.

All documents and other information that constitute the public record for this project shall be maintained by the Contra Costa County Conservation and Development Department and shall be available for public review at the following address:

Contra Costa County  
Conservation and Development Department  
30 Muir Road, Martinez CA 94553

## **Organization**

As shown in the following table, each mitigation measure for the Project is listed and categorized by impact area, with identification of:

- Implementation Schedule – The phase of the Project during which the mitigation measure shall be monitored; relevant phases include pre-construction, construction, and operation and maintenance.
- Responsible Party – The party responsible for implementing each mitigation measure and providing verification of implementation.
- Monitoring/Enforcement – The agency, or agencies, responsible for monitoring the compliance and implementation, and enforcement of the mitigation measure.

## **MMRP Modification**

Minor changes and modifications to the MMRP are permitted, subject to Contra Costa County Conservation and Development Department approval. Contra Costa County Conservation and Development Department, in conjunction with appropriate agencies, will determine the adequacy of any proposed change or modification, and whether the change or modification requires additional environmental review. This flexibility is sometimes necessary to protect the environment with a workable program. No changes will be permitted unless the MMRP continues to satisfy the requirements of CEQA, as determined by the Contra Costa County Conservation and Development Department.

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<b>Air Quality</b>				
<p><b>Mitigation Measure AQ-1: Implement BAAQMD Basic Control Measures</b></p> <p>Construction contractors shall implement the following applicable BAAQMD basic control measures as best management practices (BMPs):</p> <ul style="list-style-type: none"> <li>• All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.</li> <li>• All haul trucks transporting soil, sand, or other loose material offsite shall be covered.</li> <li>• All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least 2 times per day, not less than 4 hours apart, on San Pablo Avenue, between the refinery and Interstate 80, and on the access roads between the Carbon Plant and Highway 4. The use of dry power sweeping is prohibited.</li> <li>• All vehicle speeds on unpaved roads shall be limited to 15 miles per hour.</li> <li>• All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.</li> <li>• Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 2 minutes as recommended by the BAAQMD, and not to exceed 5 minutes as required by the California airborne toxics control measure Title 13, Section 2485 of the California Code of Regulations (CCR). Clear signage shall be provided for construction workers at all access points.</li> <li>• All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications.</li> <li>• All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.</li> </ul>	<p>During construction and demolition</p>	<p>Construction Contractor</p>	<p>Contra Costa County Conservation and Development; BAAQMD</p>	

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<ul style="list-style-type: none"> <li>• Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District’s phone number shall also be visible to ensure compliance with applicable regulations.</li> </ul> <p>Construction contractors shall implement the following Advanced Construction Mitigation Measures:</p> <ul style="list-style-type: none"> <li>• All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.</li> <li>• All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.</li> <li>• Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.</li> <li>• Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.</li> <li>• The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.</li> <li>• All trucks and equipment, including their tires, shall be washed off prior to leaving the site.</li> <li>• Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel.</li> <li>• Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.</li> </ul>				



Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p><b>Mitigation Measure AQ-2: Implement a NOx Mitigation Plan</b></p> <p>Phillips 66 shall prepare a NOx Mitigation Plan (NM Plan) prior to the issuance of construction-related permits for site preparation. The purpose of the NM Plan is to document expected construction and transitional phase NOx emissions in detail; and, if necessary, to identify feasible and practicable contemporaneous measures to reduce aggregated construction and transition NOx emissions to below the BAAQMD's 54 pounds per day threshold of significance.</p> <p>The NOx emissions estimate for the Project shall include consideration of readily available NOx construction and transition emission reduction measures, and/or other emission reduction actions that shall be implemented during construction and transitional phase of the Project. The NM Plan shall describe the approximate amount of NOx emissions reductions that will be associated with each action and reduction measure on a best estimate basis.</p> <p>The NM Plan shall be submitted to the Contra Costa County Department of Conservation and Development and the BAAQMD for review and approval, or conditional approval based on a determination of whether the NM Plan meets the conditions described below. The NM Plan shall include those recommended measures listed below needed to reduce the Project's construction and transition NOx emissions to less than the BAAQMD's threshold of significance.</p> <p>The NM Plan shall include a detailed description of the NOx emissions for all construction and transition activities based on BMPs and use data at the time of Project approval and current estimation protocols and methods. The plan shall, at a minimum, include the following elements:</p> <p><b>1. Project Construction and Transition NOx Emissions</b></p> <p>The Project's construction and transition NOx emission estimates presented in the NM Plan will be based on the emission factors for off-road and on-road mobile sources used during construction and transition, over and above baseline, along with the incorporation of vehicle fleet emission standards. Project construction and transition NOx emission estimates will be based upon the final Project design, Project-specific traffic generation estimates, equipment to be used onsite and during transition, and other emission factors appropriate for the Project prior to construction. The methodology will generally follow the approach used in this Draft EIR and in Appendix B.</p>	<p>Prior to BAAQMD permit issuance</p>	<p>Phillips 66</p>	<p>Contra Costa County Conservation and Development; BAAQMD</p>	

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p><b>2. NOx Emission Reduction Measures</b></p> <p>The NM Plan shall include feasible and practicable NOx emission reduction measures that reduce or contemporaneously offset the Project’s incremental NOx emissions below the threshold of significance. Planned emission reduction measures shall be verifiable and quantifiable during Project construction and transitional phase. The NM Plan shall be consistent with current applicable regulatory requirements. Measures shall be implemented as needed to achieve the significance threshold and considered in the following order: (a) onsite measures, and (b) offsite measures within the San Francisco Bay Area Air Basin. Feasible<sup>11</sup> onsite and offsite measures must be implemented before banked emissions offsets (emission reduction credits) are considered in the NM Plan.</p> <p><b>a. Recommended Onsite Emission Reduction Measures:</b></p> <ul style="list-style-type: none"> <li>i. Onsite equipment and vehicle idling and/or daily operating hour curtailments;</li> <li>ii. Construction “clean fleet” using Tier 4 construction equipment to the maximum extent practicable;</li> <li>iii. Reductions in Vessel and/or Rail Traffic;</li> <li>iv. Other onsite NOx reduction measures (e.g., add-on NOx emission controls); or</li> <li>v. Avoid the use of Suezmax vessels to the maximum extent practicable.</li> </ul> <p>Contra Costa County Department of Conservation and Development in its consideration of the NM Plan shall have the option to require daily NOx reductions at the Carbon Plant necessary to achieve the NOx daily emissions significance threshold. Daily idling of one kiln would provide sufficient NOx reductions to offset the Project’s incremental NOx emissions to below the NOx daily emissions threshold of significance on individual days that construction emissions are estimated to potentially be above the daily NOx significance threshold.</p>				

<sup>11</sup> For the purposes of this mitigation measure, “feasible” shall mean as defined under CEQA “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.”

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p>Additional measures and technology to reduce NOx emissions may become available during the Project construction and operation period. Such measures may include new energy systems (such as battery storage) to replace natural gas use, new transportation systems (such as electric vehicles or equipment) to reduce fossil-fueled vehicles, or other technology (such as alternatively-fueled emergency generators or renewable backup energy supply) that is not currently available at the project-level. As provided in the NM Plan, should such measures and technology become available and be necessary to further reduce emissions to below significance thresholds, Phillips 66 shall demonstrate to the Contra Costa County Department of Conservation and Development and BAAQMD satisfaction that such measures are as, or more, effective as the existing measures described above.</p> <p><b>b. Recommended Offsite Emission Reduction Measures:</b> Phillips 66, with the oversight of the Contra Costa County Department of Conservation and Development and BAAQMD, shall reduce emissions of NOx by directly funding or implementing a NOx control project (program) within the San Francisco Bay Area Air Basin to achieve an annual reduction equivalent to the total estimated construction NOx emission reductions needed to lower the Project's NOx impact below the 54 pound per day significance threshold. The offsite measures will be based on the NOx reductions necessary after consideration of onsite measures.</p> <p>To qualify under this mitigation measure, the NOx control project must result in emission reductions within the San Francisco Bay Area Air Basin that would not otherwise be achieved through compliance with existing regulatory requirements or other program participation. Phillips 66 shall notify Contra Costa County within six months of completion of the NOx control project for verification.</p> <p><b>3. Annual Verification Reports</b> Phillips 66 shall prepare an Annual NM Verification Report in the first quarter of each year following construction or transitional phase activities, while Project construction activities at the site are ongoing. The reporting period will extend through the last year of construction. The purpose of the Report is to verify and document that the total Project construction and transitional phase NOx emissions for the</p>				

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p>previous year, based on appropriate emissions factors for that year and the effectiveness of emission reduction measures, were implemented.</p> <p>The Report shall also show whether additional onsite and offsite emission reduction measures, or additional NOx controls, would be needed to bring the Project below the threshold of significance for the current year. The Report shall be prepared by Phillips 66 and submitted to the Contra Costa County Department of Conservation and Development and the BAAQMD for review and verification. NOx offsets for the previous year, if required, shall be in place by the end of the subsequent reporting year. If Contra Costa County and the BAAQMD determine the report is reasonably accurate, they can approve the report; otherwise, Contra Costa County and/or the BAAQMD shall identify deficiencies and direct Phillips 66 to correct and re-submit the report for approval.</p>				
<p><b>Mitigation Measure AQ-4: Implement Odor Prevention and Management Plan</b></p> <p>Phillips 66 shall implement the Odor Prevention and Management Plan (OPMP). The OPMP shall be an integrated part of daily operations at the Rodeo Site, to effect diligent identification and remediation of any potential odors generated by the Facility.</p>	<p>Obtain approval of OPMP prior to Project operation; ongoing</p>	<p>Phillips 66</p>	<p>Contra Costa County Conservation and Development</p>	
<p><b>Mitigation Measure AQ-5:</b></p> <p><b>Rail Offloading Rack Mitigation</b></p> <p>1. An audio, visual, and olfactory inspection (AVO) of the rail offloading rack area shall be initiated by operating personnel within 1 hour after receiving an offsite odor complaint, or as soon as practical within the constraints of proper safety protocols and site logistics after receiving an offsite odor complaint. Equipment or offloading activities determined or suspected to be responsible for odorous emissions shall be taken out of service and/or unloading will be suspended if the offsite odor impacts cannot be mitigated as soon as practicable and no later than 24 hours of receiving the offsite odor complaint.</p> <p><b>Tank 100 Mitigation</b></p> <p>1. Tank 100 shall have at a minimum two activated carbon vessels, arranged in parallel, connected at all times, while two additional spare vessels shall be connected and on standby for backup odor control.</p> <p>2. Monitoring at the outlet vent of the Tank 100 carbon vessels shall be conducted within 1 hour after receiving an offsite odor complaint, or as</p>	<p>Obtain approval of OPMP prior to Project operation; ongoing</p>	<p>Phillips 66</p>	<p>Contra Costa County Conservation and Development</p>	

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p>soon as practical within the constraints of proper safety protocols and site logistics. Unspent carbon vessels shall be placed in service if a measurement of greater than 10 parts per million by volume (ppmv) volatile organic compound (VOC) is detected at the atmospheric outlet of the last in-service carbon vessel. Monitoring shall be conducted with a photoionization detector (PID), flame-ionization detector (FID), or other BAAQMD approved methods. Equipment identified as directly causing odorous emissions will be taken out of service as soon as practicable and no later than 24 hours of receiving the offsite odor complaint if emissions cannot be mitigated or otherwise controlled.</p> <p><b>Renewable Feedstock Storage Mitigation</b></p> <ol style="list-style-type: none"> <li>1. An AVO inspection of the renewable storage tanks shall be initiated by operating personnel within 1 hour after receiving an offsite odor complaint, or as soon as practical within the constraints of proper safety protocols and site logistics. Sources or processes determined or suspected to contribute to offsite odors shall be mitigated or otherwise controlled as soon as practicable and no later than 24 hours of receiving the offsite odor complaint.</li> </ol> <p><b>Pretreatment Unit (PTU) Mitigation</b></p> <ol style="list-style-type: none"> <li>1. The PTU and associated equipment including the spent water tank, dissolved air flotation, process tanks, and collection tanks, will be connected to the Biofilter and Activated Carbon Vessels at all times while in operation to prevent the release of odorous gases that may cause offsite odors.</li> <li>2. Monitoring at the outlet vent of the Biofilters and Activated Carbon Vessels shall be completed by operating personnel within 1 hour after receiving an offsite odor complaint, or as soon as practical within the constraints of proper safety protocols and site logistics. Unspent carbon vessels shall be placed in service if a measurement of greater than 10 ppmv VOC is detected at the atmospheric outlet of the last in-service carbon vessel. Monitoring shall be conducted with a PID, FID, or other BAAQMD approved methods.</li> <li>3. An AVO inspection of the PTU process area shall be initiated by operating personnel within 1 hour after receiving an offsite odor complaint, or as soon as practical within the constraints of proper safety protocols and site logistics. Equipment identified as directly causing odorous emissions will be taken out of service as soon as practicable and no later than 24 hours of receiving the offsite odor complaint if emissions cannot be mitigated or otherwise controlled.</li> </ol>				

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<b>Biological Resources</b>				
<p><b>Mitigation Measure BIO-1a: Update Pre-Arrival Documents</b>                      Phillips 66 shall update pre-arrival document materials and instructions sent to tank vessels agents/operators scheduled to arrive at the Marine Terminal with the following information and requests:</p> <ul style="list-style-type: none"> <li>• Available outreach materials regarding the Blue Whales and Blue Skies incentive program;</li> <li>• Whale strike outreach materials and collision reporting from NMFS;</li> <li>• Request extra vigilance by ship crews upon entering the Traffic Separation Scheme shipping lanes approaching San Francisco Bay and departing San Francisco Bay to aid in detection and avoidance of ship strike collisions with whales;</li> <li>• Request compliance to the maximum extent feasible (based on vessel safety) with the 10 knot voluntary speed reduction zone.</li> <li>• Encourage participation in the Blue Whales and Blue Skies incentive program.</li> </ul>	Prior to the commencement of transitional phase; ongoing	Phillips 66	Contra Costa County Conservation and Development	
<p><b>Mitigation Measure BIO-1b: California Department of Fish and Wildlife (CDFW) and Research Sturgeon Support</b>                      Phillips 66 will conduct and support the following activities to further the understanding of vessel strike vulnerability of sturgeon in San Francisco and San Pablo Bay.</p> <p>Coordinate with CDFW and Research Sturgeon to ensure appropriate messaging on information flyers suitable for display at bait and tackle shops, boat rentals, fuel docks, fishing piers, ferry stations, dockside businesses, etc. to briefly introduce interesting facts about the sturgeon and research being conducted to learn more about its requirements and how the public's observations can inform strategies being developed to improve fisheries habitat within the estuary.</p>	Prior to the commencement of transitional phase; ongoing	Phillips 66	Contra Costa County Conservation and Development	
<p><b>Mitigation Measure BIO-3: Update and Review Facility Response Plan and Spill Prevention, Control, and Countermeasure Plan with OSPR</b></p> <ul style="list-style-type: none"> <li>• The Facility Response Plan and Spill Prevention, Control, and Countermeasure (SPCC) Plan shall be updated to address the Project operational changes, including changes in proposed feedstocks and types of vessels and trips. The SPCC shall address the operational changes of the Transitional Phase and post-</li> </ul>	Prior to the commencement of transitional phase; ongoing	Phillips 66	Contra Costa County Conservation and Development	

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p>Project. Phillips 66 will consult with OSPR during update of the SPCC Plan, especially adequacy of booms at the Marine Terminal to quickly contain a spill of renewable feedstocks</p> <ul style="list-style-type: none"> <li>• In accordance with CCR Title 14, Chapter 3, Subchapter 3, several types of drills are required at specified intervals. Due to the potential for rapid dispersion of biofuels and oils under high energy conditions, Phillips 66 shall increase the frequency of the following drills to increase preparedness for quick response and site-specific deployment of equipment under different environmental conditions. <ul style="list-style-type: none"> <li>– Semi-annual equipment deployment drills to test the deployment of facility-owned equipment, which shall include immediate containment strategies, are required on a semiannual pass/fail basis – if there is fail during first six months, then another drill is required. Phillips 66 will require that both semi-annual drills are conducted and schedule them under different tide conditions.</li> <li>– An OSRO field equipment deployment drill for on-water recovery is required at least once every three years. Phillips will increase the frequency of this drill to annual.</li> <li>– CDFW-OSPR shall be provided an opportunity to help design, attend and evaluate all equipment deployment drills and tabletop exercises. To ensure this, Phillips 66 shall schedule annual drills during the first quarter of each year to ensure a spot on OSPR’s calendar.</li> </ul> </li> </ul>				
<p><b>Mitigation Measure BIO-4a: Prohibit Ballast Water Exchange</b> Phillips 66 shall prohibit vessels from ballast water exchange at the Marine Terminal.</p>	<p>During operation and maintenance; ongoing</p>	<p>Phillips 66</p>	<p>Contra Costa County Conservation and Development</p>	
<p><b>Mitigation Measure BIO-4b: Update Pre-Arrival Documentation</b> Phillips 66 shall update pre-arrival document materials and instructions sent to tank vessels agents/operators to ensure they are advised prior to vessel departure of California’s Marine Invasive Species Act and implementing regulations pertinent to (1) ballast water management, and (2) biofouling management. Additionally, Phillips 66 will request that vessel operations provide documentation of compliance with regulatory requirements (e.g., copy of ballast water management forms and logs of hull husbandry cleaning/inspections).</p>	<p>Prior to the commencement of transitional phase; ongoing</p>	<p>Phillips 66</p>	<p>Contra Costa County Conservation and Development</p>	

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<b>Cultural Resources</b>				
<p><b>Mitigation Measure CUL-1: Inadvertent Discovery of Archaeological Resources</b></p> <ul style="list-style-type: none"> <li>Pursuant to CEQA Guidelines Section 15064.5(f), “provisions for historical or unique archaeological resources accidentally discovered during construction” shall be instituted. In the event that any cultural resources are discovered during ground-disturbing activities, all work within 100 feet of the find shall be halted and Phillips 66 shall consult with the County and a qualified archaeologist (as approved by the County) to assess the significance of the find pursuant to CEQA Guidelines Section 15064.5. If cultural resources are recovered on State lands, submerged or tidal lands, all work within 100 feet of the find shall be halted and Phillips 66 shall consult with the California State Lands Commission. If any find is determined to be significant, representatives of the County and the qualified archaeologist would meet to determine the appropriate course of action.</li> <li>Avoidance is always the preferred course of action for archaeological sites. In considering any suggestion proposed by the consulting archaeologist to reduce impacts to archaeological resources, the County would determine whether avoidance is feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery, interpretation of finds in a public venue) would be instituted. Work may proceed on other parts of the Project site while mitigation for archaeological resources is carried out. All significant cultural materials recovered shall be, at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documented according to current professional standards.</li> </ul>	During construction and demolition	Phillips 66	Contra Costa County Conservation and Development	
<p><b>Mitigation Measure CUL-2: Inadvertent Discovery of Human Remains</b></p> <ul style="list-style-type: none"> <li>The treatment of human remains and associated or unassociated funerary objects discovered during any ground-disturbing activity shall comply with applicable state law. Project personnel shall be alerted to the possibility of encountering human remains during Project implementation, and apprised of the proper procedures to</li> </ul>	During construction and demolition	Phillips 66	Contra Costa County Conservation and Development	



Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p>follow in the event they are found. State law requires immediate notification of the County coroner, in the event of the coroner's determination that the human remains are Native American, notification of the California Native American Heritage Commission (NAHC), which would appoint a Most Likely Descendent (MLD) (PRC Section 5097.98). The MLD would make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5[d]).</p> <ul style="list-style-type: none"> <li>The agreement shall take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. The PRC allows 48 hours to reach agreement on these matters. If the MLD and the other parties do not agree on the treatment and disposition of the remains and funerary objects, Phillips 66 shall follow PRC Section 5097.98(b), which states that "the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance."</li> </ul>				
<b>Geology and Soils</b>				
<p><b>Mitigation Measure GEO-1: Comply with Geotechnical Report</b> Phillips 66 shall comply with and implement all of the following measures designed to reduce potential substantial adverse effects resulting from strong seismic ground shaking:</p> <ul style="list-style-type: none"> <li>A California licensed geotechnical engineer or engineering geologist shall perform a comprehensive geotechnical investigation of all Project facilities based on adequate subsurface exploration, laboratory testing of selected samples, and engineering/geologic analysis of the data gathered. The information shall be compiled and presented as a geotechnical report that provides an evaluation of potential seismic and geologic hazards, including secondary seismic ground failures, and other geologic hazards, such as landslides, expansive and corrosive soils, and provides current California Building Code seismic design parameters, along with</li> </ul>	<p>Prior to Contra Costa County Building Permit Issuance</p>	<p>Construction Contractor</p>	<p>Contra Costa County Conservation and Development</p>	

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p>providing specific standards and criteria for site grading, drainage, berm, and foundation design.</p> <ul style="list-style-type: none"> <li>For construction requiring excavations, such as foundations, appropriate support and protection measures shall be implemented to maintain the stability of excavations and to protect construction worker safety. Where excavations are adjacent to existing structures, utilities, or other features that may be adversely affected by potential ground movements, bracing, underpinning, or other methods of support for the affected facilities shall be implemented.</li> <li>Recommendations in the approved geotechnical report shall be incorporated into the design and construction specifications and shall be implemented during build-out of the Project.</li> <li>The Project geotechnical engineer shall provide observation and testing services during grading and foundation-related work, and shall submit a grading completion report to the County prior to requesting the final inspection. This report shall provide full documentation of the geotechnical monitoring services provided during construction, including the testing results of the American Society for Testing and Materials. The Final Grading Report shall also certify compliance of the as-built Project with the recommendations in the approved geotechnical report.</li> </ul>				
<b>Hazards Materials and Water Quality</b>				
<p><b>Mitigation Measure HAZ-1: Implement Release, Monitoring and Avoidance Systems</b></p> <p>The following actions shall be completed by Phillips 66 prior to Project operations, including the transitional phase, and shall include routine inspection, testing and maintenance of all equipment and systems conducted in accordance with manufacturers' recommendations and industry guidance for effective maintenance of critical equipment at the Marine Terminal.</p> <p>Feedstocks handled at the Marine Terminal are not regulated under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (LKS Act) (e.g. renewable feedstocks such as soybean oil and tallow) and therefore not subject to OSPR oversight, and are also not subject to the CSLC oversight efforts (MOTEMS, Article 5, Article 5.3 and Article 5.5, depending on the materials handled). Yet materials may be detrimental to the environment if spilled.</p>	<p>Prior to the commencement of transitional phase; ongoing</p>	<p>Phillips 66</p>	<p>California State Lands Commission</p>	

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p>Regulated products (i.e. "Oil" and "Renewable Fuels" defined in Pub. Resources Code sec. 8750) will continue to be transferred at the Marine Terminal, which do require MOTEMS-compliant Terminal Operating Limits for those products that reside within the jurisdiction of the CSLC. To ensure that Project operation continues to meet those standards, the following measures are required.</p> <p><b>Applicability of MOTEMS, Article 5, 5.3, 5.5 and Spill Prevention Requirements</b></p> <p>As some materials transferred at the terminal may be feedstocks or other non-regulated materials/feedstocks/products, Phillips 66 shall comply with the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (LKS Act) for all vessels calling at the Marine Terminal regardless of feedstock/material type. In addition, MOTEMS operational regulations, as codified in Article 5. Marine Terminals Inspection and Monitoring (2CCR §2300 et seq), Article 5.3 Marine Terminals Personnel Training and Certification (2CCR §2540 et seq), and Article 5.5 Marine Terminals Oil Pipelines (2CCR §2560 et seq), including items such as static liquid pressure testing of pipelines, shall be implemented for all operations at the Marine Terminal regardless of feedstock/material type and LKS Act regulatory status.</p> <p>Upon request, Phillips 66 shall provide evidence to relevant regulatory agencies that these facilities, operational response plans, and other applicable measures have been inspected and approved by CSLC and OSPR and determined to be in compliance.</p> <p>If terminal operations do not allow for regular compliance and inspection of LKS and MOTEMS requirements by the CSLC and OSPR, Phillips 66 shall employ a CSLC-approved third-party to provide oversight as needed to ensure the same level of compliance as a petroleum-handling facility, and to ensure maximum protection of the environment from potential spills and resulting impacts. Phillips 66 shall provide evidence of compliance upon request of relevant regulatory agencies.</p> <p><b>Remote Release Systems</b></p> <p>The Marine Terminal has a remote release system that can be activated from a single control panel or at each quick-release mooring hook set. The central control system can be switched on in case of an emergency necessitating a single release of all mooring lines. However, to further minimize the potential for accident releases the following is required:</p>				

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<ul style="list-style-type: none"> <li>• Provide and maintain mooring line quick release devices that shall have the ability to be activated within 60 seconds.</li> <li>• These devices shall be capable of being engaged by electric/push button release mechanism and by integrated remotely-operated release system.</li> <li>• Document procedures and training for systems use and communications between Marine Terminal and vessel operator(s).</li> <li>• Routine inspection, testing and maintenance of all equipment and systems in accordance with manufacturers' recommendations and necessity, as well as guidance provided by SIGTTO/OCIMF 2008 "Jetty Maintenance and Inspection Guide" Section 2.3.1.1, 2.3.1.2 and 2.3.1.4, are required to ensure safety and reliability. The inspections, testing, and maintenance will be performed by Phillips 66 or its designated representatives.</li> <li>• In consultation with the CSLC and prior to Project operation, Phillips 66 shall provide a written evaluation of their existing equipment and provide recommendations for upgrading equipment to meet up-to-date best achievable technology standards and best industry practices, including but not limited to consideration of equipment updates and operational effectiveness (e.g. visual and audible alarm options, data display location and functionality, optional system features). Phillips 66 shall follow guidance provided by SIGTTO/OCIMF 2008 "Jetty Maintenance and Inspection Guide" Section 2.3.1.1, 2.3.1.2 and 2.3.1.4.</li> <li>• Best achievable technology shall address:             <ul style="list-style-type: none"> <li>– Functionality – Controlled release of the mooring lines (i.e. a single control system where each line can be remotely released individually in a controlled order and succession) vs. release all (i.e. a single control system where all lines are released simultaneously via a single push button). See SIGTTO/OCIMF 2008 "Jetty Maintenance and Inspection Guide" Section 2.3.1.2.1.</li> <li>– Layout – The location(s) of the single control panel and/or central control system to validate that it is operationally manned such that the remote release systems can actually be activated within 60 seconds.</li> </ul> </li> </ul>				

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p>This measure would allow a vessel to leave the Marine Terminal as quickly as possible in the event of an emergency (fire, explosion, accident, or tsunami that could lead to a spill). In the event of a fire, tsunami, explosion, or other emergency, quick release of the mooring lines within 60 seconds would allow the vessel to quickly leave the Marine Terminal, which could help prevent damage to the Marine Terminal and vessel and avoid and/or minimize spills. This may also help isolate an emergency situation, such as a fire or explosion, from spreading between the Marine Terminal and vessel, thereby reducing spill potential. The above would only be performed in a situation where transfer connections were already removed and immediate release would not further endanger terminal, vessel and personnel.</p> <p><b>Tension Monitoring Systems</b></p> <ul style="list-style-type: none"> <li>• Provide and maintain Tension Monitoring Systems to effectively monitor all mooring line and environmental loads, and avoid excessive tension or slack line conditions that could result in damage to the Marine Terminal structure and/or equipment and/or vessel mooring line failures.</li> <li>• Line tensions and environmental data shall be integrated into systems that record and relay all critical data in real time to the control room, Marine Terminal operator(s) and vessel operator(s).</li> <li>• All systems data shall be required to be recorded and readily accessible to enable tasks such as: (1) verification that systems are routinely operated in compliance with the MM (e.g. vessels are berthing within the MOTEMS compliant speed and angle requirements), and (2) post-event investigation and root-cause analysis (e.g. vessel allision during berthing).</li> <li>• System shall include, but not be limited to, quick release hooks only (with load cells), site-specific current meter(s), site-specific anemometer(s), and visual and audible alarms that can support effective preset limits and shall be able to record and store monitoring data.</li> <li>• Document procedures and training for systems use and communications between Marine Terminal and vessel operator(s).</li> <li>• Routine inspection, testing and maintenance of all equipment and systems in accordance with manufacturers' recommendations and necessity, as well as guidance provided by SIGTTO/OCIMF 2008</li> </ul>				

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p>“Jetty Maintenance and Inspection Guide” Section 2.3.1.1, 2.3.1.2 and 2.3.1.4, are required to ensure safety and reliability. The inspections, testing, and maintenance will be performed by Phillips 66 or its designated representatives.</p> <ul style="list-style-type: none"> <li>• Install alternate technology that provides an equivalent level of protection.</li> <li>• All systems data shall be required to be recorded and readily accessible to enable tasks such as: (1) verification that systems are routinely operated in compliance with the MM, and (2) post-event investigation and root-cause analysis.</li> </ul> <p>The Marine Terminal is located in a high-velocity current area and currently has only limited devices to monitor mooring line strain and integrated environmental conditions. Updated MOTEMS Terminal Operating Limits (TOLs), including breasting and mooring, provide mooring requirements and operability limits that account for the conditions at the terminal. The upgrade to devices with monitoring capabilities can warn operators of the development of dangerous mooring situations, allowing time to take corrective action and minimize the potential for the parting of mooring lines, which can quickly escalate to the breaking of hose connections, the breakaway of a vessel, and/or other unsafe mooring conditions that could ultimately lead to a petroleum product spill. Backed up by an alarm system, real-time data monitoring and control room information would provide the Terminal Person-In-Charge with immediate knowledge of whether safe operating limits of the moorings are being exceeded. Mooring adjustments can be then made to reduce the risk of damage and accidental conditions.</p> <p><b>Allision Avoidance Systems</b></p> <ul style="list-style-type: none"> <li>• Provide and maintain Allision Avoidance Systems (AASs) at the Marine Terminal to prevent damage to the pier/wharf and/or vessel during docking and berthing operations. Integrate AASs with Tension Monitoring Systems such that all data collected are available in the Control Room and to Marine Terminal operator(s) at all times and vessel operator(s) during berthing operations. The AASs shall also be able to record and store monitoring data.</li> <li>• All systems data shall be required to be recorded and readily accessible to enable tasks such as: (1) verification that systems are routinely operated in compliance with the MM, and (2) post-</li> </ul>				

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p>event investigation and root-cause analysis (e.g. vessel allision during berthing).</p> <ul style="list-style-type: none"> <li>• Document procedures and training for systems use and communications between Marine Terminal and vessel operator(s).</li> <li>• Routine inspection, testing and maintenance of all equipment and systems in accordance with manufacturers’ recommendations and necessity, as well as guidance provided by SIGTTO/OCIMF 2008 “Jetty Maintenance and Inspection Guide”, are required to ensure safety and reliability. The inspections, testing, and maintenance will be performed by Phillips 66 or its designated representatives.</li> <li>• Velocity monitoring equipment is required to monitor reduced berthing velocities until permanent MOTEMS-compliant corrective actions are implemented.</li> <li>• The systems shall also be utilized to monitor for vessel motion (i.e. surge and sway) during breasting/mooring operations to ensure excessive surge and sway are not incurred.</li> </ul> <p>The Marine Terminal has a continuously manned marine interface operation monitoring all aspects of the marine interface. The Automatic Identification System is monitored through TerminalSmart and provides a record of vessel movements. Pursuant to the CSLC January 26, 2022 letter entitled Phillips 66 (P66) Rodeo Marine Terminal – Review of New September 2021 Mooring &amp; Berthing Analyses and Terminal Operating Limits (TOLs), the single cone fenders shall not be used as the first point of contact during berthing operations. Therefore, all berthing operations shall utilize the double cone fenders. P66 shall incorporate TOL diagrams with landing point statements in the Terminal Information Booklet. For all vessels, a Phillips 66 Marine Advisor is in attendance and is in radio contact with the vessel master and pilot prior to berthing, reviewing initial contact point and then monitoring.</p> <p>Excessive surge or sway of vessels (motion parallel or perpendicular to the wharf, respectively), and/or passing vessel forces may result in sudden shifts/redistribution of mooring forces through the mooring lines. This can quickly escalate to the failure of mooring lines, breaking of loading arm connections, the breakaway of a vessel, and/or other unsafe mooring conditions that could ultimately lead to a spill. Monitoring these factors will ensure that all vessels can safely berth at the Marine Terminal and comply with the standards required in the MOTEMS.</p>				

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<b>Transportation and Traffic</b>				
<p><b>Mitigation Measure TRA-1: Implement a Traffic Management Plan.</b>                      Prior to issuance of grading and building permits, Phillips 66 shall submit a Traffic Management Plan for review and approval by the Contra Costa County Public Works Department. At a minimum the following shall be included:</p> <ul style="list-style-type: none"> <li>• The Traffic Management Plan shall be prepared in accordance with the most current California Manual on Uniform Traffic Control Devices, and will be subject to periodic review by the Contra Costa County Public Works Department throughout the life of all construction and demolition phases.</li> <li>• Truck drivers shall be notified of and required to use the most direct route between the site and the freeway;</li> <li>• All site ingress and egress shall occur only at the main driveways to the Project site;</li> <li>• Construction vehicles shall be monitored and controlled by flaggers;</li> <li>• If during periodic review the Contra Costa County Public Works Department, or the Department of Conservation and Development, determines the Traffic Management Plan requires modification, Phillips 66 shall revise the Traffic Management Plan to meet the specifications of Contra Costa County to address any identified issues. This may include such actions as traffic signal modifications, staggered work hours, or other measures deemed appropriate by the Public Works Department.</li> <li>• If required, Phillips 66 shall obtain the appropriate permits from Caltrans for the movement of oversized or excessive load vehicles on state-administered highways</li> </ul>	Prior to Contra Costa County Building Permit Issuance	Construction Contractor	Contra Costa County Conservation and Development	



Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<b>Tribal Cultural Resources</b>				
<p><b>Mitigation Measure TCR-1: Awareness Training</b></p> <ul style="list-style-type: none"> <li>A consultant and construction worker tribal cultural resources awareness brochure and training program for all personnel involved in project implementation shall be developed by Phillips 66 in coordination with interested Native American Tribes (i.e. Wilton Rancheria). The brochure will be distributed and the training will be conducted in coordination with qualified cultural resources specialists and Native American Representatives and Monitors from culturally affiliated Native American Tribes before any stages of project implementation and construction activities begin on the Project site. The program will include relevant information regarding sensitive tribal cultural resources, including applicable regulations, protocols for avoidance, and consequences of violating state laws and regulations. The worker cultural resources awareness program will also describe appropriate avoidance and minimization measures for resources that have the potential to be located on the Project site and will outline what to do and whom to contact if any potential archaeological resources or artifacts are encountered. The program will also underscore the requirement for confidentiality and culturally-appropriate treatment of any find of significance to Native Americans and behaviors, consistent with Native American Tribal values.</li> </ul>				
<p><b>Mitigation Measure TCR -2: Monitoring</b></p> <p>To minimize the potential for destruction of or damage to existing or previously undiscovered burials, archaeological and tribal cultural resources and to identify any such resources at the earliest possible time during project-related earthmoving activities, Phillips 66 and its construction contractor(s) will implement the following measures:</p> <ul style="list-style-type: none"> <li>Paid Native American monitors from culturally affiliated Native American Tribes will be invited to monitor the vegetation grubbing, stripping, grading or other ground-disturbing activities in the project area to determine the presence or absence of any cultural resources. Native American representatives from cultural affiliated Native American Tribes act as a representative of their Tribal</li> </ul>				

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p>government and shall be consulted before any cultural studies or ground-disturbing activities begin.</p> <ul style="list-style-type: none"> <li>Native American representatives and Native American monitors have the authority to identify sites or objects of significance to Native Americans and to request that work be stopped, diverted or slowed if such sites or objects are identified within the direct impact area. Only a Native American representative can recommend appropriate treatment of such sites or objects.</li> <li>If buried cultural resources, such as chipped or ground stone, historic debris, building foundations, or bone, are discovered during ground-disturbing activities, work will stop in that area and within 100 feet of the find until an archaeologist who meets the Secretary of the Interior's qualification standards can assess the significance of the find and, if necessary, develop appropriate treatment measures in consultation with the California Department of Transportation, the State Historic Preservation Office, and other appropriate agencies. Appropriate treatment measures may include development of avoidance or protection methods, archaeological excavations to recover important information about the resource, research, or other actions determined during consultation.</li> <li>In accordance with the California Health and Safety Code, if human remains are uncovered during ground disturbing activities, the construction contractor or the County, or both, shall immediately halt potentially damaging excavation in the area of the burial and notify the County coroner and a qualified professional archaeologist to determine the nature of the remains. The coroner shall examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or state lands, in accordance with Section 7050(b) of the Health and Safety Code. If the coroner determines that the remains are those of a Native American, they shall contact the NAHC by phone within 24 hours of making that determination (Health and Safety Code Section 7050[c]). After the coroner's findings are presented, the County, the archaeologist, and the NAHC-designated MLD shall determine the ultimate treatment and disposition of the remains and take appropriate steps to ensure that additional human interments are not disturbed.</li> </ul>				

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p><b>Mitigation Measure TCR -3: Inadvertent Discoveries</b></p> <ul style="list-style-type: none"> <li>Phillips 66 shall develop a standard operating procedure, or ensure any existing procedure, to include points of contact, timeline and schedule for the project so all possible damages can be avoided or alternatives and cumulative impacts properly accessed.</li> <li>If potential tribal cultural resources, archaeological resources, other cultural resources, articulated, or disarticulated human remains are discovered by Native American Representatives or Monitors from interested Native American Tribes, qualified cultural resources specialists or other Project personnel during construction activities, work will cease in the immediate vicinity of the find (based on the apparent distribution of cultural resources), whether or not a Native American Monitor from an interested Native American Tribe is present. A qualified cultural resources specialist and Native American Representatives and Monitors from culturally affiliated Native American Tribes will assess the significance of the find and make recommendations for further evaluation and treatment as necessary. These recommendations will be documented in the project record. For any recommendations made by interested Native American Tribes which are not implemented, a justification for why the recommendation was not followed will be provided in the project record.</li> <li>If adverse impacts to tribal cultural resources, unique archeology, or other cultural resources occurs, then consultation with Wilton Rancheria regarding mitigation contained in the Public Resources Code sections 21084.3(a) and (b) and CEQA Guidelines section 15370 should occur, in order to coordinate for compensation for the impact by replacing or providing substitute resources or environments.</li> <li>If cultural resources are recovered on State lands, submerged or tidal lands, all work within 100 feet of the find shall be halted and Phillips 66 shall consult with the California State Lands Commission.</li> </ul>	<p>During construction and demolition</p>	<p>Phillips 66</p>	<p>Contra Costa County Conservation and Development</p>	

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p><b>Mitigation Measure TCR-4: Avoidance and Preservation</b></p> <p>Avoidance and preservation in place is the preferred manner of mitigating impacts to tribal cultural resources and shall be accomplished by several means, including:</p> <ul style="list-style-type: none"> <li>• Planning construction to avoid tribal cultural resources, archaeological sites and/ or other resources; incorporating sites within parks, green-space or other open space; covering archaeological sites; deeding a site to a permanent conservation easement; or other preservation and protection methods agreeable to consulting parties and regulatory authorities with jurisdiction over the activity. Recommendations for avoidance of cultural resources will be reviewed by the CEQA lead agency representative, interested Native American Tribes and the appropriate agencies, in light of factors such as costs, logistics, feasibility, design, technology and social, cultural and environmental considerations, and the extent to which avoidance is consistent with project objectives. Avoidance and design alternatives may include realignment within the project area to avoid cultural resources, modification of the design to eliminate or reduce impacts to cultural resources or modification or realignment to avoid highly significant features within a cultural resource. Native American Representatives from interested Native American Tribes will be allowed to review and comment on these analyses and shall have the opportunity to meet with the CEQA lead agency representative and its representatives who have technical expertise to identify and recommend feasible avoidance and design alternatives, so that appropriate and feasible avoidance and design alternatives can be identified.</li> <li>• If the resource can be avoided, the construction contractor(s), with paid Native American monitors from culturally affiliated Native American Tribes present, will install protective fencing outside the site boundary, including a buffer area, before construction restarts. The construction contractor(s) will maintain the protective fencing throughout construction to avoid the site during all remaining phases of construction. The area will be demarcated as an "Environmentally Sensitive Area." Native American representatives from interested Native American Tribes and the CEQA lead agency representative will also consult to develop measures for long term</li> </ul>	<p>During construction and demolition</p>	<p>Phillips 66</p>	<p>Contra Costa County Conservation and Development</p>	

Mitigation Measure	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
<p>management of the resource and routine operation and maintenance within culturally sensitive areas that retain resource integrity, including tribal cultural integrity, and including archaeological material, Traditional Cultural Properties and cultural landscapes, in accordance with state and federal guidance including National Register Bulletin 30 (Guidelines for Evaluating and Documenting Rural Historic Landscapes), Bulletin 36 (Guidelines for Evaluating and Registering Archaeological Properties), and Bulletin 38 (Guidelines for Evaluating and Documenting Traditional Cultural Properties); National Park Service Preservation Brief 36 (Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes) and using the Advisory Council on Historic Preservation’s Native American Traditional Cultural Landscapes Action Plan for further guidance. Use of temporary and permanent forms of protective fencing will be determined in consultation with Native American representatives from interested Native American Tribes.</p>				

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## **APPENDIX B**

# **Motion to Vacate Judgment and Writ, Amended Judgment Granting Peremptory Writ of Mandate**

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**Minute Order – Motion to Vacate Judgment and Writ**  
**October 12, 2023**

Superior Court of California, Contra Costa County

Department 01/39  
925-608-1000  
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K. Bieker  
Court Executive Officer

<b>MINUTE ORDER</b>	
<b>COMMUNITIES FOR A BETTER ENVIRONMENT VS. COUNTY OF CONTRA COSTA</b>	<b>N22-1080</b>
	<b>HEARING DATE: 10/12/2023</b>
PROCEEDINGS: *HEARING ON MOTION IN RE: MOTION TO VACATE JUDGMENT AND WRIT (ADVANCED FROM 10/19/23 TO 10/12/23 FROM 9/14/23 EX PARTE HEARING)	
DEPARTMENT 01/39 JUDICIAL OFFICER: EDWARD G WEIL	CLERK: CHANDRA FORFANG COURT REPORTER: NOT REPORTED
<u>JOURNAL ENTRIES:</u>	
<p>LAUREN TARPEY, ESQ., STEPHANIE SAFDI, ESQ. (&amp; HOLLIN KRETZMANN, ESQ. OBSERVING BY ZOOM) FOR COMMUNITIES FOR A BETTER ENVIRONMENT &amp; CENTER FOR BIOLOGICAL DIVERSITY APPEAR IN PERSON.</p> <p>NICKI CARLSEN, ESQ. &amp; MEGAN AULT, ESQ. FOR PHILLIPS 66 APPEAR IN PERSON.</p> <p>KURTIS KELLER, ESQ. FOR COUNTY OF CONTRA COSTA APPEARS IN PERSON.</p> <p>COUNSEL ARGUE THE FOLLOWING, POSTED, TENTATIVE RULING:</p> <p>Appearances required.</p> <p>Petitioners filed a motion to vacate the judgment and writ in this case pursuant to Code of Civil Procedure sections 663 and 663a. Petitioners argue that the judgment is inconsistent with the Court’s statement of decision because it allows the Project s Land Use Permit to remain in place and fails to enjoin Project operations pending the County s compliance with CEQA.</p> <p>CEQA, through the Public Resources Code, allows a trial court to leave project approvals in place. After a court finds a CEQA error, the court has three options: void a decision in whole or part; suspend certain project activities; or take other specified actions. (Pub. Resources Code, 21168.9, subd. (a).) CEQA does not require the court, on finding CEQA error, to void all project approvals. The plain language of section 21168.9 grants the trial court the discretion to leave project approvals in place. (Preserve Wild Santee v. City of Santee (2012) 210 Cal.App.4th 260, 286 290.) (Central Delta Water Agency v. Department of Water Resources (2021) 69 Cal.App.5th 170, 205.)</p> <p>The Court’s intention when issuing the statement of decision and judgment was to allow for construction activities, but not Project operations, while the County reconsider the CEQA issues. The Court has considered the parties papers for both this motion and Phillips motion and reaffirms its decision. The Court must still consider whether there is any conflict between the statement of decision and the judgment.</p> <p>In its statement of decision, the Court ordered the County to set aside its certification of the EIR because the piecemealing and cumulative impact issues affected the entire analysis of the Project.</p>	

Superior Court of California, Contra Costa County

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Court Executive Officer

The Court went on to explain that [t]he CEQA violations found here relate to Operation of the Project, but not to construction of the Project. Therefore, the Court will not issue an injunction preventing Phillips from continuing its construction activities while the County reconsiders these issues. (SOD at 29.)

The judgment in this case states that [t]he Court exercises its equitable discretion under Section 21168.9 to allow, and issues no injunction preventing, the construction of the Project to proceed during the Respondents' performance of actions taken to comply with the writ of mandate. (Judgment at 3.)

The Court finds that the judgment allowing construction activities is consistent with the Court's statement of decision. In both instances the Court found that it would not enjoin Phillips from engaging in construction activities related to the Project. Furthermore, because the land use permit allows for both construction and operation of the Project, the Court decided not to order the County to set aside the permit since setting aside the permit would conflict with the Court's decision to allow construction while the County reconsiders the CEQA issues.

There is, however, a potential conflict between the statement of decision and the judgment because the Court allowed the land use permit to remain in place but did not specifically enjoin Project operations. Therefore, the Court grants Petitioners motion to vacate the judgment and to issue a new judgment that specifically enjoins Project operations until further order of the Court.

THE COURT HAVING CONSIDERED THE PLEADINGS AND ORAL ARGUMENT OF COUNSEL HEREBY ADOPTS THE ABOVE NOTED RULING.

ATTY TARPEY IS TO PREPARE AN AMENDED JUDGMENT THAT SPECIFICALLY ENJOINS PROJECT OPERATIONS UNTIL FURTHER ORDER OF THE COURT. THE WRIT DOES NOT NEED TO BE CHANGED OR MODIFIED.

THE AMENDED JUDGMENT IS TO BE CIRCULATED FOR APPROVAL AS TO FORM.

A SEPARATE ORDER IS TO BE PREPARED DENYING THE MOTION FOR CLARIFICATION.

FUTURE HEARING(S):

DATED: 10/12/2023

BY: \_\_\_\_\_

C. FORFANG, DEPUTY CLERK

**Superior Court of California, Contra Costa County**

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K. Bieker  
Court Executive Officer

**Amended Judgment Granting Peremptory Writ of Mandate  
August 23, 2023**

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 286665 NAME: Joseph D. Petta FIRM NAME: Shute, Mihaly & Weinberger LLP STREET ADDRESS: 396 Hayes Street CITY: San Francisco STATE: CA ZIP CODE: 94102 TELEPHONE NO.: 415-552-7272 FAX NO.: 415-552-5816 E-MAIL ADDRESS: petta@smwlaw.com ATTORNEY FOR (name): Communities for a Better Environment, Center for Biological Diversity	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> Contra Costa STREET ADDRESS: 725 Court Street MAILING ADDRESS: 725 Court Street CITY AND ZIP CODE: Martinez, CA 94553 BRANCH NAME: Wakefield Taylor Courthouse	CASE NUMBER: N22-1080
PLAINTIFF/PETITIONER: Communities for a Better Environment, et al. DEFENDANT/RESPONDENT: County of Contra Costa, et al. OTHER: Real Party in Interest Phillips 66 Company	JUDICIAL OFFICER: Edward G. Weil
<b>PROPOSED ORDER (COVER SHEET)</b>	DEPT: 1/39

**NOTE:** This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:  
 Petitioners Communities for a Better Environment and Center for Biological Diversity
  
2. Title of the proposed order:  
 Amended Judgment Granting Peremptory Writ of Mandate
  
3. The proceeding to which the proposed order relates is:
  - a. Description of proceeding: Hearing on Motion in Re: Motion to Vacate Judgment and Writ
  - b. Date and time: 10/12/2023 at 9:00 am
  - c. Place: Wakefield Taylor Courthouse - Department 39  
 725 Court Street  
 Martinez, CA 94553
  
4. The proposed order was served on the other parties in the case.

Joseph D. Petta

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: Communities for a Better Environment, et al. v. County of Contra Costa, et al.	CASE NUMBER: N22-1080
--	--------------------------

**PROOF OF ELECTRONIC SERVICE  
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):  
Shute, Mihaly & Weinberger LLP, 396 Hayes Street, San Francisco, CA 94102

b. My electronic service address is (*specify*): tsanchez@smwlaw.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):  
See attached service list

b. To (*electronic service address of person served*): See attached service list


c. On (*date*): 10/27/2023

Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 10/27/2023

Tuloa Sanchez  
\_\_\_\_\_  
(TYPE OR PRINT NAME OF DECLARANT)

  
\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

1 **PROOF OF SERVICE LIST**

2 ***Communities For A Better Environment, et al. v. County of Contra Costa, et al.***

3 **Case No. N22-1080**

4 **Contra Costa County Superior Court**

5 Thomas L. Geiger, Assistant County Counsel  
6 Kurtis C. Keller, Deputy County Counsel  
7 COUNTY OF CONTRA COSTA  
8 1025 Escobar Street, 3rd Floor  
9 Martinez, California 94553  
Tel: (925) 655-2200  
Fax: (925) 655-2263  
Email: thomas.geiger@cc.cccounty.us  
kurtis.keller@cc.cccounty.us

Representative for Respondents:  
COUNTY OF CONTRA COSTA; BOARD OF  
SUPERVISORS OF CONTRA COSTA  
COUNTY; and CONTRA COSTA COUNTY  
DEPARTMENT OF CONSERVATION AND  
DEVELOPMENT

10 Nicki Carlsen  
11 Megan Ault  
12 Kalina Zhong  
13 ALSTON & BIRD  
14 333 South Hope Street, 16th Floor  
15 Los Angeles, CA 90071  
16 Tel: (213) 576-1000  
17 Fax: (213) 576-1100  
18 Email: nicki.carlsen@alston.com  
19 megan.ault@alston.com  
20 kalina.zhong@alston.com

Attorney for Real Party in Interest:  
PHILLIPS 66

21  
22  
23  
24  
25  
26  
27  
28



1 DEBORAH A. SIVAS (State Bar No. 135446)  
STEPHANIE L. SAFDI (State Bar No. 310517)  
2 MATTHEW J. SANDERS (State Bar No. 222757)  
ENVIRONMENTAL LAW CLINIC  
3 Stanford Law School  
4 559 Nathan Abbott Way  
Stanford, California 94305  
5 Telephone: (650) 723-0325  
Facsimile: (650) 723-4426  
6 dsivas@stanford.edu  
ssafdi@stanford.edu  
7 matthewjsanders@stanford.edu

8 ELLISON FOLK (State Bar No. 149232)  
JOSEPH D. PETTA (State Bar No. 286665)  
9 LAUREN M. TARPEY (State Bar No. 321775)\_  
SHUTE, MIHALY & WEINBERGER LLP  
10 396 Hayes Street  
San Francisco, California 94102  
11 Telephone: (415) 552-7272  
Facsimile: (415) 552-5816  
12 folk@smwlaw.com  
petta@smwlaw.com  
13 ltarpey@smwlaw.com

14 Attorneys for Petitioners  
COMMUNITIES FOR A BETTER ENVIRONMENT and  
15 CENTER FOR BIOLOGICAL DIVERSITY

16 *[additional counsel listed on next page]*

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF CONTRA COSTA**

19 COMMUNITIES FOR A BETTER  
20 ENVIRONMENT and CENTER FOR  
BIOLOGICAL DIVERSITY,

21 Petitioners,

22 v.

23 COUNTY OF CONTRA COSTA; BOARD  
24 OF SUPERVISORS OF COUNTY OF  
CONTRA COSTA; CONTRA COSTA  
25 COUNTY DEPARTMENT OF  
CONSERVATION AND DEVELOPMENT;  
26 and DOES 1-20,

27 Respondents  
28

Case No. N22-1080

(California Environmental Quality Act)

**AMENDED JUDGMENT GRANTING  
PEREMPTORY WRIT OF MANDATE**

[Code Civ. Proc., §§ 1085, 1094.5;  
California Environmental Quality Act,  
Pub. Resources Code, §§ 21000 et seq.]

Assigned for All Purposes to:  
The Hon. Edward G. Weil, Dept. 1/39

Action Filed: June 7, 2022  
Judgment Entered: August 23, 2023

1 PHILLIPS 66, a Texas corporation and DOES  
2 21-40, inclusive,

3 Real Party in Interest.  
4

5 SHANA LAZEROW (State Bar No. 195491)  
6 COMMUNITIES FOR A BETTER ENVIRONMENT  
7 340 Marina Way  
8 Richmond, CA 94801  
9 Telephone: (510) 302-0430  
10 Facsimile: (510) 302-0437  
11 slazerow@cbeal.org

12 Attorneys for Petitioner  
13 COMMUNITIES FOR A BETTER ENVIRONMENT

14 VICTORIA BOGDAN TEJEDA (State Bar No. 317132)  
15 HOLLIN KRETZMANN (State Bar No. 290054)  
16 CENTER FOR BIOLOGICAL DIVERSITY  
17 1212 Broadway, Suite 800  
18 Oakland, California 94612  
19 Telephone: (310) 365-9281  
20 Facsimile: (510) 844-7150  
21 vbogdantejeda@biologicaldiversity.org  
22 hkretzmann@biologicaldiversity.org

23 Attorneys for Petitioner  
24 CENTER FOR BIOLOGICAL DIVERSITY  
25  
26  
27  
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1 The Verified Petition for Writ of Mandate filed by Petitioners Communities for a Better  
2 Environment and Center for Biological Diversity (“Petitioners”) was heard in Department 39 of this  
3 Court before the Honorable Edward G. Weil on June 28, 2023. Lauren Tarpey, Joseph Petta, Mark  
4 Goldstein, and Stephanie Safdi appeared for Petitioners. Stephen Siptroth appeared for Respondents  
5 County of Contra Costa, Board of Supervisors of County of Contra Costa, and Contra Costa County  
6 Department of Conservation (“Respondents”). Nicki Carlsen and Megan Ault appeared for Real Party in  
7 Interest Phillips 66 Company (“Phillips 66”). The matter was deemed submitted as of July 12, 2023, the  
8 Court having determined that no further briefing was necessary.

9 The Court, having considered the briefs filed in support of and in opposition to the Petition for  
10 Writ of Mandate, having heard oral argument, and having reviewed and considered the administrative  
11 record and other documentary evidence submitted, issued its Statement of Decision on July 21, 2023,  
12 that judgment and a peremptory writ of mandate issue in this proceeding. For the reasons set forth in the  
13 Court’s July 21, 2023 Statement of Decision, which is attached hereto as Exhibit A and incorporated  
14 herein, and the Court’s October 12, 2023 Order Vacating Judgment, which is attached hereto as Exhibit  
15 B and incorporated herein,

16 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

- 17 1. The Petition for Writ of Mandate is granted, in part, for the reasons set forth in the  
18 Court’s July 21, 2023 Statement of Decision.
- 19 2. A Peremptory Writ of Mandate directed to Respondents shall issue under seal of this  
20 Court (“Writ”), ordering Respondents to:
- 21 a. Set aside the Contra Costa County Board of Supervisors’ May 3, 2022 certification of the  
22 Environmental Impact Report under the California Environmental Quality Act  
23 (“CEQA”), California Public Resources Code, Section 21000, et seq., for Phillips 66’s  
24 Rodeo Renewed Project (“Project”);
- 25 b. Conduct a further environmental review of the Project in compliance with CEQA to  
26 remedy the three specific issues identified in the Court’s July 21, 2023 Statement of  
27 Decision, *viz.*
- 28

- i. Reconsider NuStar terminal as part of the project description (Statement of Decision, Section III.A, Piecemealing);
- ii. Reconsider Unit 250 as part of the cumulative impact analysis (Statement of Decision, Section III.A, Piecemealing); and
- iii. Reconsider the mitigation measures for the Project’s odor impacts (Statement of Decision, Section III.E, Deferral of Odor Mitigation).

3. Pursuant to Public Resources Code section 21168.9(a)(2), Respondents and Real Party in Interest Phillips 66 shall suspend all Project operational activities, including any storage and processing at the Project facilities of renewable feedstocks from the NuStar Selby terminal, until Respondents have taken all actions to comply with the writ.

4. Under Public Resources Code Section 21168.9(b), this Court retains jurisdiction over the Respondents’ proceedings by way of a return to the peremptory writ of mandate until the Court has determined that Respondents have (1) remedied the inadequacies found by the Court in the EIR as set forth in the Court’s July 21, 2023 Statement of Decision, viz. NuStar terminal as part of the project description (Statement of Decision, Section III.A, Piecemealing), Unit 250 as part of the cumulative impact analysis (Statement of Decision, Section III.A, Piecemealing), and mitigation measures for the Project’s odor impacts (Statement of Decision, Section III.E, Deferral of Odor Mitigation); and (2) complied with CEQA.

5. The Court exercises its equitable discretion under Section 21168.9 to allow, and issues no injunction preventing, the construction of the Project to proceed during the Respondents’ performance of actions taken to comply with the writ of mandate.

6. Notwithstanding the Court’s retention of jurisdiction, this is intended to be a final, appealable judgment.

7. Respondents are ordered to file an initial return to the writ of mandate no later than 75 days after service of the writ, describing the action they have taken to comply with the writ pursuant to Public Resources Code section 21168.9(b).

8. Nothing in this Judgment directs Respondents to exercise their discretion in any particular way.



# **Exhibit A**

FILED

JUL 21 2023

K. BIEKEN CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CONTRA COSTA

By C. Norfang, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

COMMUNITIES FOR A BETTER  
ENVIRONMENT and CENTER FOR  
BIOLOGICAL DIVERSITY,

Petitioners,

v.

COUNTY OF CONTRA COSTA; BOARD OF  
SUPERVISORS OF COUNTY OF CONTRA  
COSTA; CONTRA COSTA COUNTY  
DEPARTMENT OF CONSERVATION AND  
DEVELOPMENT and DOES 1 - 20,

Respondents,

PHILLIPS 66, a Texas Corporation, and DOES  
21 - 40, inclusive,

Real Party in Interest.

Case No. N22-1080

**STATEMENT OF DECISION FROM  
7/12/23 SUBMISSION**

Judge: Hon. Edward G. Weil  
Dept. 1/39

The Court heard oral argument in this case on June 28, 2023, and advised the parties that the Court would determine whether further briefing was necessary no later than July 12, 2023. On that date, the Court advised the parties that no further briefing was necessary and the matter was

1 deemed submitted as of that date. After considering all documents filed in this case, along with oral  
2 argument, the Court rules as follows:<sup>1</sup>

3  
4 I. BACKGROUND

5 The Rodeo Refinery has operated in Rodeo for 125 years, most recently by Real Party in  
6 Interest Phillips 66 Company. In August of 2020, Phillips applied to change the facility to make  
7 fuel products from renewable fuels, i.e., agricultural feedstocks such as soybean oil, corn oil, and  
8 other vegetable oils. Respondents Contra Costa County, its Board of Supervisors and its  
9 Department of Conservation and Development prepared an Environmental Impact Report pursuant  
10 to CEQA. Petitioners Communities for a Better Environment and Center for Biological Diversity  
11 contend that the EIR did not comply with CEQA for a variety of reasons.  
12

13 First, Petitioners contend that the EIR unlawfully “piecemealed” the project, by excluding  
14 the First Phase of the refinery modification into a separate project, which did not undergo  
15 environmental review. Second, they contend that the EIR did not disclose the “feedstock mix” that  
16 will be used at the refinery. Third, they contend that the EIR failed to consider “Indirect Land Use  
17 Changes” (ILUC) caused by the project. Fourth, they contend that the EIR does not address  
18 cumulative impacts. Fifth, they claim the County improperly deferred determining how to mitigate  
19 odor impacts.  
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24 <sup>1</sup> Although the Court titles this order “Statement of Decision,” it did not follow the process of  
25 issuing a tentative decision and proposed statement of decision under Rule of Court 3.1590,  
26 because the requirements of Code of Civil Procedure section 632 do not apply to this action. That  
27 provision applies where the court holds a trial resolving issues of fact, which does not occur in a  
28 mandamus action under CEQA. (*City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183  
Cal.App.3d 229, 237.)



1           II.       STANDARD OF REVIEW

2           In reviewing a challenge to approval of a project under CEQA, the Court determines  
3 whether there has been a prejudicial abuse of discretion by the public agency, which is established  
4 " 'if the agency has not proceeded in a manner required by law or if the determination or decision is  
5 not supported by substantial evidence.' [Citations, internal quotation marks omitted.]" (*Citizens*  
6 *Committee to Complete the Refuge v. City of Newark* (2021) 74 Cal.App.5th 460, 469 ("City of  
7 *Newark*") [quoting *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301,  
8 1310].)

9  
10           Under the substantial evidence test, the agency's factual determinations cannot be set aside  
11 "on the ground that an opposite conclusion would have been equally or more reasonable." (*Sierra*  
12 *Club v. County of Fresno* (2018) 6 Cal.5th 502, 512 [internal quotation marks omitted, quoting  
13 *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th  
14 412, 435 and addressing factual findings supporting an EIR].) " 'Substantial evidence' is defined as  
15 'enough relevant information and reasonable inferences from this information that a fair argument  
16 can be made to support a conclusion, even though other conclusions might also be reached.'  
17 (CEQA guidelines, § 15384, subd. (a).) 'The agency is the finder of fact and we must indulge all  
18 reasonable inferences from the evidence that would support the agency's determinations and  
19 resolve all conflicts in the evidence in favor of the agency's decision.' [Citation omitted.]" (*City of*  
20 *Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833, 839-840 [quoting  
21 *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99,  
22 117].) (See also *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1244  
23 ["reasonable doubts must be resolved in favor of the decision of the agency."].)  
24  
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1 Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and  
2 expert opinion supported by facts." (Pub. Res. Code § 21082.2(c).) "Argument, speculation,  
3 unsubstantiated opinion or narrative" do not qualify as substantial evidence. (Guidelines §  
4 15384(a); Pub. Res. Code § 21082.2(c).)  
5

6 The burden is on Petitioners to demonstrate that no substantial evidence in the record  
7 supports Respondents' decisions. (*Citizens for a Megaplex-Free Alameda v. City of Alameda*  
8 (2007) 149 Cal.App.4th 91, 113 ["It is *Citizens'* burden to demonstrate that there is not sufficient  
9 evidence in the record to justify the City's action. [Citation omitted; italics in original.] To do so, an  
10 appellant must set forth in its brief all the material evidence on the point, not merely its own  
11 evidence. [Citation omitted.] A failure to do so is deemed a concession that the evidence supports  
12 the findings. [Citation omitted.]"]; *Citizens Against Airport Pollution v. City of San Jose, supra*,  
13 227 Cal.App.4th at 798 [" 'The burden is on the appellant to show there is no substantial evidence  
14 to support the findings of the agency. [Citation.]' [Citation omitted.]," quoting *American Canyon*  
15 *Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th  
16 1062, 1070].)  
17

### 18 III. ANALYSIS

#### 19 A. Piecemealing

20 What Petitioners call the first phase of the project (and which Respondents call the "Unit  
21 250 Renewable Diesel Project") consisted of converting a diesel hydrotreater (Unit 250) to process  
22 renewable feedstocks instead of petroleum. This included adding 2,300 feet of pipeline. What  
23 petitioners call the second phase is the Rodeo Renewed Project, which converts the entire refinery  
24 from processing petroleum to processing renewable feedstocks. It modified the "hydrotreater,"  
25 rebuilt pumps and other equipment to treat renewable feedstocks. Unit 250's capacity represents  
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1 18% of the Rodeo Renewed Project’s total. Initially Phillips sought building permits for parts of  
2 the project, but sought none for other activities, which led to the Bay Area Air Quality  
3 Management District citing Phillips for failing to have required permits. By this time, however, the  
4 “first phase” of the project was already operating.  
5

6 In August of 2020, Phillips applied to the County for approval of the “Second Phase” of the  
7 project, the “Rodeo Renewed Project.” This phase significantly expanded the ability to process  
8 renewable feedstocks, and expand the variety of feedstocks used from soybean oil to include used  
9 cooking oil, fats, oil and greases; tallow; and inedible corn oil. The combined effect would make  
10 the Rodeo Refinery the largest refiner of renewable feedstocks in the world.  
11

12 The definition of the “project” is a key part of CEQA. (*Stopthemillenniumhollywood.com*  
13 *v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 16.) Piecemealing or segmenting one project into  
14 separate pieces is prohibited because it “avoids the responsibility of considering the environmental  
15 impacts of the project as a whole.” (*Orinda Ass’n v. Bd. Of Supervisors* (1985) 182 Cal.App.3d  
16 1145, 1156, 1171.) This assures that “ ‘environmental considerations do not become submerged  
17 by chopping a large project into many little ones – each with a minimal potential impact on the  
18 environment – which cumulatively may have disastrous consequences.’ [Citation.]” (*Laurel*  
19 *Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396.) A  
20 “project” is defined broadly to ensure that “CEQA’s requirements are not avoided by chopping a  
21 proposed activity into bite-sized pieces which, when taken individually, may have no significant  
22 adverse effect on the environment. [Citation.]” (*POET, LLC v. State Air Resources Bd.* (2017) 12  
23 Cal.App.5th 52, 73.)  
24  
25

26 The county contended in response to comments on the Draft EIR that the projects were  
27 independent projects. The county said at AR 000931, AR 002302 that Unit 250 was not  
28

1 “operationally related” to the Rodeo Renewed Project. But it also stated that “from time to time,  
2 treated renewable feedstocks from the proposed PTU [Feed Pre-treatment Unit] may be used as an  
3 alternative source of feedstock for Unit 250.” (AR 2303.) In addition, naphtha produced by Unit  
4 250 will be fed to other referring units converted under the Rodeo Renewed Project for further  
5 processing. (AR 053737.) Both are located within the existing boundaries of the refinery.  
6

7         In *Tuolumne County. Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155  
8 Cal.App.4th 1214 , the issue was whether a road realignment was separate from the development of  
9 a home improvement center because they could be implemented independently of each other.”  
10 (155 Cal.App.4th at 1229.) The court found that “theoretical independence does not defeat a  
11 piecemealing claim, what matters is “what is actually happening.” (*Id.*, at 1230; See also *Banning*  
12 *Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1223, n. 7 [when  
13 “implementation would be sufficiently interdependent in practice even if theoretically separable ...  
14 a piecemealing challenge would be well founded.”].) The Court provided different ways of looking  
15 at whether two projects were sufficiently related such that they should be considered together for  
16 CEQA purposes. The court explained that “[o]ne way is to examine how closely related the acts are  
17 to the overall objective of the project. The relationship between the particular act and the remainder  
18 of the project is sufficiently close when the proposed physical act is among the ‘various steps  
19 which taken together obtain an objective.’ [Citation.]” (*Id.* at 1226.) The court also considered  
20 whether the two projects were “related in (1) time, (2) physical location and (3) the entity  
21 undertaking the action.” (*Id.* at 1227; see also *POET, LLC, supra*, 12 Cal.App.5th at 74-75.)  
22  
23

24         In *Tuolumne County* the road alignment was a condition of the approval of the construction  
25 of the home improvement center. The County contended, however, that the road realignment had  
26 been contemplated for years, and was needed due to regional traffic concerns, not just the home  
27  
28



1 improvement center. The court stated, however, that “[w]e reject the position that a CEQA project  
2 excludes an activity *that actually will be undertaken* if the need for that activity was not fully  
3 attributable to the project as originally proposed.” (*Tuolumne County, supra*, 155 Cal.App.4th., at  
4 1228 [emphasis in original].) “The idea that all integral activities are part of the same CEQA  
5 project does not establish that *only* integral activities are part of the same CEQA project.” (*Id.*, at  
6 1229 [emphasis in original].) The court also relied heavily on the fact that the road alignment was  
7 made a condition of approval of the home improvement center: “At that point in time, the  
8 independent existence of the two actions ceased for purposes of CEQA[.]” (*Id.*, at 1231.)

9  
10 In *Orinda Ass’n*, the project consisted of a retail and office development, but the project  
11 required the demolition of a theatre and bank building, which was not included as part of the  
12 project in the CEQA analysis. (*Orinda Ass’n, supra*, 182 Cal.App.3d at 1170.) The demolition  
13 clearly was part of the project. (*Id.*, at 1171.) *Orinda Ass’n* is a relatively clear case—the  
14 remaining part of the project could not be implemented without demolition of the theatre and bank.  
15 And there was no reason to demolish the theatre and bank other than to allow the other part of the  
16 project to proceed.  
17

18 Other cases take the same approach. *County of Ventura v. City of Moorpark* (2018) 24  
19 Cal.App.5th 377, at 285, cites *Tuolumne*: “It is only ‘where the second activity is independent of,  
20 and not a contemplated future part of, the first activity, [that] the two activities may be reviewed  
21 separately.’” In that case, the court found that a beach restoration project involving adding sand to  
22 a beach could not be separated from the City’s approval of permits to allow trucks to haul sand  
23 from a quarry to the beach. The court also cited to *Muzzy Ranch Co. v. Solano County Airport*  
24 *Land Use Com.* (2007) 41 Cal.4th 372, 382 for point that it is a question of independent review.  
25  
26  
27  
28

1 “Whether an activity is a project is an issue of law that can be decided on undisputed data in the  
2 record on appeal.”

3  
4 *Make UC A Good Neighbor v. Regents of University of California* (2023) 88 Cal.App.5th  
5 656 explained that “[t]he projects must be linked in a way that logically makes them one project,  
6 not two. A classic example is *Laurel Heights*, where a university described the project only as its  
7 initial plan to occupy part of a building, omitting its future plan to occupy the entire building.  
8 (*Laurel Heights, supra*, 47 Cal.3d at p. 396.) ... But two projects may be kept separate when,  
9 although the projects are related in some ways, they serve different purposes or can be  
10 implemented independently. (See *Banning Ranch, supra*, 211 Cal.App.4th at pp. 1223–1224  
11 [summarizing the case law].” (*Make UC A Good Neighbor, supra*, 88 Cal.App.5th at 683-684.)

12  
13 In essence, the result of the case law is that the two phases are one project if they are  
14 interdependent in the sense that one would not be done without the other or if they serve different  
15 purposes. Would the Unit 250 project be built without the subsequent Rodeo Renewed Project?  
16 Would the Rodeo Renewed Project be built without the Unit 250 project? The issue is not whether  
17 they could have, but whether they would have. The Court is also concerned with whether the two  
18 projects serve the same purposes.

19  
20 Respondents argue that Petitioners failed to exhaust their remedies by raising their concerns  
21 about Unit 250 when approvals for that project were being considered. Respondents also argue that  
22 the statute of limitations for challenging Unit 250’s approval has long expired. These arguments  
23 assume that Petitioners are challenging Unit 250 directly. Rather, Petitioners are challenging the  
24 approval of this Project and the failure to fully consider Unit 250 in the context of this Project.  
25 Thus, the Court’s consideration here is whether Petitioners raised their concerns regarding Unit 250  
26  
27  
28



1 in the context of the environmental review for this Project. The Court finds that Petitioners  
2 sufficiently raised the issue. (AR 2302-04.)

3  
4 Unit 250 switched from processing petroleum feedstocks to renewable feedstocks in April  
5 2021. (AR 2302.) Phillips 66 obtained various permits from the County related to the changes to  
6 Unit 250 in December 2020. (Respondents' RJN C, D and E.) Apparently Phillips 66 did not obtain  
7 the necessary permits from the Air District and received a notice of violation in April 2022.  
8 (Petitioners' RJN B.)

9  
10 In August 2020, Phillips 66 started the Rodeo Renewed Project by applying to the County.  
11 A Draft EIR was completed in October 2021 and a Final EIR was completed in March 2022 and  
12 was certified in May 2022. (AR 1, 806-09, 2230, 53631.)

13  
14 Most of the changes to Unit 250 itself appear to be separate from the Rodeo Renewed  
15 Project. However, part of the changes to Unit 250 included changes that support the Project. The  
16 Court is particularly concerned with changes to the NuStar rail terminal and the 2,300 feet of  
17 pipeline running from the terminal to the Rodeo facility.

18  
19 In conjunction with the changes to Unit 250, the NuStar terminal requested changes. (AR  
20 103086-87; 103096.) The changes to the NuStar facility would allow it to receive soybean oil and  
21 other renewable feedstocks. (AR 103086.) While the capacity at NuStar would not change, NuStar  
22 sought the ability to receive approximately 45,000 barrels per day of renewable feedstocks. (AR  
23 103086; 103096.) At the same time, the Unit 250 project would produce 9,000 barrels per day of  
24 renewable feedstocks. (AR 103087; 103096.) The capacity for Unit 250 was later changed to  
25 12,000 bpd. (AR 54218.) It seems that the changes to the NuStar facility would allow for it to  
26 receive additional renewable feedstock beyond the amounts that can be processed by Unit 250;  
27  
28

1 possibly up to 33,000 barrels per day that would not be used by Unit 250. It is not clear where the  
2 other 33,000 barrels will be used, but the Project discusses obtaining feedstocks from several  
3 sources, including rail transport. The DEIR also noted that rail traffic at the Rodeo facility would  
4 increase from 4.7 railcars per day to 16 railcars per day. (AR 53805; see also AR 7998 [comment  
5 discussing rail traffic].) It is unclear from the record whether any of this increase in rail traffic  
6 would go through the NuStar facility.  
7

8 Respondents argue that the NuStar facility is only handling pretreated feedstocks and that  
9 only Unit 250 will be processing pretreated feedstocks. The record partially supports this argument  
10 as the record shows that Unit 250 will process pretreated feedstocks. (AR 103087.) But the record  
11 also shows that the Project is designed to process “a comprehensive range of renewable feedstocks,  
12 including treated and untreated feedstocks”. (AR 53730, 53733.) Thus, the fact that NuStar will  
13 only handle pretreated feedstocks does not mean that the Project is not designed to process  
14 feedstocks from NuStar.  
15

16  
17 Given this evidence, the Court finds that the changes to the NuStar terminal increased its  
18 renewable feedstock capacity well beyond that which was required for Unit 250. Given the  
19 proximity in time and location between the NuStar and Unit 250 projects and the Rodeo Renewed  
20 Project, the Court finds that the failure to consider the changes to the NuStar facility in the EIR at  
21 issue here was improper piecemealing. The Court notes that the record regarding NuStar is limited  
22 and with more information it may be possible to show that NuStar’s changes can be considered a  
23 separate project but on the current record the Court cannot make this finding.  
24

25 Petitioners also argue that the 2,300 feet of pipe that was included in the Unit 250 changes  
26 constituted improper piecemealing. As part of the Unit 250 project, Phillips 66 had 2,300 feet of  
27 pipe (sometimes referred to as 2,500 feet of pipe) installed. The pipe runs from the NuStar facility  
28



1 to the Rodeo facility and is entirely on Phillips 66 property. (AR 103087-88.) The pipe is used to  
2 receive pretreated renewable feedstocks from the adjacent NuStar Terminal. (AR 103087.) The  
3 pipe is described as a 12" pipe. (AR 103084, 103088.) Petitioners argue that the pipe has capacity  
4 of 45,000 barrels per day, but the Court's review of the record citations does not support this point.  
5 (AR 2304, 103096.)  
6

7           Petitioners have not shown that the 2,300 feet of pipeline would not have been installed but  
8 for the Rodeo project. There is also no showing that the size of the pipe was increased beyond what  
9 would be reasonable to transport feedstocks to Unit 250. The Court finds that the 2,300 feet of  
10 pipeline is not improper piecemealing because it was necessary for the Unit 250 project and would  
11 have been installed for that project regardless of the Rodeo Renewable Project.  
12

13           As to the remainder of the Unit 250 Project, the Court is not convinced that excluding Unit  
14 250 from the EIR was improper piecemealing. The record shows that the conversions at Unit 250  
15 were mostly separate from the Project here. Furthermore, the purposes of the Unit 250 Project and  
16 the Rodeo Renewed Projects are different. Unit 250 is designed to process a relatively small  
17 amount of pretreated renewable feedstocks, while the Rodeo Renewed Project is designed to  
18 change the entire Rodeo facility from a petroleum facility to one that only processes renewable  
19 feedstocks. The Court also finds that Unit 250 and this Project would have happened  
20 independently from each other and thus, there was not improper piecemealing for most of the  
21 changes to Unit 250.  
22

23  
24           In the alternative, Petitioners argue that the failure to discuss Unit 250 in the cumulative  
25 impact section was an error. The changes to Unit 250 were not discussed in the cumulative impact  
26 section in the DEIR. (AR 54245-47.) Respondents dismiss this issue by pointing out that Unit 250  
27 was discussed in the baseline analysis. The baseline for renewable feedstocks in the DEIR is listed  
28

1 as zero. (AR 53654.) However, it was also noted that Unit 250 had a capacity to produce 12,000  
2 bpd of renewable fuels, but that it was not producing those fuels during the 2019 baseline period.  
3 (AR 53654.) In addition, in the summary of alternatives to the Project, it is noted that Unit 250 has  
4 a capacity to produce 12,000 bpd in renewable fuels. (AR 54218-219.) The DEIR notes that Unit  
5 250 has the capacity of producing 12,000 bpd of renewable fuels while the Project would produce  
6 55,000 bpd of renewable fuels. (AR 53654.) The capacity at Unit 250 amounts is over 15% of the  
7 renewable fuel capacity at the Rodeo facility when the Project is fully operational. A couple of  
8 footnotes regarding Unit 250's renewable fuels processing does not sufficiently explain the  
9 cumulative impact of Unit 250 along with the Project. The Court finds that the EIR violated CEQA  
10 by failing to include Unit 250 in the cumulative impact analysis.  
11

12  
13 B. Estimating Mix of Feedstocks

14 An EIR must have a proper description of the project. “[W]hether the EIR's project  
15 description complied with CEQA's requirements, the standard of review is de novo. [Citations.]”  
16 (*stophemillenniumhollywood.com, supra*, 39 Cal.App.5th 1, 15.)  
17

18 As part of the description of the Project, the EIR describes that the modified facility would  
19 use a variety of different substances as inputs, including “but not be limited to” used cooking oil,  
20 fats, oils, and grease, tallow (animal fat), inedible corn oil, canola oil, soybean oil, “other  
21 vegetable-based oils, and/or emerging and other next-generation feedstocks.” (AR 053735.)  
22

23 Petitioners contend that which of these inputs are used, in what proportions, significantly  
24 changes the environmental impacts of the project, specifically carbon emissions and hydrogen  
25 usage (which leads to other GHG emissions), indirect land use impacts and odor issues. The record  
26 does contain evidence that indicates that the different feedstocks could lead to different emissions,  
27  
28



1 and quantifies the difference between the different types of feedstock. “Switching to new and  
2 different feedstock has known potential to increase refinery emissions and to create new and  
3 different process hazards and feedstock acquisition impacts.... However, the DEIR does not  
4 describe the chemistries, processing characteristics, or types and locations of feed extraction  
5 sufficiently to evaluate potential impacts of the proposed feedstock switch.” (AR 471; see also AR  
6 25354.) A comment letter also described feedstocks involving fats, oils and grease as “highly  
7 malodorous”. (AR 2625.)  
8

9 In comments to the Draft EIR, Petitioners argued that “the County should have evaluated a  
10 ‘reasonable worst-case scenario’ for feedstock consumption and its impacts” and that “the County  
11 was required to evaluate a reasonable array of scenarios, including but not necessarily limited to  
12 the worst-case scenario, in order to provide full disclosure.” (AR 278; 2281.) “Comments also  
13 contend that appropriate Draft EIR impact analysis should reflect historic, current, and projected  
14 feedstock availability that will influence the proportional selection of feedstocks as demand for  
15 feedstocks increases.” (AR 2281.) Petitioners also argue that, based on the information available, a  
16 large portion of the feedstocks would come from food crop oils. (AR 279; see also, 2282.)  
17  
18

19 The FEIR does not, however, make any estimate of the likely mix of feedstocks and the  
20 combined effect of the various mixtures. In response to comments, Respondents explained that  
21 they are not required to conduct a worst case analysis and that CEQA only “requires analysis of  
22 reasonably foreseeable impacts ‘in terms of what is reasonably feasible.’ ” (AR 2282.) The FEIR  
23 also explained that the DEIR provided information on potential feedstocks, but where there is no  
24 reliable forecasting, “CEQA requires only that the County use its best efforts to find out and  
25 disclose all it reasonably can...” (AR 2282.) Petitioners also argued that the County erred when it  
26 claimed the Project would not use meaningful amounts of soybean oil. The FEIR stated that  
27  
28

1 “comment[s] that feedstocks will utilize food crops and oils, particularly soybean, are not  
2 consistent with available data.” The FEIR explained that the credits provided for soy oil are much  
3 lower than those provided for cooking oil. (AR 2279.) Petitioners argue that the NuStar facility will  
4 unload 45,000 bpd of soybean oil and that only a portion of that soybean oil would be used by Unit  
5 250. The record does not support Petitioners’ assumption. While a County employee stated that  
6 NuStar would receive 45,000 bpd of soybean oil, the accompanying permits and project description  
7 state that NuStar would receive 45,000 bpd of “soybean oil and other renewable feedstocks”. (AR  
8 103083-86, 103096.) Petitioners also point to Phillips 66’s applications to CARB that include  
9 soybean oil, but those were for Unit 250 and do not mean that the rest of the facility will use  
10 significant amounts of soybean oil. (AR 26059-60.)  
11

12  
13 The EIR should consider the relative mix of these inputs, to the extent it can be estimated,  
14 but not if it would be speculative. The record, however, does not appear to contain substantial  
15 evidence concerning the likely mixtures of feedstocks that would be used. In the absence of any  
16 information indicating past history or even a forward-looking, but factually informed, basis for an  
17 estimate, following Petitioners’ suggestions and making projections based on all of the different  
18 possibilities, including a worst-case scenario, would be an exercise in the hypothetical, and not  
19 based on reliable information concerning their likelihood. In other words, it would be speculative.  
20

21 Petitioners contend that even if the actual mix cannot be predicted, a worst-case scenario  
22 could be used. Use of worst-case scenarios has been discussed in a number of cases.  
23

24 *stopthemillenniumhollywood.com, supra*, 39 Cal.App.5th 1 rejected using worst-case  
25 scenario where project description included different conceptual scenarios for development instead  
26 of including the size, mass, or appearance of proposed buildings on the site. The court explained  
27 that it was not enough that “the worst-case-scenario environmental effects have been assumed,  
28



1 analyzed, and mitigated” and development does not exceed those mitigation measures. “CEQA’s  
2 purposes go beyond an evaluation of theoretical environmental impacts. ‘If an EIR fails to include  
3 relevant information and precludes informed decision making and public participation, the goals of  
4 CEQA are thwarted and a prejudicial abuse of discretion has occurred.’ [Citation.]”  
5  
6 (*stopthemillenniumhollywood.com v. City of Los Angeles, supra*, 39 Cal.App.5th at 18.)

7 In *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014)  
8 227 Cal.App.4th 1036 a worst-case type analysis was approved. There, the EIR included different  
9 potential building development options, but with more detail than in  
10 *stopthemillenniumhollywood.com*. The court in *Treasure Island* approved of “the EIR’s focus on  
11 the maximum impacts expected to occur at full buildout [because it] promoted informed decision  
12 making, and evidences a good faith effort at forecasting what is expected to occur if the Project is  
13 approved.” (*Id.* at 1053, fn. 7.)  
14

15 “ “CEQA requires that an EIR make ‘a good faith effort at full disclosure.’ [Citation.] ‘An  
16 EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with  
17 information which enables them to make a decision which intelligently takes account of  
18 environmental consequences.’ ” ’ (*Save the El Dorado Canal v. El Dorado Irrigation Dist.* (2022)  
19 75 Cal.App.5th 239, 264 (*El Dorado*)). An EIR ‘is required to study only reasonably foreseeable  
20 consequences of’ a project. (*High Sierra Rural Alliance v. County of Plumas* (2018) 29  
21 Cal.App.5th 102, 125.) ‘CEQA does not require an agency to assume an unlikely worst-case  
22 scenario in its environmental analysis.’ (*Id.* at p. 126.)” (*East Oakland Stadium Alliance v. City of*  
23 *Oakland* (2023) 89 Cal.App.5th 1226, 1252.)  
24

25 “ [A]n EIR is not required to engage in speculation in order to analyze a “worst case  
26 scenario.” ’ (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91  
27  
28

1 Cal.App.4th 342, 373, citing *Towards Responsibility in Planning v. City Council* (1988) 200  
2 Cal.App.3d 671.)” (*High Sierra Rural Alliance v. County of Plumas* (2018) 29 Cal.App.5th 102,  
3 122.)

4           Petitioners also argue that *Communities for a Better Environment v. City of*  
5 *Richmond* (2010) 184 Cal.App.4th 70 (*CBE v. Richmond*) applies here and shows that Respondents  
6 need to do more in describing the likely feedstock mix for the Project. In *CBE v. Richmond* the  
7 issue was whether the EIR failed to properly discuss whether a reasonably foreseeable consequence  
8 of the project would include the processing for lower quality, heavier crude. (*Id.* at 83.) The EIR  
9 stated in conclusory terms that it would not increase capacity to process heavier crude, but the  
10 court noted that the record showed conflicting evidence on that issue. (*Ibid.*) The court found that  
11 the EIR failed as an informational document because the project description was inconsistent and  
12 obscure as to whether the project would enable the refinery to process heavier crude. (*Id.* at 89.)

13           Unlike *CBE v. Richmond*, the description of feedstocks for this Project is not obscure or  
14 inconsistent with the evidence. Petitioners argue that in this case the EIR failed to disclose that  
15 Unit 250 would use soybean oil and that the NuStar terminal would provide up to 45,000 bpd of  
16 soybean oil. As discussed above, the Court finds that Unit 250 should have been included as  
17 cumulative impact, but was not required to be analyzed as part of the Project. The Court’s review  
18 of the record shows that NuStar terminal would provide capacity for 45,000 bpd of renewable  
19 feedstocks, but the record does not support that such feedstocks would be soybean oil.

20           It is possible that a worst-case analysis of the feedstocks would comply with CEQA,  
21 however, such a worst-case analysis is not required. Instead, Respondents are required to make a  
22 good faith effort to include a description of the likely or reasonably foreseeable mixtures of  
23 feedstock. Here the question is whether a description of the likely types of feedstocks constitutes a  
24  
25  
26  
27  
28



1 good faith effort at describing the feedstocks in the Project Description, or whether Respondents  
2 needed to do more by including various estimates of the likely amounts of feedstock. The Court  
3 finds that including estimates on the likely amounts of feedstocks is unduly speculative given the  
4 shifting nature of the renewable feedstock market.

5  
6 Furthermore, Petitioners have not shown that the failure to include more information on the  
7 likely amounts of feedstocks negatively affected the analysis of the environmental impact from the  
8 Project. As discussed below, the Court finds that additional discussion on how this Project will  
9 impact indirect land use changes would be too speculative. Thus, a better estimate of the different  
10 types of feedstocks used at this facility will not change the indirect land use analysis as more  
11 information on what this facility is likely to use will not change the speculative nature of that  
12 analysis.

13  
14 Finally, the Court must consider whether the odor mitigation analysis could be better with  
15 an estimate as to the likely amounts of various feedstocks. It is worth noting here that certain  
16 feedstocks, such as animal fats, are known to create more objectionable odors than plant-based  
17 feedstocks. Yet, the EIR concluded that there would be potentially significant odor impacts from  
18 the Project that could be reduced to less than significant with mitigation. More specific information  
19 on the amounts of feedstocks would not change the analysis of the potential odor impacts. While  
20 the Court finds that the EIR improperly deferred mitigation of the odor impacts, it is not convinced  
21 that more information on the amounts of feedstocks is necessary for a properly drafted odor  
22 mitigation measure.

23  
24 Therefore, the Court finds that the Project Description is sufficient and that the EIR is not  
25 required to include additional information on the likely amounts of feedstocks.

1 C. Discussion of Indirect Land Use changes

2 CEQA requires that agencies consider the indirect changes in land use caused by projects,  
3 but not if they are speculative. Indirect land use changes are cognizable under CEQA as a basis for  
4 a finding that the project will significantly affect the environment, *if* a sufficient showing is made.  
5 (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 383.)  
6

7 Petitioners argue that the project will result in the conversion of existing lands that either lie fallow  
8 (or are currently forested) are used to grow other crops that are used as feedstock for the project.  
9 Some of these changes, particularly production of soybeans, involve adoption of more intensive  
10 agricultural practices that consume more water and otherwise affect the environment.

11 Accordingly, the CEQA Guidelines address the issue, requiring analysis of indirect land use  
12 changes if they are “reasonably foreseeable.” (CEQA Guidelines §§ 15064(d), 15358(a)(2).)  
13

14 While many cases discuss this issue, typically the issue is raised in the context of displaced  
15 physical development. As the Supreme Court stated, “a government agency may reasonably  
16 anticipate that its placing a ban on development in an area of a jurisdiction may have the  
17 consequence, notwithstanding existing zoning or land use planning, of displacing development to  
18 other areas of the jurisdiction.” (*Muzzy Ranch Co., supra*, 41 Cal.4th at 383.) Nor does the fact  
19 that subsequent developments will require further approvals automatically negate the requirement,  
20 although it is a factor that may be considered. (*Id.*, at 383 and 388.) As the court noted in *Muzzy*  
21 *Ranch*, “nothing inherent in the notion of displaced development places such development, *when it*  
22 *can reasonably be anticipated*, categorically outside the concern of CEQA.” (*Id.*, [emphasis  
23 added].)  
24

25  
26 The line between the two appears to be very fact-specific. In *Stanislaus Audubon Society,*  
27 *Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 158, the court considered whether  
28



1 construction of a golf course could lead to residential development. The fact that those effects  
2 (development of housing) would go through their own environmental review process did not avoid  
3 the issue. There were no pending applications at the time. The county had stated that past  
4 experience had shown that golf courses were “a catalyst which triggers requests for residential  
5 development.” (*Id.*, at 16, 158.) As the court stated, “The record here clearly contains substantial  
6 evidence supporting a fair argument the proposed country club may induce housing development in  
7 the surrounding area. The fact that the exact extent and location of such growth cannot now be  
8 determined does not excuse the County from preparation of an EIR.” (*Id.*) The court went on to  
9 note that the petition is not required to prove that the project “*will* have a growth-inducing effect or  
10 to present evidence demonstrating it had already spurred growth in the surrounding area. To the  
11 contrary, appellant is required only to demonstrate that the record contains substantial evidence  
12 sufficient to support a *fair argument* that the project *may* have a significant growth inducing  
13 effect.” (*Id.*, at 152-153 [emphasis in original].)  
14  
15

16 In *Aptos Council v. County of Santa Cruz* (2017) 10 Cal. App.5th 266, 293, the court noted  
17 the same standards, but reached a different result based on the facts in the record. The ordinance in  
18 question changed standards for construction of hotels in a manner that was intended to encourage  
19 more development. The court stated that “when evaluating the potential environmental impact of a  
20 project that has growth-inducing effects, an agency is not excused from environmental review  
21 simply because it is unclear what future developments may take place. It must evaluate and  
22 consider the environmental effects of the ‘most probable development patterns.’” (*Id.*, at 292-293,  
23 quoting *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1337.) Ultimately, however,  
24 the court concluded that while the ordinance reflected the County’s “hope” that it would result in  
25 more hotels, the record did not show that it was “reasonably foreseeable, rather than an ‘optimistic  
26  
27  
28

1 gleam in [the County's] eye.'" (*Id.*, at 294.) Thus, it found that no Environmental Impact Report  
2 was required.

3  
4 In some instances, the foreseeability of the impact affects not simply whether the issue must  
5 be discussed, but the level of detail required. (*Muzzy Ranch Co.*, *supra*, 41 Cal.4th at 388.)

6 In response to comments, the FEIR stated that it would be too speculative to analyze  
7 indirect land use impacts because the mix of feedstocks, as well as their sources, cannot reasonably  
8 be predicted. (AR 2284.) The response also explained that based on California Air Resources  
9 Board's Low Carbon Fuels Standard Program the majority of feedstocks so far have been waste-oil  
10 and tallow. (AR 2284.)

11  
12 Petitioners argue that the Project will cause significant and unavoidable land use impacts.  
13 Petitioners cite to three articles discussing potential land use changes caused by an increased  
14 demand in bio feedstocks. (AR 21903, 23905, 59292.) These articles explain that an increased  
15 demand for certain feedstocks may result in deforestation, which can have a number of negative  
16 impacts including negative impacts on biodiversity and threatening food and water security. (AR  
17 21903.) Two of the articles note a particular problem with palm oil, however, palm oil will not be  
18 used at the Phillips 66 facility. (AR 23905, 59292.) One of the articles explained that the  
19 International Panel on Climate Change rated certain feedstocks as having a high risk of indirect  
20 land use changes. Based on that system, palm oil was identified as high risk while soy was not.  
21 (AR 23911.)

22  
23  
24 In addition to these articles, Petitioners' point to the 2018 FEIR for proposed Amendments  
25 to low carbon fuel standards and the alternative diesel fuels regulation. (AR 19426.) The 2018  
26 FEIR explained that biofuel crop production may cause more fuel-based agricultural and thus cause  
27  
28



1 indirect land use where the loss of food-based agriculture results in conversion of rangeland,  
2 grassland, forests, and other land uses to agriculture. (AR 19493.) The 2018 FEIR concluded there  
3 was a potentially significant impact on indirect land use, but it could not be mitigated by the  
4 California Air Resources Board because CARB had no authority over land use regulation. (AR  
5 19494.)  
6

7           Petitioners show that in general there may be some impacts on land use from an increase in  
8 biofuels on a large scale. But Petitioners' evidence does not show that this Project will have a  
9 significant impact on land use changes. In addition, much of Petitioners' cited evidence focuses on  
10 the harmful effects of palm oil, which, as noted above, will not be used at this facility. The Court  
11 finds that providing more analysis on the indirect land use impacts would be too speculative and  
12 thus, the failure to include additional analysis did not violate CEQA.  
13

#### 14           D. Cumulative ILUC impacts

15           Petitioners also argue that Respondents failed to consider the cumulative impact of similar  
16 projects on indirect land use changes.  
17

18           “The EIR must discuss cumulative impacts. (Guidelines, § 15130.) That is, the EIR must  
19 discuss the impacts of the project over time in conjunction with past, present and reasonably  
20 foreseeable future projects. (§ 21083; Guidelines, § 15130.) Guidelines section 15130, subdivision  
21 (b) provides that ‘[t]he discussion of cumulative impacts shall reflect the severity of the impacts  
22 and their likelihood of occurrence, but the discussion need not provide as great detail as is provided  
23 of the effects attributable to the project alone. ...’ Thus, an EIR which completely ignores  
24 cumulative impacts of the project is inadequate. [Citation.] But a good faith and reasonable  
25 disclosure of such impacts is sufficient. [Citation.]” (*Fairview Neighbors v. County of*  
26 *Ventura* (1999) 70 Cal.App.4th 238, 245.)  
27  
28

1           “An agency's selection of the geographic area impacted by a proposed development,  
2 however, falls within the lead agency's discretion, based on its expertise. (Guidelines, § 15130,  
3 subd. (b)(3); *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889,  
4 907.) Moreover, discussion of cumulative impacts in an EIR “should be guided by the standards  
5 of practicality and reasonableness.” [Citation.] Absent a showing of arbitrary action, a reviewing  
6 court must assume the agency has exercised its discretion appropriately. [Citation.]” (*South of*  
7 *Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th  
8 321, 338.)

10           In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692 the court held  
11 that the cumulative air quality impact analysis was insufficient because it only considered a portion  
12 of the San Joaquin Valley. Initially, respondents had agreed to include the entire air basin in the  
13 FEIR, but ultimately decided to keep the smaller area for the cumulative impact analysis without  
14 providing an explanation. The court found that the FEIR was inadequate under CEQA because the  
15 cumulative impacts did not include similar projects in the entire air basin. In reaching this  
16 conclusion, the court noted that information on the excluded projects was available through several  
17 sources. (*Id.* at 722-724.)

19           In *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859  
20 the court found the EIR for a water diversion project was inadequate because it did not consider the  
21 cumulative impacts of another pending governmental action that could significantly affect water  
22 supply.  
23

24           The DEIR considered several other projects in the vicinity of the Rodeo facility as well as  
25 projects near the Santa Maria site. (AR 54245-47.) The cumulative impact section included a  
26 discussion of the Martinez Refinery project, which involves transforming that refinery into a  
27  
28



1 facility that processes renewable feedstocks, similar to the Project here. (AR 54246.) The FEIR  
2 explained that the cumulative impacts related to renewable feedstocks are too speculative and  
3 unable to be quantified. (AR 2274-75.)

4           Petitioners argue that the EIR should have considered the nearly 20 other renewable fuel  
5 conversion projects in California and throughout the nation. (AR 727; see also AR 10493-95.)

6           Here, the EIR considered the Martinez facility, which was arguably necessary for a proper  
7 cumulative impact analysis. Given the similarity of the two projects, the relatively close proximity  
8 of the two projects (approximately 10 miles) and the fact that the two projects (if they become  
9 operational) will be two of the largest biodiesel facilities in California. The question here is  
10 whether Respondents were required to go beyond the Martinez facility and consider other biodiesel  
11 facilities in California or perhaps the entire nation. (Whether the EIR needed to consider the  
12 changes to Unit 250 as a cumulative impact is discussed above.)

13           The Court is concerned that on a statewide or nationwide scale, there may be some indirect  
14 land use effects. (Such effects were discussed in CARB's 2018 FEIR. (AR 19493-94.)) The  
15 problem here is where should the line be drawn? In most of the cases cited by the parties, there was  
16 a clear geographical boundary, which is near the Project site. Using a statewide boundary when  
17 considering a change to a state law or regulation makes sense, but the Court is not convinced that  
18 the same logic for requiring a statewide boundary applies to this Project.

19           Assuming that the Court is convinced that the EIR should have considered more biodiesel  
20 or renewable fuel facilities in California, the Court is still concerned that the indirect land use  
21 changes are too speculative. It does not appear practical for Respondents to estimate what the likely  
22 mix of feedstocks will be at each facility. The Court finds that the failure to include more analysis  
23 on the cumulative indirect land use impacts did not violate CEQA.

1 E. Deferral of Odor Mitigation

2 The DEIR stated that during refinery operations the impacts from odor would have less than  
3 significant with mitigation. (AR 53809, 53828.) The odor concerns include that “renewable  
4 feedstocks can create odors similar to an animal and/or food processing facility unless properly  
5 managed through good engineering practices during project development combined with an Odor  
6 Management Plan after Project completion.” (AR 53827.) The DEIR goes on to note that these  
7 principals are currently used at the facility and will continue to be used after the completion of the  
8 Project. (*Ibid.*)  
9

10  
11 In order to lessen the impacts from odor, the EIR includes mitigation measure AQ-4. (AR  
12 2322, 53829.) In the DEIR, AQ-4 states that during the construction phase of the Project an Odor  
13 Management Plan (OMP) would be development and implemented. (AR 53829.) The FEIR  
14 provided additional guidance on AQ-4, including: (1) the OMP will be developed and reviewed by  
15 the County and the Air District, (2) the OMP will be an “evergreen” document that will be updated  
16 overtime, (3) the OMP will include guidance for proactive identification and documentation of  
17 odors and (4) every odor complaint will be investigated with a goal of identifying if the odor  
18 originated from the facility and if so, to determine the cause of the odor and remediate the odor.  
19 (AR 2322; see also AR 776-777.)  
20

21 The DEIR describes some additional odor management controls, which are not included in  
22 the mitigation measure. The DEIR provides a two-page discussion on different types of odor  
23 management controls. (AR 53827-28.) The DEIR provides includes a discussion on how to control  
24 odor from tallow feedstocks. (AR 53827 and 53738.) A staff report addresses the claim that the  
25 odor mitigation is an improperly deferred mitigation by claiming that if the OMP is developed too  
26  
27  
28



1 early, it would not be effective. (AR 922.) Respondents also point to the Air District's Regulation 7  
2 on regarding odors. (Respondents RJN F.)

3  
4 Finally, the FEIR noted that a draft OMP existed and was being reviewed by the County.  
5 (AR 2322.) The draft OMP provides additional information on how odors will be reduced or  
6 eliminated. (AR183007-183014.)

7  
8 Where an EIR identifies significant impacts from the project, it must also include feasible  
9 mitigation measures for those impacts. (Pub. Res. Code § 21081.6(b), CQA Guidelines S  
10 15126.4(a)(2).) Here, the EIR identified "objectionable odors" as "potentially significant." It then  
11 identified a mitigation measure consisting of "the operational Odor Management Plan," which  
12 "shall be developed and implemented upon commissioning of the renewable fuels processes,  
13 intended to become an integrated part of daily operation of the facilities. While the EIR contains  
14 other language referring to the OMP preventing objectionable odors, and that it "shall outline  
15 equipment that is in place and procedures that facility personnel shall use to address odor issues," it  
16 identifies no actual mechanism or whether it would reduce or eliminate the odors in question.

17  
18 Mitigation measures may be deferred where they "specify performance standards which  
19 would mitigate the significant effect of the project and which may be accomplished in more than  
20 one specified way." (CEQA Guidelines § 15126.4(a)(1)(B).) This is permissible where the agency  
21 "commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly  
22 incorporated in the mitigation plan. [Citation.]" (*Defend the Bay v. City of Irvine* (2004) 119  
23 Cal.App.4th 1261, 1275.) As that court stated in more detail:

24  
25  
26 " " "[F]or [the] kinds of impacts for which mitigation is known to be feasible, but where  
27 practical considerations prohibit devising such measures early in the planning process  
28

1 (e.g., at the general plan amendment or rezone stage), the agency can commit itself to  
2 eventually devising measures that will satisfy specific performance criteria articulated at  
3 the time of project approval. Where future action to carry a project, forward is  
4 contingent on devising means to satisfy such criteria, the agency should be able to rely  
5 on its commitment as evidence that significant impacts will in fact be mitigated.  
6 [Citations.]” [Citation.]” (*Id.* at 1275-76.) “On the other hand, an agency goes too far  
7 when it simply requires a project applicant to obtain a biological report and then comply  
8 with any recommendations that may be made in the report. [Citation.]” (*Id.* at 1275.)  
9

10 In order to defer mitigation measures, the lead agency must find that providing details on a  
11 mitigation measure is “impractical or infeasible at the time the EIR was certified.” (*Preserve Wild*  
12 *Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281; see also CEQA Guidelines §  
13 15126.4(a)(1)(B), *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th  
14 645, 671 and *Save Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 687-  
15 688.)  
16

17 *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690 is distinguishable from the case  
18 here. *Rominger* found an odor mitigation measure, similar to the one here, was not an improperly  
19 deferred mitigation measure. (*Id.* at 723-724.) In 2014, the relevant CEQA Guideline stated that  
20 “Formulation of mitigation measures should not be deferred until some future time. However,  
21 measures may specify performance standards which would mitigate the significant effect of the  
22 project and which may be accomplished in more than one specified way.” (CEQA Guideline  
23 §15126.4(a)(1)(B) (2014).) The CEQA Guidelines in effect in 2014 have been modified. They  
24 now include the “impractical or infeasible” finding and *also* require that “the agency (1) commits  
25 itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and  
26  
27  
28



1 (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard  
2 and that will be considered, analyzed, and potentially incorporated in the mitigation measure.”  
3 (CEQA Guideline §15126.4(a)(1)(B) (2022).) The analysis in *Rominger* did not consider the  
4 standards in the current CEQA Guidelines and thus, *Rominger* does not apply here.

5  
6 “Courts have approved deferring the formulation of the details of a mitigation measure  
7 where another regulatory agency will issue a permit for the project and is expected to impose  
8 mitigation requirements independent of the CEQA process so long as the EIR included  
9 performance criteria and the lead agency committed itself to mitigation. [Citation.]” (*Clover Valley*  
10 *Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 237.) *Clover Valley* found a mitigation  
11 measure was not improperly deferred where it required the real party to obtain necessary permits  
12 from two government agencies that were not the lead agency. (*Id.* at 235, 237.) Similarly, in *North*  
13 *Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th  
14 614 the court found a mitigation was not improperly deferred where consultation with NOAA  
15 Fisheries was required as part of the federal permitting process under the Clean Water Act and the  
16 Endangered Species Act, as well as an express term in the EIR. (*Id.* at 647.)

17  
18 In addition to case law, the CEQA Guidelines state that “compliance with a regulatory  
19 permit or other similar process may be identified as mitigation if compliance would result in  
20 implementation of measures that would be reasonably expected, based on substantial evidence in  
21 the record, to reduce the significant impact to the specified performance standards.” (CEQA  
22 Guideline § 15126.4(a)(1)(B).)

23  
24 Petitioners argue that the odor mitigation measure AQ-4 is an improperly deferred  
25 mitigation because the County did not find that it was impractical or infeasible to include details of  
26 the mitigation measure when the EIR was certified. Respondents have not shown how this  
27  
28

1 threshold requirement was met. The County did not make the required finding in the EIR. In  
2 addition, a draft Odor Management Plan was available when the EIR was certified, but it is unclear  
3 why a final version of the document could not be completed. (AR 183007.) Thus, as an initial  
4 matter, the EIR fails to comply with CEQA because it has not shown that it was impractical or  
5 infeasible to include the details odor mitigation measure at the time the EIR was certified.  
6

7 In addition to the threshold issue, a related question is whether there are feasible measures  
8 to mitigate the odor, which are already known to exist, but simply can't be specified until more is  
9 known about the odor problem.  
10

11 The Court finds that the record does not show that there are feasible mitigation measures,  
12 which could not be finished when the EIR was certified due to practical considerations.  
13 Furthermore, while an operating permit from the Air District might be sufficient in some cases to  
14 show a mitigation measure is not improperly deferred, the record here does not support that  
15 conclusion. Mitigation measure AQ-4 does not state that the Air District will issue a permit. An Air  
16 District permit will be required for construction and operations. (AR 53688, 53792-93.) But, the  
17 record does not show that the Air District's permit will sufficiently address the odor concerns  
18 raised by Petitioners. Therefore, the Court finds that the County violated CEQA by allowing  
19 deferred mitigation for the odor impacts without complying with CEQA Guidelines §  
20 15126.4(a)(1)(B).  
21

#### 22 F. Requests for Judicial Notice

23 Petitioners' request for judicial notice is granted as to B. Requests A, C and D are denied as  
24 these documents were not in existence when the EIR was certified.  
25  
26  
27  
28



1 Respondents' requests for judicial notice are granted as to C, D, E, F and G. Requests A  
2 and B are denied as the Court cannot tell whether these documents were in existence when the EIR  
3 was certified.

4  
5 IV. CONCLUSION

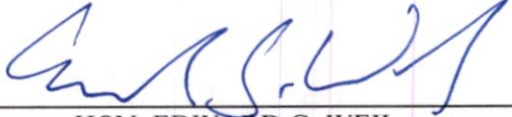
6 Accordingly, the Court's rulings on the issues are:

- 7  
8 1. The project description improperly omitted changes to the NuStar terminal, but did not  
9 improperly omit Unit 250;  
10 2. Unit 250 was improperly omitted from the cumulative impact section;  
11 3. The project description with respect to the mix of feedstocks was sufficient;  
12 4. The discussion of Indirect Land Use Impacts was sufficient;  
13 5. The discussion of cumulative Indirect Land Use Impacts was sufficient;  
14 6. The discussion of Odor Mitigation Measures was insufficient.

15 This matter will be remanded to the County for reconsideration of the NuStar and Unit 250  
16 projects and the odor mitigation measure. Because the piecemealing and cumulative impact issues  
17 affect the entire analysis of the project, the Court will order the County to set aside its certification  
18 of the EIR. The CEQA violations found here relate to operation of the Project, but not to  
19 construction of the Project. Therefore, the Court will not issue an injunction preventing Phillips  
20 from continuing its construction activities while the County reconsiders these issues.  
21

22 The parties shall submit proposed writs and judgments by August 18, 2023.

23  
24  
25 Dated: July 20, 2023

26   
27 \_\_\_\_\_  
28 HON. EDWARD G. WEIL  
Judge of the Superior Court

# **Exhibit B**

Superior Court of California, Contra Costa County

Department 01/39  
925-608-1000  
[www.cc-courts.org](http://www.cc-courts.org)



K. Bieker  
Court Executive Officer

<b>MINUTE ORDER</b>	
<b>COMMUNITIES FOR A BETTER ENVIRONMENT VS. COUNTY OF CONTRA COSTA</b>	<b>N22-1080</b>
	<b>HEARING DATE: 10/12/2023</b>
PROCEEDINGS: *HEARING ON MOTION IN RE: MOTION TO VACATE JUDGMENT AND WRIT (ADVANCED FROM 10/19/23 TO 10/12/23 FROM 9/14/23 EX PARTE HEARING)	
DEPARTMENT 01/39 JUDICIAL OFFICER: EDWARD G WEIL	CLERK: CHANDRA FORFANG COURT REPORTER: NOT REPORTED
<u>JOURNAL ENTRIES:</u>	
<p>LAUREN TARPEY, ESQ., STEPHANIE SAFDI, ESQ. (&amp; HOLLIN KRETZMANN, ESQ. OBSERVING BY ZOOM) FOR COMMUNITIES FOR A BETTER ENVIRONMENT &amp; CENTER FOR BIOLOGICAL DIVERSITY APPEAR IN PERSON.</p> <p>NICKI CARLSEN, ESQ. &amp; MEGAN AULT, ESQ. FOR PHILLIPS 66 APPEAR IN PERSON.</p> <p>KURTIS KELLER, ESQ. FOR COUNTY OF CONTRA COSTA APPEARS IN PERSON.</p> <p>COUNSEL ARGUE THE FOLLOWING, POSTED, TENTATIVE RULING:</p> <p>Appearances required.</p> <p>Petitioners filed a motion to vacate the judgment and writ in this case pursuant to Code of Civil Procedure sections 663 and 663a. Petitioners argue that the judgment is inconsistent with the Court’s statement of decision because it allows the Project s Land Use Permit to remain in place and fails to enjoin Project operations pending the County s compliance with CEQA.</p> <p>CEQA, through the Public Resources Code, allows a trial court to leave project approvals in place. After a court finds a CEQA error, the court has three options: void a decision in whole or part; suspend certain project activities; or take other specified actions. (Pub. Resources Code, 21168.9, subd. (a).) CEQA does not require the court, on finding CEQA error, to void all project approvals. The plain language of section 21168.9 grants the trial court the discretion to leave project approvals in place. (Preserve Wild Santee v. City of Santee (2012) 210 Cal.App.4th 260, 286 290.) (Central Delta Water Agency v. Department of Water Resources (2021) 69 Cal.App.5th 170, 205.)</p> <p>The Court’s intention when issuing the statement of decision and judgment was to allow for construction activities, but not Project operations, while the County reconsider the CEQA issues. The Court has considered the parties papers for both this motion and Phillips motion and reaffirms its decision. The Court must still consider whether there is any conflict between the statement of decision and the judgment.</p> <p>In its statement of decision, the Court ordered the County to set aside its certification of the EIR because the piecemealing and cumulative impact issues affected the entire analysis of the Project.</p>	

Superior Court of California, Contra Costa County

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K. Bieker  
Court Executive Officer

The Court went on to explain that [t]he CEQA violations found here relate to Operation of the Project, but not to construction of the Project. Therefore, the Court will not issue an injunction preventing Phillips from continuing its construction activities while the County reconsiders these issues. (SOD at 29.)

The judgment in this case states that [t]he Court exercises its equitable discretion under Section 21168.9 to allow, and issues no injunction preventing, the construction of the Project to proceed during the Respondents' performance of actions taken to comply with the writ of mandate. (Judgment at 3.)

The Court finds that the judgment allowing construction activities is consistent with the Court's statement of decision. In both instances the Court found that it would not enjoin Phillips from engaging in construction activities related to the Project. Furthermore, because the land use permit allows for both construction and operation of the Project, the Court decided not to order the County to set aside the permit since setting aside the permit would conflict with the Court's decision to allow construction while the County reconsiders the CEQA issues.

There is, however, a potential conflict between the statement of decision and the judgment because the Court allowed the land use permit to remain in place but did not specifically enjoin Project operations. Therefore, the Court grants Petitioners motion to vacate the judgment and to issue a new judgment that specifically enjoins Project operations until further order of the Court.

THE COURT HAVING CONSIDERED THE PLEADINGS AND ORAL ARGUMENT OF COUNSEL HEREBY ADOPTS THE ABOVE NOTED RULING.

ATTY TARPEY IS TO PREPARE AN AMENDED JUDGMENT THAT SPECIFICALLY ENJOINS PROJECT OPERATIONS UNTIL FURTHER ORDER OF THE COURT. THE WRIT DOES NOT NEED TO BE CHANGED OR MODIFIED.

THE AMENDED JUDGMENT IS TO BE CIRCULATED FOR APPROVAL AS TO FORM.

A SEPARATE ORDER IS TO BE PREPARED DENYING THE MOTION FOR CLARIFICATION.

FUTURE HEARING(S):

DATED: 10/12/2023

BY: \_\_\_\_\_

C. FORFANG, DEPUTY CLERK

**Superior Court of California, Contra Costa County**

Department 01/39  
925-608-1000  
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K. Bieker  
Court Executive Officer

1 **PROOF OF SERVICE**

2 ***Communities For A Better Environment, et al. v. County of Contra Costa, et al.***  
3 **Case No. N22-1080**

4 **Contra Costa County Superior Court**

5 At the time of service, I was over 18 years of age and **not a party to this action**. I am employed  
6 in the County of San Francisco, State of California. My business address is 396 Hayes Street, San  
7 Francisco, CA 94102.

8 On October 27, 2023, I served true copies of the following document(s) described as:

9 **AMENDED JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE**

10 on the parties in this action as follows:

11 Thomas L. Geiger, Assistant County Counsel  
12 Kurtis C. Keller, Deputy County Counsel  
13 COUNTY OF CONTRA COSTA  
1025 Escobar Street, 3rd Floor  
Martinez, California 94553  
Tel: (925) 655-2200  
Fax: (925) 655-2263  
Email: thomas.geiger@cc.cccounty.us  
kurtis.keller@cc.cccounty.us

Representative for Respondents:  
COUNTY OF CONTRA COSTA; BOARD OF  
SUPERVISORS OF CONTRA COSTA  
COUNTY; and CONTRA COSTA COUNTY  
DEPARTMENT OF CONSERVATION AND  
DEVELOPMENT

14 Nicki Carlsen  
15 Megan Ault  
16 Kalina Zhong  
ALSTON & BIRD  
333 South Hope Street, 16th Floor  
Los Angeles, CA 90071  
17 Tel: (213) 576-1000  
18 Fax: (213) 576-1100  
19 Email: nicki.carlsen@alston.com  
megan.ault@alston.com  
kalina.zhong@alston.com

Attorney for Real Party in Interest:  
PHILLIPS 66

20 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to  
21 be sent from e-mail address tsanchez@smwlaw.com to the persons at the e-mail addresses listed in the  
22 Service List. I did not receive, within a reasonable time after the transmission, any electronic message  
or other indication that the transmission was unsuccessful.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
true and correct.

24 Executed on October 27, 2023, at San Francisco, California.

25  
26 

27 \_\_\_\_\_  
Tuloa Sanchez  
28



## **APPENDIX C**

# **Odor Prevention and Management Plan**

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# **Rodeo Renewed Odor Prevention and Management Plan**

**Date: January 2024**



**Table of Contents**

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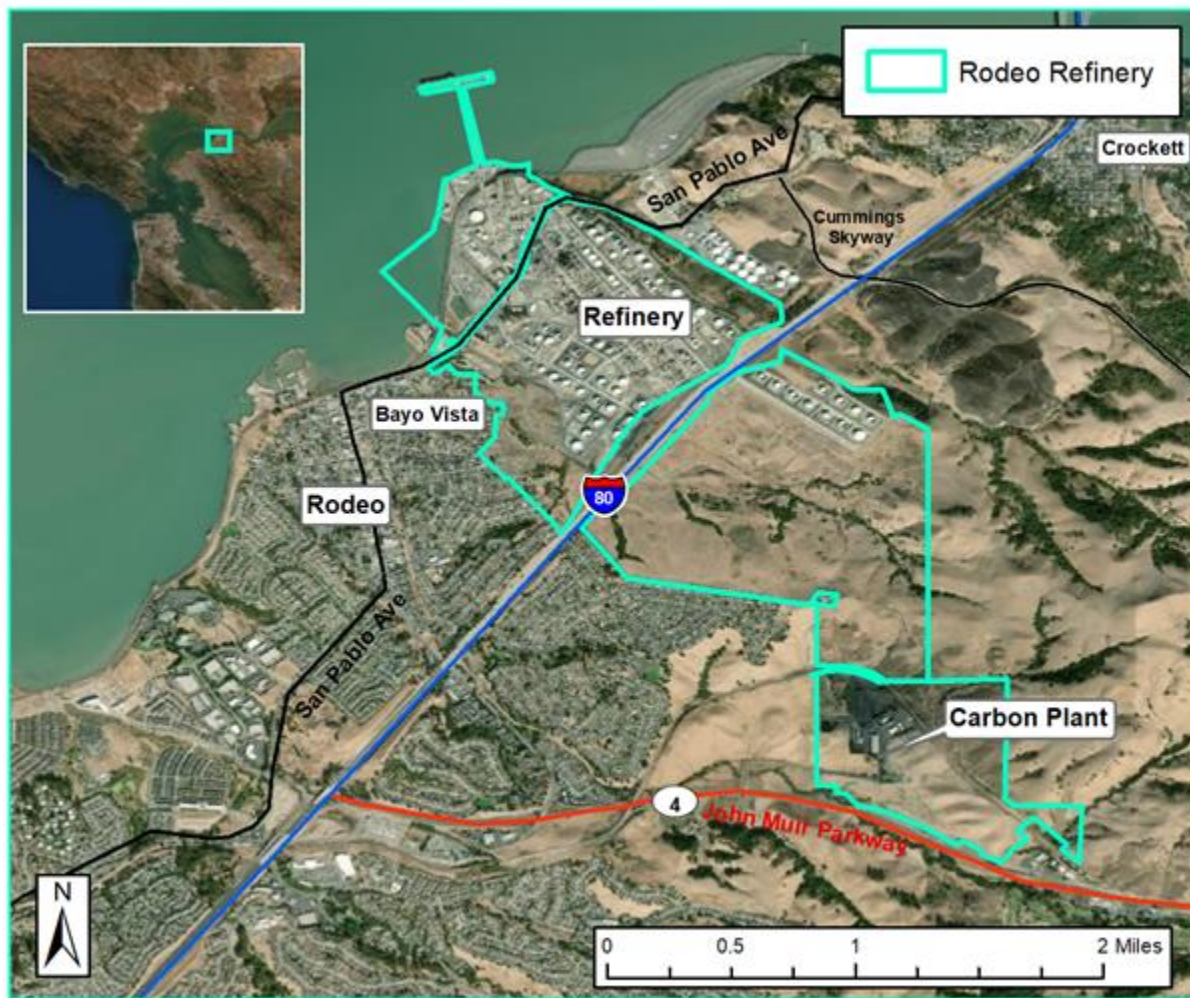
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## 1.0 Introduction

As shown in Figure 1-1, the Rodeo Refinery comprises approximately 1,100 acres of land, but the Rodeo Site is the 495-acre, developed portion of the property northwest of Interstate 80. The remaining portion of the Rodeo Refinery, southeast of I-80, consists of a tank farm and undeveloped land. The Rodeo Site is bordered by San Pablo Bay on the north and west, Interstate 80 on the southeast, the NuStar Energy tank farm on the northeast, and the Bayo Vista residential area of Rodeo to the southwest.

**Figure 1-1 Rodeo Refinery and Vicinity**



*Service Layer Credits: Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community*

### 1.1 Background

The objective of the Rodeo Renewed project is to modify certain existing facilities and install new essential supporting facilities (e.g., feedstock pretreatment, etc.) to allow receipt and processing of a variety of renewable feedstocks, such as used cooking oil (UCO), international waste Fat Oil & Grease (FOG), beef tallow, soybean oil, etc. for producing renewable fuels.



Phillips 66 is planning to utilize as much existing equipment and infrastructure as possible for receiving, transferring, and storing future feedstocks and products. The project also includes a new renewable feedstock pretreatment unit (PTU, BAAQMD Source No. S600) as an element of the Rodeo Renewed Project.

The current Phillips 66 Rodeo refinery has two existing hydrocrackers (Units 240 and 246, BAAQMD Source Nos. S307 and S434, respectively) that will be converted for producing renewable naphtha, renewable diesel, and renewable jet fuel with minimal modifications.

Environmentally-responsible construction and operation, which preserves the natural characteristics and environmental features, is a primary objective of the project design. The project will comply with all federal and local environmental, health, and safety regulations and will incorporate good engineering practice and operation/maintenance policies and procedures to minimize environmental emissions and discharges.

**Figure 1-2. Rodeo Site Plot Plan and Project Equipment.**



## 1.2 Purpose of the Odor Prevention and Management Plan

This Odor Prevention and Management Plan (OPMP, Plan) will become an integrated part of daily operations at the Rodeo Renewed Facility (“Facility”), to effect diligent identification and remediation of any potential odors generated by the Facility. The purpose of this Plan is to outline procedures that facility personnel shall use to address odor issues, facility wide.

The Plan will include continuous evaluation of the overall system performance, identifying any trends to provide an opportunity for improvements to the Plan, and updating the odor management and control strategies as necessary. This OPMP will be maintained, updated, and operated as reviewed and approved by Contra Costa County. All records associated with the OPMP will be kept for five (5) years.





## 2.0 Design Considerations for Odor Management

The first step in the process of controlling odors is designing active odor control measures into the facility. Techniques that can be used to reduce odor generation including reduction of volatile organic compounds (VOCs) and odor generation by covering appropriate units with closed sealed covers, using fixed roof or floating roof storage tanks, reducing fugitive emissions, controlling and mitigating system upsets, and using scrubbing, and incineration systems for vent gas streams.

Phillips 66 will also routinely employ Best Management Practices (BMPs) on a daily basis to ensure that odors are not generated during the transfer and delivery of renewable feedstocks and removal of PTU sludge.

- Renewable feedstock will be offloaded after it arrives at the Facility as soon as practical for timely processing.
- Sludge from the PTU evaporator (S615) will not be stored overnight in trucks prior to removal from the facility.
- Trucks delivering renewable feedstocks, whether in tanks or other containers, will offload the materials as soon as practical upon arrival and will not be used to store the materials overnight.
- In certain cases, railcars delivering renewable feedstocks will need to be stored for a short time on-site prior to unloading. In these cases, however, the railcars will remain sealed with all tank ports closed, vapor tight, and unheated, effectively limiting the potential to generate odors while on-site. In addition, all railcars are inspected (as described in Section 3) upon arrival at the Facility for any leaks and/or odors.
- Upon offloading, potential odors from the railcars will be controlled using the system described below.

The main focus are the areas where the renewable feedstocks are first unloaded from trucks, railcars, and marine vessels to Tank 100 (TK-100 [S97]) and at the feedstock PTU.

Railcar unloading (S70) odor abatement includes a pipe header system tied to a new activated carbon canister system. The system will have redundant blowers that provide suction to the header ensuring that railcars connected to the system will operate at slightly negative pressure, so potential odors are not released to the environment. The new activated carbon canister system contains two beds in series to ensure that odorous components are reduced to below detectable levels prior to release to the atmosphere. Any breakthrough that occurs on the first canister is controlled by the second canister and the saturated bed can be replenished without disrupting the odor abatement control of the rail unloading system. All railcars undergoing preheating or offload operation will be continuously attached to the odor abatement system until all contents are offloaded.

TK-100 is being repurposed to store renewable feedstocks with a fixed roof and new tank vent system that utilizes a nitrogen inert gas blanket. TK-100 will receive renewable feedstock from marine vessel and railcar unloading. The TK-100 vent system will be used to control any vapors generated while material is being unloaded from a marine vessel or railcar into TK-100. The TK-100 vent system operates either as in-breathing nitrogen when feeding the PTU or as out-breathing to the carbon canisters when receiving material into the tank. The blanket gas will be discharged via new blowers through activated carbon canisters for odor abatement prior to release to atmosphere. Both blowers and the carbon canisters have on-line spares. The TK-100 vent system is designed with push-pull pressure control that can be set to

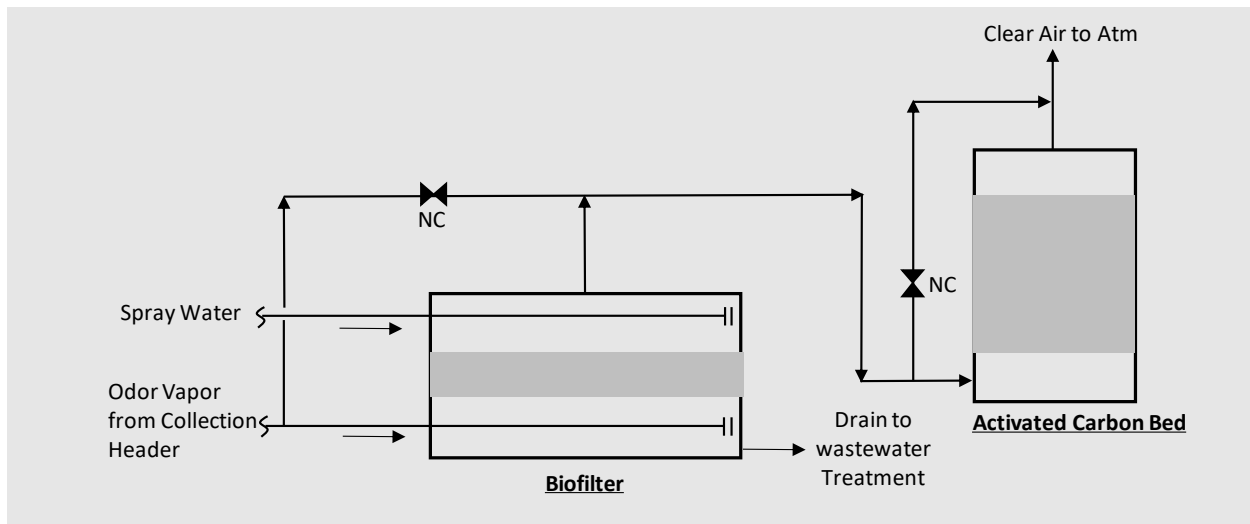


operate at a slight negative pressure. This ensures that no untreated odor is released to the atmosphere. The carbon canisters are designed with two beds in series to ensure that potential odorous components are controlled prior to release to the atmosphere. Full sparing of the carbon canisters will ensure that odor abatement of TK-100 will not be disrupted when one set of carbon beds is saturated and require replenishment. BAAQMD Authority to Construct permit condition number 27819 includes monitoring, inspection, and changeout frequency requirements for the TK-100 carbon canisters.

Other storage tanks that will be used to store untreated renewable feedstocks are connected to the existing tank vapor control system. The existing vapor control system on these tanks consists of a fixed roof with a natural gas blanket used to maintain a constant pressure in the tank vapor space (head space). Any vapors generated in these tanks are pulled out of the tanks by vapor recovery compressors and routed into the Facility fuel gas system. By controlling the pressure in the tanks and routing vapors to the Facility fuel gas system, vapors and potential odors are combusted and thus prevented from being released to the atmosphere.

The Odor Abatement System at the PTU includes an odor-vapor collection system and an odor-vapor treatment unit, which consists of a biofilter (A622, A624) followed by an activated carbon adsorption bed (A623, A625). The biofilter reduces odorous constituents from the collected vapor and the residual components discharged from the biofilter will be further treated by the activated carbon bed. A simplified Block Flow Diagram for the Odor Abatement System is shown in Figure 1.3.

**Figure 1.3. Simplified PTU Odor Abatement System**



### **Odor-Vapor Collection System**

Using a suction fan/blower, the Odor Abatement System will draw vapors from the head space of all ambient liquid tanks/vessels in the PTU that could have potential odor-causing vapors. The system is designed for five air exchanges per hour of head space volume to effectively prevent the emission of odorous vapors to the atmosphere prior to treatment. All vessels and tanks directly venting to the odor abatement system will operate under a slight vacuum to ensure no odor is released to the atmosphere from an individual source. For the vessels operated under vacuum, the non-condensable vapor discharged from the vacuum ejectors and blowers will also be directed to the Odor Abatement System for odorous constituent removal.





### **Biofilter**

Azzuro's Biotrickling filter technology with activated carbon bed combined system has been selected as the Odor Management System at the PTU. The multi-stage Biotrickling reactor is sized and optimized to maximize the contact time with the highest contact area available. This system has been utilized successfully in several sectors including municipal wastewater units, agriculture and food processing units, biogas desulphurization processing solutions, petrochemical, rendering plants and cellulose processing facilities.

The heart of the system is the patented spacious wire pac media, which has a unique structural design with high surface area per volume ratio, with a high odor removal efficiency (>99%). It is compression resistant (does not shrink) and has an excellent resistance to low pH and organic solvents, thus allowing for a longer life with a 20-year warranty. This media creates a substrate for the bacteria to colonize and flourish, and in doing so, creates the maximum surface area for bacteria to be in contact with the recovered air. This system also does not require water recirculation as it is able to maintain favorable conditions for the bacteria on the media.

The system has three stages to mitigate odorous components in the air flow:

- Stage 1 – inorganic odors are oxidized at the low pH by autotrophic bacteria
- Stage 2 – all other odorous components like fatty acids, and VOCs are biologically oxidized at a neutral pH by heterotrophic bacteria
- Stage 3 – the final stage consists of activated carbon treatment as a polishing stage.

The PTU odor abatement includes two parallel biofilters that allow for one of the biofilters to be isolated for maintenance while the other is in operation. This redundancy ensures sources in the PTU are abated at all times in the event one biofilter is isolated for maintenance. The redundant activated carbon beds alone are sized to provide sufficient odor abatement for the entire PTU in the unlikely event both biofilters are offline at the same time. This will allow additional flexibility and redundancy if both biofilters are to be temporarily offline during maintenance periods without shutting down the complete system.

This technology was selected based on proven history of operating in multiple industries for over 20 years. The system is a product based on years of research and development and has proven superior performance, both in industrial and municipal applications.

### **Activated Carbon Adsorption Bed**

An activated carbon adsorption bed is a proven technology for removing odorous constituents from vapor streams. Activated carbon beds alone are designed to be sufficient for odor abatement; however, the proposed 2-stage system with biofilter and activated carbon bed provides a robust solution for odor abatement during steady state operations and maintenance. During normal operation when both biofilters are operational, the carbon polishing stage has very minimal adsorption loading. This extends the useful life of the carbon adsorption bed for several years before replenishment is required, thereby reducing the generation of non-hazardous waste. BAAQMD Authority to Construct permit condition number 27649 includes monitoring, inspection, and changeout frequency requirements for the activated carbon beds.



## 3.0 Odor Monitoring and Inspection Program

The odor monitoring and inspection program described below has been designed to provide guidance for the proactive identification and documentation of odors through self-inspections and odor compliant investigations. In addition, this program outlines the general methods by which odor sources can be identified and resolved.

### 3.1 Identifying the Presence of Odor

The first step in the process of controlling odors is to determine if the odors are present and have the potential to cause a nuisance. This is done through employee training, routine employee observations, self-inspections, and odor complaint investigations. All odor complaints are directed to the Facility Shift Organization (Shift Superintendent on duty) at (510) 245-4070.

#### **Employee Training**

Training is provided to the Facility Shift Organization annually and includes training on the Facility's Refinery Emergency Operating Procedure (REOP)-11-Operations (OPS) EMERGENCY - Odor Complaint Investigation and Community Warning System (CWS) Notification Requirements (REOP-11) procedure (incorporated by reference, see additional discussion below under Odor Complaint Investigation) for general odor investigation, equipment isolation, fence line and ground level monitoring equipment and tank transfers as they relate to potential odors. Operators are trained on unit specific odor investigations as well as equipment isolation, and vessel/piping opening and cleaning requirements. The procedures and training provide guidance on how to identify the source of potential odors and as well as response to spills and loss of containment. Training is updated and refreshed annually.

#### **Daily Routine Employee Observations**

When any on-site facility employee detects an odor that has sufficient intensity or volume that it could lead to detection off-site and potentially cause a nuisance, it will be reported to Shift Supervision to investigate to determine the source of the odors. In addition, Operators complete monitoring and inspection rounds every day twice per 12-hour shift (i.e., four times per day) where they walk through the Facility and will report any noticeable odors, or other issues that could lead to odors (e.g., gas or liquid leaks), to the Shift Supervision. Once the source of an odor is determined, the Facility staff will respond to mitigate or otherwise control the odor source and restore the area to normal operations. Such on-site investigation, reporting, and remediation of odors are inherent components of the site's standard operating procedures.

#### **Self-Inspection**

The primary objective of this method is to identify and mitigate odors from the facility before the odors can result in off-site migration. This is accomplished through routine operational self-inspections. The self-inspections will be performed at random times with daily and weekly variability until meaningful trend data is collected to ensure that trending data is not biased by a pattern in self-inspection.

#### **Odor Complaint Investigation**

Phillips 66 strives to be a good neighbor and a contributor to the local community. All odor complaints received by the facility will be promptly investigated. Investigations by facility staff will begin within one (1) hour, or as soon as is practical, within the confines of proper safety protocols and site logistics. The



goal of an investigation will be to determine if an odor originates from the facility and, if so, to determine the specific source and cause of the odor, and then to remediate the odor by taking corrective actions. Upon receipt of an odor complaint, the REOP-11 procedure will be followed.

The REOP-11 procedure includes corrective action steps to investigate, identify, stop and prevent further odorous releases. Initiated upon receiving an odor complaint from inside or outside the Facility, the Shift Superintendent on duty determines what corrective action to take, and each of the Operating Departments makes separate odor inspection tours to identify unusual odors or typical low-level odors with a higher intensity than normal. The real time ground level monitor and fenceline monitor data will be reviewed for suspect readings. Odor complaints from outside the Facility are documented using the Incoming Call Log by the Shift Superintendent on duty. The general telephone number for the Phillips 66 Rodeo Refinery is (510) 245-4070.

Sources or processes determined or suspected to contribute to offsite odors shall be mitigated or otherwise controlled as soon as practicable and, if initiated by an offsite complaint, then no later than within 24 hours of receiving the offsite odor complaint. REOP-11 will be updated as necessary to correct for and prevent repeat odor incidents.

### 3.2 Preventive Odor Management

Preventive odor management and relief system management are interrelated. Preventive odor management, for the purposes of this Plan, will be the temporary measures employed during any facility maintenance activity that has the potential to generate odors, such as opening of vessels or piping.

Prior to any maintenance activities, standard pre-job planning and procedures have been developed and are in place at the Facility for the safe flushing and cleanout of the equipment, vessels, piping, etc., prior to opening the system for maintenance work. Equipment must be depressurized and flushed into an enclosed receiving system, such as vapor recovery vessels. Typical cleaning will include steam, chemical cleaning, and a water wash/rinse. Pre-job planning involves operations, maintenance, and any trade/craft involved in the maintenance to ensure all of the proper safeguards are in place and understood. This prevents any odor causing issues. Several other programs, such as Leak Detection and Repair (LDAR) and Fenceline Monitoring, also work in conjunction and support the overall odor management program at the facility.



## 4.0 Administrative Procedures

### 4.1 Recordkeeping and Retention

OPMP records will be retained for a period of five (5) years. These records will include, but not be limited to:

- Employee Training Attendance and Certification of Completion
- Logs of Odor Control Equipment Maintenance and Repairs
- Logs of Daily Routine Employee Observations
- Logs of Random Self-Inspections
- Documentation of Odor Complaint Investigations
- Documentation of Remedial/Corrective Actions and Resolutions

Phillips 66 will develop forms for Facility use that provide specific record formats to ensure data consistency. OPMP records will be kept on site in a secure location with other operating records and are available upon agency request.

### 4.2 Plan Updates

The OPMP will be updated as necessary to accommodate changing operating procedures at the Facility and to improve odor prevention and control protocols as warranted. The updated OPMP will be submitted in draft form to Contra Costa County for review and comment prior to finalization consistent with any comments received.