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VIA ELECTRONIC MAIL¹

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Re: CBE Comments on Phillips 66 Rodeo Refinery Propane Recovery Project Draft Environmental Impact Report (**State Clearinghouse #2012072046, County File #LP12-2073**)

Dear Ms. Cross and Contra Costa County Department of Conservation and Development:

Phillips 66 proudly declares its intent to process only heavier crude. At the Rodeo refinery, this means primarily crude from Western Canada, which Phillips 66 intends to bring in by rail and ship. The Propane Recovery Project is one critical piece of the refinery change, but the Draft Environmental Impact Report never mentions this larger project, let alone analyzing the impacts to the people who live and breathe in Contra Costa county, identifying less harmful alternatives, or mitigating impacts.

Communities for a Better Environment (“CBE”) submits the following comments on the Phillips 66 Propane Recovery Project in Contra Costa County (“Project”) Draft Environmental Impact Report (“DEIR”) to clarify the flaws in the DEIR and request that Contra Costa county address these flaws. CBE is a California nonprofit environmental health and justice organization with offices in Oakland and Huntington Park. CBE has thousands of members throughout the state of California. More than 2,700 of CBE’s members live, work, or engage with environmental justice issues in urban communities in Northern and Southern California. This includes hundreds of people living, working, and breathing in Contra Costa County (“County”) and the area surrounding the Phillips 66 Company, formerly Conoco Phillips, Refinery (“Refinery”). CBE’s organizational goals include protecting and enhancing the environment and public health by reducing air and water pollution and minimizing hazards in California’s urban areas, including the area surrounding the Refinery.

As further detailed in the accompanying expert declaration by Greg Karras, this Project poses significant risks for spills, fires, and explosions; threatens to lock the Refinery into processing heavy high-sulfur crude; and invests in expanded use of environmentally-detrimental once-through cooling. Nevertheless, if the Project is informed by additional analysis of significant environmental impacts, feasible mitigation measures, and superior alternatives – it presents an opportunity for the County to take steps toward improved health and safety for workers and the surrounding community, as well as toward local and state plans to transition away from fossil fuels and towards green clean energy and jobs for local communities.

¹ Due to the size of the reference documents, an electronic storage device is being sent via U.S. Mail, along with a physical copy of these comments and the technical comments of Greg Karras.

The drafting of an environmental impact report such as this one is precisely the process intended to ensure that agencies consider all relevant information, allow public participation, and avoid or reduce significant environmental impacts when feasible. In its current form, however, this DEIR fails to achieve these goals and does not comply with the California Environmental Quality Act (“CEQA”). Pub. Resources Code § 21000 et seq. The DEIR is unclear, incomplete, and inadequate. The most glaring example of the DEIR’s inadequacy is in its project description, which is missing basic project duration information, lacks any detailed project specifications, and fails to mention reasonably foreseeable future actions implicated by the Project. The DEIR also improperly segments the Project from other Refinery projects; is inconsistent with applicable local and state plans; fails to analyze and mitigate stated and reasonably foreseeable significant impacts; and fails to fully discuss alternatives.

CEQA is intended “to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259; see also, *Laurel Heights Improvement Ass’n. v. Regents of University of California* (1988) 47 Cal.3d 376, 390. CBE is concerned that the DEIR fails to address the adverse health and environmental impacts the proposed Project will have upon CBE members in the communities surrounding the Refinery. More broadly, the DEIR further fails to address the foreseeable increase in greenhouse gas (GHG) emissions that will flow directly and indirectly from the proposed Project, creating grave potential impacts for all Californians.

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I. THE DEIR FAILS TO INCLUDE SUFFICIENT INFORMATION TO MEET CEQA'S PURPOSE OF PROMOTING INFORMED DECISIONMAKING AND PUBLIC PARTICIPATION.

When viewed as a whole, an EIR should provide a reasonable, good faith disclosure and analysis of environmental impacts, and must detail sufficient information to allow decision-makers and the public to understand the environmental consequences of the project. *Laurel Heights* (1988) 47 Cal.3d 376; *California Oak Found. v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 269; *In re Bay-Delta Programmatic Env't Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1175. As an environmental justice organization, CBE is particularly concerned with the lack of information contained in this DEIR as written, because it fails to provide the public and its responsible officials with adequate information to inform their decisions *before* they are made. Specifically, the DEIR fails to adequately describe the scope of the Project and thereby fails to identify the significant effects of the Project on the environment. *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. In large part because of its failure to adequately describe the project and identify its potential impacts, the DEIR also fails to identify alternatives to the project and fails to indicate the manner in which significant effects of the Project might be mitigated or avoided. *See id.*; *see also Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 400, *quoting* Pub. Resources Code § 21002.1(a); and Guidelines 15002(a). The DEIR, therefore, thwarts CEQA's key objective to provide public participation in environmental decisionmaking and planning processes, and as such, should be revised and recirculated for public review. *See Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1355 ("the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process"); *see also Russian Hill Improvement Ass'n v. Board of Permit Appeals* (1974) 44 Cal.App.3d 158,168.

A. The DEIR relies upon conclusory statements without sufficient factual, analytical, or legal support

To be adequate, EIR must at a minimum:

- Inform the public and decisionmakers before decisions are made;
- Provide good faith disclosure, sufficient information to evaluate consequences, and all relevant data compiled in a single report;
- Be clear;
- Have enough technical detail included, or cited to, for parties to evaluate statements made in the EIR;
- Make reasonable forecasts; and
- Be based on substantial evidence to support conclusions on questions of fact.

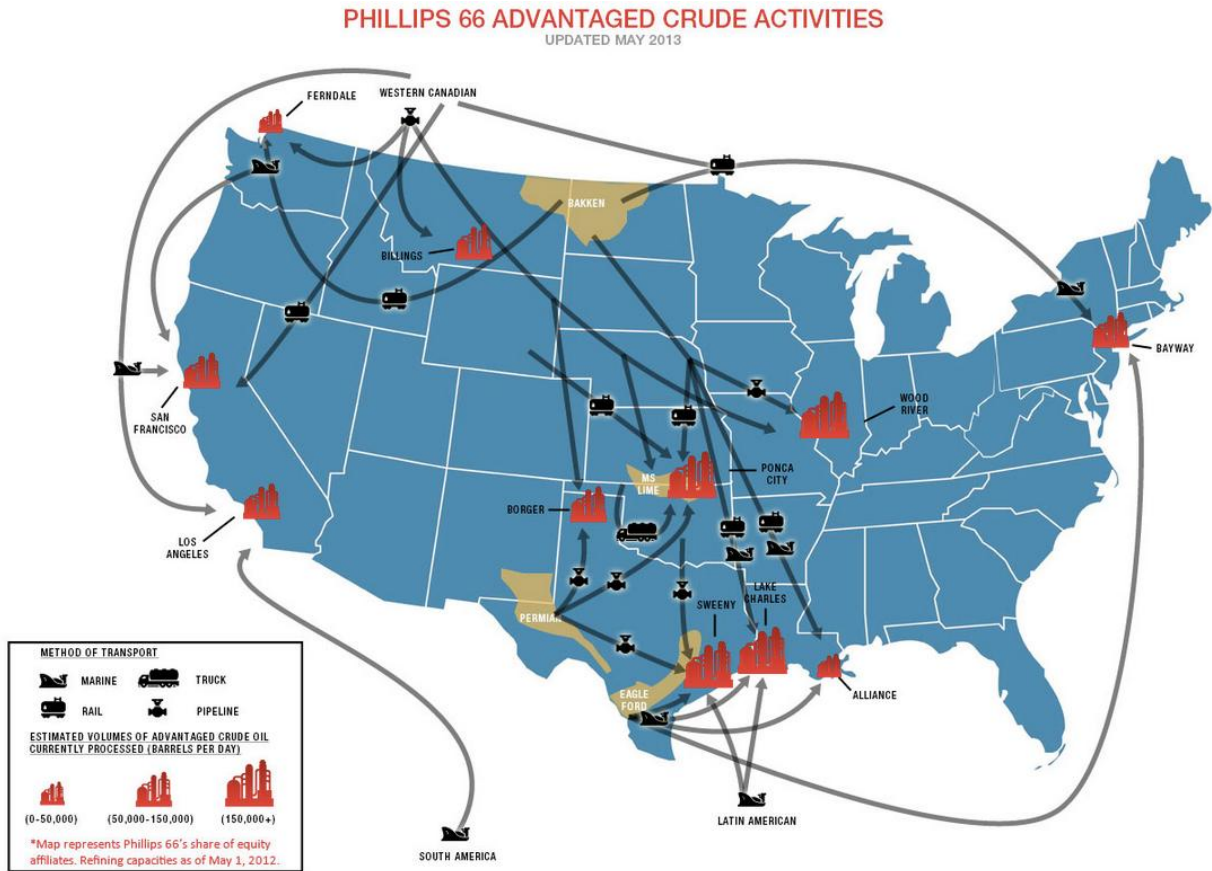
Because such information is critical to making a reasoned evaluation of the full impacts of a proposed project, it should be compiled and presented clearly in a single report in order to facilitate both public input and the decisionmaking process. *Russian Hill Improvement Ass'n v.*

Board of Permit Appeals (1974) 44 Cal.App.3d 158, 168. As described in further detail in Section III, and in the concurrently submitted declaration by technical expert, Greg Karras, the DEIR fails to inform the County or the public of the potential impacts of the Project by failing to adequately analyze, support by reasonable forecasts, technical detail or other evidence, the following foreseeable impacts: effects on hazards, air quality, biological resources, and climate change.

The omission of adequate information is particularly perplexing where the missing information is publically available. Readers of any EIR should not be forced to sift through obscure minutiae or appendices, or to rely on outside research and resources to find important components of a thorough environmental analysis. *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 649; *see also, California Oak Found. v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239. Here, the DEIR does not disclose pertinent information relating to the anticipated source and quality of crude feedstock the Refinery plans to process. Yet Phillips 66's has announced to the public its strategy of shifting to refining "advantaged crude." Phillips 66 defines "advantaged crude" as "heavy crude oil from Canada and Latin America, lighter Canadian grades, and West Texas Intermediate (WTI)." *Phillips 66 Delivers on Advantaged Crude Strategy*.² A map available on the Phillips 66 website (shown below) specifically highlights the strategy of transporting Western Canadian crude oil to the Rodeo Refinery both by marine vessel and rail. *Phillips 66 Advantaged Crude Activities: Updated May 2013*.³ Of the advantaged crude sources shown on the map, only Western Canadian crude is shown as being transported to the Rodeo Refinery. *Id.* Moreover, Phillips 66's CEO has articulated a target of shifting to 100% advantaged crude in two years. *Transcript of May 1, 2013 Phillips 66 First-Quarter Earning Conference Call*, pp. 19-20.

² Available at: <http://www.phillips66.com/EN/newsroom/feature-stories/Pages/AdvantagedCrude.aspx>, last accessed Aug 7, 2013.

³ Available at: <http://www.phillips66.com/EN/Advantaged%20Crude/index.htm>, last accessed Aug 7, 2013.



Phillips 66 map indicating plans to transport Western Canadian crude oil to the Rodeo Refinery.

Phillips 66 Advantaged Crude Activities: Updated May 2013, last accessed Aug 7, 2013, available at: <http://www.phillips66.com/EN/Advantaged%20Crude/index.htm>.

As discussed in Section II, comments made over the past year by Phillips 66 officials, including CEO Greg Garland, indicate that this crude strategy applies to both of Phillip 66's California refineries, with at least one official specifically mentioning crude strategy for the Rodeo Refinery. *See, e.g., Transcript of Dec. 13, 2012, Phillips 66 Analyst Meeting.*⁴ For example, at the UBS Global Oil & Gas Conference, Greg Maxwell, Executive Vice President of Finance and CFO of Phillips 66, stated:

[A]s you probably know, we're with regard to our LA and San Francisco refineries, we're fairly heavy. We can run some lights in San Francisco. As far as working towards getting advantaged crudes into that, we're looking at options to take down via pipeline -

⁴ Available at: http://www.phillips66.com/EN/investor/presentations_ccalls/Documents/PSX_Investor_Transcript_12_13.pdf; *Transcript of May 21, 2013, Phillips 66 Presentation at UBS Global Oil & Gas Conference*, last accessed Aug 7, 2013; http://www.phillips66.com/EN/investor/presentations_ccalls/Documents/2013%20UBS%20Oil%20and%20Gas%20Conference.pdf last accessed Aug 7, 2013.

- I mean via rail cars, and then also going over to the waterfront and barging down into those refineries.

Id.

The source of crude necessary for the Project, and foreseeably anticipated in the future due to the Project, is crucial information for an adequate analysis of the environmental impacts of the Project, as further discussed below. While likely crude sources are foreseeable, due to technical reasons, this Project changes the likelihood to a near certainty that the crude slate will be locked into high-sulfur crude for the next few decades. *See* Karras Decl. In failing to address these elements of the Refinery's crude source, the DEIR falls far short of meeting its obligation to state reasonable forecasts of potentially significant future impacts of the Project, and is thus inadequate.

In addition to omitting information about crude feedstock, the DEIR fails to provide sufficient information about the Project's duration, LPG storage tank specifications and its hydrotreater system necessary to evaluate the environmental consequences of the Project. *See* Karras Decl. The DEIR also fails to provide crucial technical detail and evidence, including an undisclosed Emissions Reduction Credits (ERC) application, 1995 Wharf Lease Final EIR, various Regional Water Quality Control Board permits and reports, County Industrial Safety Ordinance, and US Chemical Safety Board Interim Chevron report. *See* Karras Decl. Ultimately, the lack of sufficient information in several areas and the lack of crucial technical evidence make the DEIR unclear and far from a single report clearly written to inform the reader of the consequences of the Project.

The DEIR must include the information discussed above to fulfill CEQA's requirement to provide substantial evidence to support its environmental conclusions. *Laurel Heights*, 47 Cal.3d at 392. Without this information, the public cannot understand and participate in the decisionmaking process, and the County cannot fulfill its CEQA obligations.

II. THE PROJECT DESCRIPTION AND ENVIRONMENTAL SETTING ARE INADEQUATE UNDER CEQA BECAUSE THEY ARE UNCLEAR, INCONSISTENT, AND INCOMPLETE.

For the foreseeable future, the Project as proposed will lock the Refinery into the undisclosed and environmentally significant processing of higher sulfur crude oil, threatening to exacerbate environmental and health impacts already endured by local residents. This higher sulfur crude processing also undermines local and state plans to reduce greenhouse gas emissions. The DEIR's project description, however, obscures these Project impacts because it omits a good faith and detailed description of the scope, design and implementation specifications of the Project.

A misleading project description is critically detrimental to CEQA's goal of achieving maximum environmental protection as it inhibits the public or decision makers' access to meaningful information. In *County of Inyo v. City of Los Angeles*, the Court of Appeal held that a "finite project description is indispensable to an informative, legally adequate EIR."

County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 199. In that case, the Court found the EIR's project description legally deficient because the City of Los Angeles described the project as merely expanding the pumping of water in Owens Valley for use within the Valley when the City really was paving the way for the expanded pumping of water to send to Los Angeles. *Id.* Thus, the Court held that "the selection of a narrow project as the launching pad for a vastly wider proposal frustrated CEQA's public information aims." 71 Cal.App.3d, . 199-200; *see also* 14 Cal Code Regs §15124.

As further described below, the DEIR project description is deficient, and fails to meet the Court's ruling in *County of Inyo v. City of Los Angeles* because:

1. The description does not state the project duration and various technical specifications;
2. The description does not include all components of the project; and
3. The description lacks a discussion of the shift in crude source as either an objective or impact of the Project.

Regardless of whether such deficiencies are directly related to the DEIR's overall omission of any discussion of the Project in relation to Refinery's larger single project to switch its crude, these deficiencies render the DEIR as a whole, inadequate.

A. The Project Description is Inadequate Because it Does Not State the Project Duration and Various Technical Specifications.

In *Communities for a Better Env't v. City of Richmond*, the EIR failed "as an informational document because the EIR's project description [was] inconsistent and obscure as to whether the Project enables the Refinery to process heavier crude." *Communities for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 89. In that case, the project description was inconsistent compared to statements within the EIR itself, and differed considerably from the "the Project that Chevron described in a filing with the United States Security and Exchange Commission (SEC)[.]" *Communities for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 83. In another case, where sewer expansion was recognized by the DEIR as necessary to the project, yet was excluded from any description of the development of the Project in the final EIR, the Court found that the FEIR was premised on an improperly "curtailed" and "distorted" project description. *San Joaquin Raptor/Wildlife Rescue Ctr. v. Cnty. of Stanislaus* (1994) 27 Cal. App. 4th 713, 729-30. The Court held, that "even where the FEIR [is] deemed to be adequate in all other respects, the selection and use of a truncated project concept violate[s] CEQA and mandates the conclusion that the County did not proceed in a manner required by law." *San Joaquin Raptor/Wildlife Rescue Ctr. v. Cnty. of Stanislaus*, 27 Cal. App. 4th 713, 730 (citing *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 200; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454-1455) (internal quotation marks omitted). In sum, "[a]n accurate, stable and finite project description" has been upheld as "the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

1. Basic project duration information is not discussed.

The project description, as well as the DEIR as a whole, fails to disclose or discuss the anticipated technical life of the proposed Project. The expected operational duration of the Project is vital because only with this information can environmental consequences be adequately evaluated by decisionmakers and the public. Research shows that similar refinery processes have operated for 30-50 years. *See* Karras Decl. Given this potentially significant period of operation, it is necessary to identify with at least reasonable precision, the expected duration of the proposed Project so that the scope and scale of environmental impacts stemming from the Project can be analyzed and either avoided or reduced. For example, if the Project locks the Refinery into processing dirty crude for the next 30-50 years, this will have significant air quality and cumulative greenhouse gas emission impacts. The resulting health risks facing residents of the communities near the refinery—communities that are already disproportionately impacted by the number of industrial and refinery projects in the area, including the current Refinery—are likely to be significant and require mitigation.

2. Technical specifications of project components are not sufficiently discussed.

In order to accurately identify the Project and analyze the scale of effects from design, implementation and process changes proposed, the project description should detail the technical specifications of the Refinery's planned crude feedstock *quantity* under the Project. In addition, to be sufficient, the project description should include specifications of the proposed change in crude feedstock *use* resulting from the Project. Such details are necessary to evaluate the environmental consequences of the Project because they relate to changes in the location of emissions, potential emissions from future projects, flaring, and furnace operations. *See* Karras Decl. In addition, the *quality* of the feedstock is relevant both to disclosed and undisclosed project objectives and impacts. *See*, Part C, and Section III below for further discussion of potential impacts from crude feedstock quality.

The DEIR also fails to provide sufficient information about the LPG storage tank specifications and its hydrotreater system needed to evaluate the potential environmental impacts of the Project. *See generally*, Karras Decl. For example, although the DEIR states that six pressurized propane storage tanks will be an equipment requirement of the Project, and further admits that LPG production for export sales will increase by at least 17.5% of its current total crude feed, the DEIR fails to address the potential impact that a change in the location of emission combustion sites associated with the increase of LPG production will have on the environment. *See id.* Similarly, the DEIR omits mention of the potential impacts that the Refinery's reliance on "cracking" denser hydrocarbons will have on the surrounding environment, as it fails to explicitly detail how exactly the Project will meet its export objectives. *Id.* Accordingly, the DEIR falls far short of providing decision makers and the public with a "finite project description" as is required by law. *County of Inyo v. City of Los Angeles, supra*, 71 Cal. App. 3d 185.

B. The Project Description Improperly Segments A Larger Single Project And Does Not Include Components of that Project.

A complete project description is necessary to ensure that all of the project's environmental impacts are considered. *City of Santee v. County of San Diego* (1989) 214 CA3d 1438, 1450. A lead public agency, therefore, cannot subdivide a single project into smaller individual subprojects to avoid consideration of the environmental impacts of the project as a whole because the requirements of CEQA cannot be satisfied by "chopping up proposed projects into bite-size pieces" *Orinda Ass'n v. Board of Supervisors* (1986) 182 CA3d 1145, 1171 (citing *Topanga Beach Renters Assn. v. Department of General Services* (1976) 58 Cal.App.3d 188, 195-196) (internal quotation marks omitted). Because the DEIR omits reference to the Refinery's larger single project to switch crude, the DEIR as presently drafted, improperly segments the proposed Project from a larger single project in violation of the applicable CEQA standards.

1. The Failure of the Project Description to Describe the Refinery's Overarching Project to Switch Crude Quality Taints the Accuracy of Information Presented and Frustrates CEQA's Purpose to Consider the Full Environmental Impacts of the Project

The EIR process for this Project presents a critical opportunity to engage in a genuine and thorough review of the full environmental impacts of Refinery's proposed Project, specifically in the context of its overall single large project to switch crude quality. While it is true that a proposal, which is related to, but has independent utility of, and is not necessary for another project to proceed, need not be included as part of the project description and may be reviewed in its own EIR as a separate project, that is not the case with the Project. *See, Communities for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 108. As further detailed below, this Project does not have independent utility without the Refinery's single large project to switch its crude quality, and therefore, mandates full environmental review and consideration of its impacts in the context of any and all additional components of that single large project. *See, Id.; see also, City of Santee v. Cnty. of San Diego* (1989) 214 Cal. App. 3d 1438, 1447.

Phillips 66's statements, the Refinery's past activities, and the technical requirements and implications of making the Propane Recovery Project feasible reveal the overarching single large project to change the Refinery's crude quality and crude processing system. Indeed, Phillips 66 publically, explicitly and enthusiastically proclaims its intention to pursue every infrastructure and process change necessary to transition to refining 100% "advantaged crude." For the Rodeo Refinery this means mostly Western Canadian crude, arriving by ship or rail. Moreover, expert analysis confirms that the Project proposed here only has practical utility in the context of this overarching effort to switch the Refinery's crude source and quality by processing its 100% advantaged crude. *See* Karras Decl. The Project, thus, is but one piece of the larger crude switching effort, a single project. As such, the DEIR for the current proposed Project must describe and analyze the larger crude switch project, which it fails entirely to do. To comply with the requirements of CEQA, however, an adequate project

description must include all the components of any larger single project, in this case, the project is Refinery's single large project to switch its crude quality.

The DEIR's project description does not include components of the larger project including: (1) the Marine Terminal Offload Limit Revision Project (2013), (2) Low Sulfur Diesel Project, and (3) the Wharf Lease (1995). These past projects explicitly foresaw needing to replace the Refinery's pipeline-sourced crude, but did not discuss an overarching plan to switch to crude such as diluted bitumen. However, the current proposed Project locks in coking, which requires dense crude, such as the cheapest diluted bitumen from tar sands. Until this Project proposal, new crude could still have been cleaner than diluted bitumen tar sands from a practical point of view. Karras Decl.

With this Project, the Refinery is, thus, in effect, foreclosing the option to shift to cleaner crude – all without an EIR analyzing the impacts of the crude switch or a comprehensive GHG reduction plan. Karras Decl. Additionally, because the CEQA initial study for the Marine Terminal Offload Limit Revision Project concluded in a Negative Declaration and did not evaluate the change in crude *quality*, yet, the current proposed Project makes fundamental equipment changes *designed specifically to enable a long-term crude quality switch*, there are potentially irreversible environmental impacts that demand public and agency attention, and full review. *Orinda Ass'n v. Board of Supervisors* (1986) 182 CA3d 1145, 1171 (“A public agency is not permitted to subdivide a single project into smaller individual subprojects in order to avoid the responsibility of considering the environmental impact of the project as a whole.”).

For these reasons, it has become clear to CBE and its allies that this Project is a necessary, final debottlenecking and long-term investment potential, that makes the single large project to switch crude quality possible. Therefore, it is critical that the County demand a full EIR for the Project, that includes a genuine and good faith comprehensive analysis of the environmental impacts of all aspects of the Project, **including the overall single large project** to switch crude quality and crude processing. *See, Santiago County Water Dist. v. County of Orange* (1981) 118 CA3d 818, 830. A failure to do so, would run counter to well established law, prohibiting public agencies from piecemealing, improperly segmenting and subdividing a single project into smaller projects, wherein the overall significant environmental effects are obscured. *Orinda Ass'n v. Board of Supervisors* (1986) 182 CA3d, at 1171 (citing *Topanga Beach Renters Assn. v. Department of General Services* (1976) 58 Cal.App.3d 188, 195-196).

C. The Project Description Lacks a Discussion of the Shift in Crude Quality as Either an Objective or Impact Of the Project

An adequate EIR must analyze “the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 396.

The project description does not discuss the reasonably foreseeably significant future actions of shifting the Refinery's crude feedstock quality to dense, high sulfur crude such as diluted bitumen from tar sands. According to a Phillips 66 company executive quoted by Reuters, "Phillips 66 has begun moving cut-price Canadian crude to its California refineries via rail." *Phillips 66 moving some Canadian crude to Calif. refineries –exec*, Feb 5, 2013, last accessed Aug 8, 2013, available at: <http://www.reuters.com/article/2013/02/05/phillips66-california-crude-idUSL1N0B5JMJ20130205>. The article went on to state that Phillips 66 CEO Greg Garland "told analysts that the company was looking at railcars capable of transporting Canadian heavy crude to the West Coast." *Id.* In March of this year, Bloomberg's news service reported that "Phillips's moves will bring a variety of U.S. and Canadian crudes to refineries around the country via pipeline and rail" and that "Phillips's Rodeo refinery near San Francisco could also receive crude deliveries, displacing imports from outside North America." *Phillips 66 Signs Deals to Boost Oil Deliveries by Pipe, Rail*, Mar 20, 2013, last accessed Aug 8, 2013, available at: <http://www.bloomberg.com/news/2013-03-20/phillips-66-signs-deals-to-boost-oil-deliveries-by-pipe-rail.html>.

As mentioned above, Phillips 66's website proudly proclaims a strategy to transition to "advantaged crude," which includes "heavy crude oil from Canada." *Phillips 66 Delivers on Advantaged Crude Strategy*, last accessed Aug 7, 2013, available at: <http://www.phillips66.com/EN/newsroom/feature-stories/Pages/AdvantagedCrude.aspx>. Moreover, the webpage, which appears to have been posted in 2013, quotes CEO Garland as saying "We are looking at pipe, rail, truck, barge and ship -- just about any way we can get advantaged crude to the front end of the refineries." *Id.* The news release states "The next challenge for the company is identifying strategies to get more advantaged crude oil to its California refineries." *Id.* Jay Clements, Phillips 66's manager of Business Development and leader of the advantaged crude strategy team is quoted as saying, "The California refineries are capable of running a wide range of crude oils which creates opportunities throughout North America to supply California *if we can find a cost effective mode of transportation.*" *Id.* (emphasis added).

Public statements made to investors reveal even more of the strategy, not only to bring more Canadian crude to the Rodeo Refinery, but also its connection to export capabilities and profitability assessments of California refineries as a whole. As CEO Garland stated:

California is a challenging operating environment from a regulatory standpoint, we do not see that changing over the midterm. And so ***our opportunity to improve performance in California is really around getting advantage crudes to the front end of the California refineries, it's rail, it's ship, it's working on optimization of the cost structure and the export capabilities of those refineries.*** And we'll improve them to the extent that we can.

Transcript of Dec. 13, 2012, Phillips 66 Analyst Meeting, last accessed Aug 7, 2013, available at: http://www.phillips66.com/EN/investor/presentations_ccalls/Documents/PSX_Investor_Transcript_12_13.pdf (emphasis added).

Furthermore, expert research reveals that the technical specifications of the Project as described indicate a locking-in of a change in crude feed quality to meet the LPG production objectives. This is supported by an assessment of the commitment to coking in order to crack propane and butane from crude residua or bitumen, and that only denser, higher sulfur crudes will have enough residua/bitumen for this process. *See* Karras Decl. In this context, the DEIR must also analyze whether the proposed rail spur and loading rack would contribute to increased importing of diluted bitumen. Thus, even without the additional evidence of the corporate strategy and market realities, just looking at the stated project specifications implicates long-term effects which must be discussed. *City of Santee v. County of San Diego* (1989) 214 Cal. App. 3d 1438, 1455.

In addition to being reasonably foreseeable, the future expansion into dirty crude is environmentally significant. As will be discussed further in Section III, the switch in crude quality has direct impacts on hazards, air quality, and biological resources, as well as cumulative impacts on climate change. These impacts must be analyzed and either avoided or reduced, as “[t]he EIR is intended to furnish both the road map and the environmental price tag for a project.” *Natural Resources Defense Council, Inc. v. City of Los Angeles*, 103 Cal. App. 4th 268, 271.

D. The DEIR Inadequately Describes the Environmental Setting in Failing to Sufficiently Discuss Inconsistency with Applicable Plans.

The DEIR is inadequate for failing to discuss any potential inconsistency with applicable plans, polices, and regulations including (1) state policy and Regional Water Quality Control Board (RWQCB) orders to retire once-through cooling (OTC) systems, (2) the County Industrial Safety Ordinance (ISO), (3) U.S. Chemical Safety Board guidance regarding risk analysis, (4) the Contra Costa General Plan, and (5) the California Global Warming Solutions Act (AB 32). The CEQA Guidelines state:

The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, regional blueprint plans, plans for the reduction of greenhouse gas emissions, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

CEQA Guidelines § 15125(d); *see also, San Franciscans Upholding the Downtown Plan v. City & Cnty. of San Francisco* (2002) 102 Cal.App.4th 656, 678.

An applicable plan, policy, or regulation is one that has already been adopted and thus legally applies to a project. *Chaparral Greens v. City of Chula Vista* (1996) 50 CA4th 1134, 1145, n7. The Project conflicts with state policy and RWQCB orders to retire OTC systems by not only proposing to expand the OTC system, but foreclosing the option to end use of the system in the foreseeable future. Additionally, the switch to denser, higher sulfur crude, as

well as the proposal to store propane in pressurized tanks, conflicts with the County ISO that requires Inherently Safer Systems (ISS). These proposals are also inconsistent with U.S. Chemical Safety Board (CSB) findings that apply to all refineries and call for industrial safety analysis, seeking to drive risk “as low as reasonably practicable” (ALARP). The CSB also found a catastrophic failure hazard from running higher sulfur crude in existing refineries built before 1985.

Moreover, the Contra Costa County Plan sets goals of increasing the usage of renewable energy such as wind, solar, and biomass methane production, yet the DEIR fails to discuss the Project’s conflict with these important sections of the County’s General Plan. In addition, the Global Warming Solutions Act of 2006 (AB 32) recognized that “[g]lobal warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California, and set the current state-wide 2020 greenhouse gas emissions reduction goal into law. Not only does the DEIR fail to discuss the Project’s foreseeable increase in GHG emissions, and thus its inconsistency with AB 32, but it also fails to disclose that Phillips 66 officials themselves have noted the possible conflict between the law and their strategy for their two California refiners. Asked what he thought the permitting track is for delivering US Bakken crude or Canadian heavy crude to California by rail, CEO Garland replied, “I think we are pushing it. I think there is some resistance, given the heavy nature of the crudes and the carbon footprint of the crudes and AB 32 cap and trade, et cetera, et cetara [sic] in California.” *Transcript of Jan. 30, 2013 Phillips 66 Fourth-Quarter Earnings Conference Call*, last accessed Aug 8, 2013, available at: http://www.phillips66.com/EN/investor/presentations_ccalls/Documents/PSX-Transcript-2013-01-30T.pdf.

Overall, the DEIR’s description of the project and its environmental setting is inaccurate and inadequate to the extent that it improperly minimizes the environmental effects discussed further below. Given this fundamental failure, the DEIR should be redrafted and recirculated with an adequate project description and complete discussion of Project inconsistencies with applicable plans, policies, and regulations.

III. THE DEIR DOES NOT ADEQUATELY ANALYZE SIGNIFICANT ENVIRONMENTAL IMPACTS.

The single large project to switch crude quality and the current Project to recover propane gas for export will result in significant environmental hazards, air quality and biological resources impacts, and cumulative greenhouse gas emissions – all of which the DEIR fails to adequately analyze and mitigate. CEQA requires project proponents to address all of a proposed project’s anticipated environmental impacts. Public Resource Code § 21100(b)(1); *See also, County of Inyo v. City of Los Angeles* (1977) 71 Cal.App. 3d 185, 199. CEQA Guidelines require that “[a]n EIR shall identify and focus on the significant environmental effects of the proposed project.” CEQA Guidelines § 15126.2(a). “An EIR shall identify and focus on the significant environmental effects of the proposed project,” including providing an analysis of both short-term and long-term significant environmental impacts. CEQA Guidelines § 15126.2(a). Agencies, moreover, should not approve projects if there are feasible mitigation measures or project alternatives available to reduce or avoid the significant

environmental impacts contained in the project's EIR. Public Resource Code §§ 21002, 21002.1(a).

A. The DEIR Fails to Adequately Analyze Significant Direct Impacts.

The DEIR does not adequately identify and analyze various potential environmental impacts to determine their significance, including possible catastrophic environmental hazards incidents, air quality effects, and impacts on biological resources.

1. The DEIR Fails to Adequately Analyze Potentially Significant Environmental Hazards.

The Project as proposed, could result in environmental hazards from catastrophic incidents caused by both the crude switch, and from the proposed pressurized storage of propane.

The Project design also suggests that the Refinery will likely use poorer quality crudes, because of the need for new high residua/bitumen crudes, which are by their nature, poorer quality crudes. *See* Karras Decl. Such "poorer quality" crude sources are higher in sulfur content, which is associated with an increased frequency of catastrophic failures from corrosion such as the failure which occurred at the Chevron Richmond refinery on August 6, 2012. *See* Karras Decl. Likely crude sources for the project would also have an increased density, which equates to an increased volume of toxic and flammable material. *See* Karras Decl. Under high heat and pressure, this material is at a proven high risk of increasing the frequency and magnitude of resultant incidents. *See* Karras Decl.

Environmental hazards from catastrophic incidents can also reasonably be expected from the pressurized storage of propane as part of the Project. Pressurized propane storage poses as extreme high magnitude impact hazard and is exacerbated by site-specific factors that increase the likelihood and potential magnitude of impacts. *See* Karras Decl. These factors include the proximity to other hazardous operations and staff, as well as the proposed seizmac/liquefaction hazard site. *See* Karras Decl.

An adequate risk assessment has not been done, however, for either the crude switch hazards or proposed pressurized storage. Such an assessment would balance even a low probability of incident, with the weight of the devastating and irreversible impact of such an event occurring to determine its overall significance. The DEIR reaches its conclusions without a documented Process Hazard Analysis (PHA) conducted or disclosed to identify, evaluate, and control the hazards involved in certain refinery processes. *See* Karras Decl.

2. The DEIR Fails to Adequately Analyze Potentially Significant Air Quality Impacts.

The Project fails to identify and analyze air quality impacts, including acute exposures to flared particles and routine daily emissions from the Refinery. Yet, the Project can be reasonably expected to require an increase in frequency and magnitude of flaring due to the

fact that the expected dirtier crude processing would likely increase “malfunction” and “emergency” flaring. *See* Karras Decl. Moreover, a malfunction or emergency upset causes the whole contents of one or more major process vessels to depressurize suddenly, and each flaring event can cause acute exposures to emitted pollutants, which is not discussed in the DEIR. *See* Karras Decl. Separately, the DEIR claims that removing LPG from fuel gas will reduce flaring from fuel gas, which it may, *or* it may instead *contribute* to flaring from the fuel gas quality changes that the DEIR does not identify or analyze. *See* Karras Decl.

Air quality will also be impacted by the likely significant effect the Project could have on daily routine emissions from the Refinery, and the Project could lead to an increase in many toxic/PM precursor/smog-forming air pollutants from burning more fuel per barrel to process the likely denser/dirtier crude feeds. *See* Karras Decl. An increase in fugitive emissions and heightened concentrations of toxic VOCs can also be anticipated as a result of the higher pressure processing of denser crudes. *See* Karras Decl. The DEIR does not analyze these effects, and fails to state any information to rebut them in its SO₂ reduction claim. Furthermore, the claim of reduced SO₂ emissions is unsupported because the undisclosed ERC application associated with the Project is likely to result in future project increases and could reasonably be expected to result in a Refinery-wide rebound in SO₂ emissions. *See* Karras Decl.

3. The DEIR Fails to Adequately Analyze Potentially Significant Biological Resource Impacts.

The DEIR further fails to sufficiently analyze significant environmental effects on biological resources in and around the San Francisco Bay due to Project expansion of the Refinery’s once-through cooling (OTC) system. The OTC system which draws ambient temperature water out of the Bay, uses it to cool Refinery processes, and then expels the hotter water back into the Bay, causes significant impacts resulting from impingement, entrainment, heat, and possible pollutant discharge. *See* Karras Decl. Notwithstanding the widely recognized, harsh environmental impacts of this type of cooling process, the Project proposes to invest in an expansion of OTC rather than finding ways to retire the system and replace it with practicable environmentally superior alternatives. *See* DEIR. The proposed Project would thus expand hotter flows and reset the clock on the operational lifetime of the OTC system. *See* Karras Decl.

Moreover, while the DEIR admits that there is a general, potential impact on endangered species caused by the OTC system, it claims that the impact is less than significant. *See* DEIR. This analysis and conclusion is incorrect for several reasons. First, although the DEIR relies on Refinery’s compliance with its National Pollutant Discharge Elimination System (NPDES) to reach the conclusion that any impact is insignificant, the NPDES limits are not known to be protective, which is why the NPDES permitting agency for the Refinery, the San Francisco Regional Water Quality Control Board (RWQCB), has ordered Refinery to conduct an impact study on the discharge effects. *See* Karras Decl. Furthermore, there is indication that the NPDES limits are suspected to be underprotective overall, because the RWQCB has also ordered Refinery to study an OTC replacement. *See* Karras Decl. In addition, the DEIR fails to analyze the impact of the Project’s conflict with state policy to

phase out OTC and Refinery-specific orders that could implement this policy. *See* Karras Decl. The DEIR also fails to discuss the fact that “taking” even one endangered species is contract to state/federal policy and there could be considered significant. *See* Karras Decl. Finally, the DEIR incorrectly analyzes impacts from only a fraction of the OTC flow that the Project could cause. Because building onto and expanding OTC conflicts with state and RWQCB policy, the Project could foreclose the planned elimination of OTC flow. Therefore, the future impact from the Project could actually be from the *whole* future flow, not just the incrementally increased flow and temperature that the DEIR analyzes. In failing to analyze the Project’s full future OTC impact, the DEIR underestimates the possible biological effect of the Project.

A. The DEIR Fails to Adequately Analyze Significant Cumulative Impacts.

The DEIR omits a necessary analysis of cumulative impacts of the Project, one of CEQA’s most vital requirements. *See* Pub.Res.Code § 21082 (referring to the CEQA Guidelines §§ 15130(a)(1) and 15355 for the applicable definition of cumulative impacts); *see also, Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283 (holding that the cumulative impacts analysis of a project’s regional impacts as a “vital provision” of CEQA). The purpose of this analysis is to avoid considering projects in a vacuum, because piecemeal approval of several projects with related impacts could lead to severe environmental harm. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th at 720.) The DEIR must therefore “demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed[,] and it must permit the significant effects of the project to be considered in the full environmental context.” CEQA Guidelines § 15125(c).

Although the DEIR provides a framework for cumulative impacts analysis by, for example, explaining its methodology for determining whether an incremental impact is in fact significant enough to be considered a significant cumulative impact, it fails to provide any factual analysis of the Project’s components and processes, which create the incremental impacts that must be analyzed. The DEIR describes its implementation of a combination of a plan-based and list-based approach to analyzing the potential cumulative impacts of the Project. It then lists out the specific projects and plans, including other refinery plans in the area, against which the Project’s direct impacts were presumably analyzed to determine the relative significance of their impact. The glaring problem with the DEIR’s cumulative impacts analysis is that, much like its failure to include specific facts and evidence in the project description, the DEIR fails again to include good-faith statements of fact relating to project components and processes that are only vaguely mentioned in the Project Description.

An EIR must “discuss cumulative impacts of a project when the project’s incremental effect is cumulatively considerable.” CEQA Guidelines § 15130(a). Furthermore, a lead agency must find “that a project may have a significant effect on the environment” when “[t]he project has possible environmental effects that are individually limited but cumulatively considerable.” CEQA Guidelines § 15065(a). The Guidelines define “cumulatively considerable” to mean “that the incremental effects of an individual project 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.” *Id.*

The DEIR here, however, only purports to analyze the significance of the Project’s incremental impacts, in combination to other projects in the region, completely failing to state, much less fully analyze, which of this *actual Project’s* impacts it is including in the cumulative impacts analysis. This glaring omission renders its analysis of any direct, indirect or foreseeable cumulative impacts, completely deficient, as it fails to demonstrate that any of the Project’s impacts were in fact identified for analysis, actually analyzed and investigated as required by CEQA. *See* CEQA Guidelines §§ 15064(d), § 15125(c).

4. The DEIR Does Not Adequately Analyze Potentially Significant Greenhouse Gas Emissions.

Adequacy/level of detail of GHG identification analysis

The DEIR fails to adequately identify and analyze the cumulative impacts of direct refinery sources and indirect off-site sources of greenhouse gas (GHG) emissions stemming from the Project. Lead agencies should analyze the “potentially cumulative GHG emission impacts” of a project and “make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.” *North Coast Alliance v. Marin Mun. Water Dist. Bd. of Directors*, 216 Cal.App.4th 614, 650; CEQA Guidelines § 15064.4(a).

Climate change is an environmental impact both on the entire planet and on a local level. Greenhouse gas emissions *cumulatively* affect climate change by adding heat-trapping gas to the atmosphere, and whether they are *considerable* must be analyzed by the County based first on an evidence-based significance threshold.

On-site sources of GHG emissions not identified by the DEIR include emissions from processing dirtier crude at the Refinery. The DEIR fails to disclose the quantity and quality of crude oil that Phillips 66 will be processing, and this information is necessary to fully consider the GHG emissions that will result from the Project.

While the DEIR did identify the off-site source of GHG emissions from electrical demand associated with the Project, it did not identify many other reasonably foreseeable and estimable sources including: (1) emission from propane/butane sold and burned off-site, (2) emissions from crude source demand activities such as extraction, frontend refining/diluting; and (3) natural gas demand activities. The DEIR must, at the least, identify these activities and then adequately analyze and estimate how much the Project is likely to increase emissions from all of these sources, regardless of their location. There is no predefined geographic limit to where impacts can occur, and “the area that will be affected by a proposed project, may be greater than the area encompassed by the project itself.” *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 173. The DEIR actually estimates the GHG emissions that will not be emitted *at the Refinery* from burned propane and butane they plan to

sell, but then does not make the reasonable next step of noting that this same amount of GHG emissions is likely to *still be emitted outside of the Refinery and because of the Project*.

The scale of the Project's activities is large enough that off-site emissions could reasonably be affected. Moreover, the indirect nature of these off-site emissions cannot be ignored as "it is inaccurate and misleading to divide the project's air emissions analysis into on-site and secondary emissions for purposes of invoking the presumption the project will have no significant impact." *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 717. Thus the DEIR requires a sufficient analysis and discussion of these sources. For example, in *North Coast Alliance*, the lead agency's analysis of the identification of indirect sources of GHG emissions from electrical demand was found sufficient given that the agency conducted a thorough analysis of the project's demand on a utility's electricity generation and whether it would increase production at any fossil-fuel power plants. *North Coast Alliance v. Marin Mun. Water Dist. Bd. of Directors*, 216 Cal.App.4th 614, 652 ("Based on this evidence, the EIR concluded the Project's energy demand would not result in an indirect increase in pollutant emissions.").

The fact that a source of cumulative impacts is indirect is not a justifiable default reason to exclude them from analysis, and lead agencies must consider multiple factors in considering the detail of analysis that each possible impact deserves. *Muzzy Ranch Co. v. Solano County Airport Land Use Com.*, (2007) 41 Cal. 4th 372, 388 ("The detail required in any particular case necessarily depends on a multitude of factors, including, but not limited to, the nature of the project, the directness or indirectness of the contemplated impact and the ability to forecast the actual effects the project will have on the physical environment.").

Adequately determining the significance of identified emissions

After making a good-faith effort to sufficiently identify all direct and indirect GHG emissions resulting from the project, the lead agency must assess "the significance of these emissions" and "should consider the extent to which the project may affect emissions levels; whether emissions exceed an applicable threshold of significance; and whether the project complies with regulations or requirements adopted to implement statewide, regional, or local plans to reduce GHG's." *North Coast Alliance v. Marin Mun. Water Dist. Bd. of Directors*, 216 Cal.App.4th 614, 650 (citing *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 335–336; CEQA Guidelines § 15064.4(b)).

The DEIR fails to adequately analyze the significance of GHG emissions either from sources it has identified as well as from the sources it has excluded. The DEIR relied on BAAQMD significance thresholds that have been stayed by a court and shows no indication that the County conducted its own determination of a significance threshold based on substantial evidence. *Cal Building Industry Ass'n v. BAAQMD* (2012) Alameda County Superior Court, Case No. RG10-548693.

Courts have found that lead agencies have adequately analyzed the significance of greenhouse gas emissions after conducting detailed analysis and discussing "the analytic route the agency traveled from evidence to action." *North Coast Alliance v. Marin Mun. Water Dist.*

Bd. of Directors, 216 Cal.App.4th 614, 652 (quoting *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1056). The DEIR contains no such analysis.

5. The DEIR Fails to Adequately Analyze Reasonably Foreseeable and Cumulative Impacts of Its Once Through Cooling System.

The DEIR fails to adhere to the CEQA Guidelines standards in assessing the cumulative impacts of its OTC system. Again, the DEIR is required to “demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and[,] it must permit the significant effects of the project to be considered in the full environmental context.” CEQA Guidelines § 15125(c). The DEIR bares no mention of its OTC in the cumulative impacts section, despite its potential impacts under the “Air Quality”, “Hydrology and Water Quality”, as well as the “Biological Resources” categories. *See* Karras Decl. The DEIR’s conclusion that the Project presents no significant cumulative impacts in either of those categories, therefore, lacks foundation.

The OTC is described relatively briefly in the Project Description and Impacts sections of the DEIR as a part of Refinery’s current operation and as part of the Project’s proposed changes to that operation. *See* discussion of impacts above. Specifically, the DEIR states that the Project will increase Refinery’s current use of salt water in its cooling system by “approximately 8,500 gallons per minute to a total once through cooling flow of approximately 40,000 gallons per minute”. DEIR section 3.4.2.7. In the following section, “Environmental Setting, Impacts and Mitigation”, the Project’s cooling impacts are also mentioned. Despite the significant increase in water use implicated in the Project Description, however, and its mention in the Impacts section, the DEIR states that the OTC will yield no significant impacts and therefore does not require mitigation. The DEIR’s failure to adequately analyze the cumulative impacts of its OTC, is thus strongly rooted in its failure to adequately describe the project and its direct impacts in the first place.

Notwithstanding its concurrent failure to adequately assess the OTC system’s potential direct and/or indirect impacts, there are critical foreseeable incremental impacts of the OTC system implicated by this project that must be addressed in the DEIR. The DEIR states that Refinery will “remain in compliance with” and will therefore be “regulated” by its NPDES permits. However, as stated above in relation to the DEIR’s current analysis of impacts, it cannot rely on its general statement of alleged permit compliance to stand in the place of providing an adequate investigation of the potential incremental and substantial impacts the Project will have, with, for example, other cooling systems in the area (none of which are mentioned or described), or in the context of particular the marine, aerial, land and marsh environments surrounding the Project. *See* Karras Decl. Specifically, the DEIR fails to state or explain any other projects in the area that implement similar or related water cooling systems in order to evaluate the Project’s potential cumulative impact in relation to those other projects, and fails to state or explain any particular water standards, marine life, or bird species that might be impacted by the Project’s OTC system as a substantial, incremental and additional impact in the context of the surrounding environment. *See* Karras Decl.

IV. THE DEIR DOES NOT ADEQUATELY MITIGATE SIGNIFICANT ENVIRONMENTAL IMPACTS.

CEQA requires that feasible mitigation measures be adopted to reduce adverse environmental impacts, and the failure of the lead agency to adopt mitigation measures is a violation of CEQA. Pub. Res. Code §§ 21002 - 21002.1(b), 21081; CEQA Guidelines § 15021(a)(2). The policy of CEQA is to promote the adoption of the most environmentally-friendly feasible alternatives possible.

The lead agency must make findings in the record based on substantial evidence regarding alternatives, mitigation measures, and their feasibility. *See* Public Resource Code §§ 21081 and 21081.5; *see also, San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 690-91. CEQA Guidelines § 15131(c) requires that “[e]conomic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR.”

While the DEIR is fundamentally inadequate because of its omission of Project components and numerous potentially significant impacts, the consequences of these insufficiencies is most meaningfully evident in the DEIR’s overall failure to achieve CEQA’s purpose to avoid and reduce significant environmental effects. The DEIR fails to achieve this purpose by not adequately analyzing known practicable measures to mitigation its potentially significant direct and cumulative impacts.

A. The DEIR Fails to Adequately Discuss Feasible Mitigation of its Significant Direct Impacts.

The DEIR does not adequately discuss or analyze various feasible mitigation measures for the potential environmental impacts of catastrophic environmental hazards, air quality effects, and impacts on biological resources. Fundamentally, the DEIR does not discuss possible conditions to prevent, in the first place, impacts from a crude switch that would avoid the myriad of environmental consequences resulting from the crude switch. *See* Karras Decl.

1. The DEIR Fails to Adequately Discuss Feasible Mitigation of Significant Environmental Hazards

Despite the fact that there are practical mitigation measures that could be implemented to avoid the significant potential environmental hazards of the Project, and reduce the risks of catastrophic incidents that may be caused by the crude quality switch, none are discussed in the DEIR. Some of these mitigation measures include, but are not limited to: (1) County conditions ensuring that the asserted reduction in Refinery-wide SO₂ emissions will be permanent, (2) prohibiting the use of ERCs, (3) safer materials/equipment to prevent risk of corrosion from sulfur, (4) compliance with the County Industrial Safety Ordinance (ISO) requirement of Inherently Safer Systems (ISS), and (5) compliance with the US Chemical

Safety Board's findings of the need for industrial safety analysis that seeks to drive risk "as low as reasonably practicable" (ALARP).

In addition, it is practicable to avoid or reduce the risks due to catastrophic incidents caused by the proposed pressurized storage of propane by additional measures including, but not limited to: (1) practicable cooled/refrigerated storage, (2) compliance with the County ISO requirement of ISS, and (3) compliance with the US Chemical Safety Board's ALARP risk analysis advice. In addition to omitting any discussion of these potential mitigation measures, however, the DEIR further fails to compare the Projects proposed storage option to practicable ISS technologies that could eliminate or reduce this hazard.

2. The DEIR Fails to Adequately Discuss Feasible Mitigation of Air Quality Impacts.

The Project fails to adequately discuss mitigation of air quality impacts such as acute exposures to flared particles and routine daily emissions from the Refinery. As above, some of these impacts could be avoided right-out by preventing a switch in crude quality. Furthermore, an adequate discussion of mitigation should include an analysis of fuel gas balancing and burner/fire box changes to minimize fuel gas quality flaring, County conditions, and better technologies.

3. The DEIR Fails to Adequately Discuss Feasible Mitigation of Biological Resource Impacts.

The DEIR does not sufficiently analyze practicable mitigation measures to avoid or reduce the impacts to biological resources in and around the San Francisco Bay that would be caused by the Project's expansion of the Refinery's OTC system. At a minimum, the DEIR should discuss closed-loop cooling instead of once-through cooling.

B. The DEIR Fails to Adequately Discuss Feasible Mitigation of its Significant Cumulative Impacts.

On top of its insufficient analysis to identify the Project's significant cumulative impacts, the DEIR also does not adequately discuss ways to avoid or reduce the significant cumulative impacts that are reasonably foreseeable, namely those of greenhouse gas emissions and those resulting from the Project's expansion of its OTC system.

1. The DEIR Does Not Adequately Discuss Potentially Significant Greenhouse Gas Emissions.

The DEIR must "consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of [GHG] emissions." *North Coast Alliance v. Marin Mun. Water Dist. Bd. of Directors*, 216 Cal.App.4th 614, 650 (citing CEQA Guidelines, § 15126.4(c)).

In addition to failing to identify multiple significant sources of GHG emissions, the DEIR does not sufficiently analyze feasible methods of avoiding these emissions. Possible mitigation measures include, but are not limited to: (1) reducing the Project's GHG emissions by using renewable energy (solar or wind) to provide the electricity needed for the Project and/or Refinery; (2) funding local community distributed generation renewable energy projects; and (3) using best available emissions control technology.

2. The DEIR Fails to Adequately Analyze Reasonably Foreseeable and Cumulative Impacts of Its Once Through Cooling System.

As noted above, feasible mitigation measures are not discussed that could completely avoid or reduce the cumulative impacts to biological resources in and around the San Francisco Bay that would be caused by the Project's expansion of the Refinery's OTC system. At a minimum, the DEIR should discuss closed-loop cooling instead of once-through cooling.

V. THE DEIR INADEQUATELY DISCUSSES PROJECT ALTERNATIVES

The DEIR fails to discuss a reasonable range of feasible alternatives that would reduce environmental impacts and the DEIR and fails to justify the narrow scope of alternatives described. CEQA requires that public agencies consider alternatives to the Project that would avoid or mitigate a project's adverse environmental impacts, and adopt them if feasible. *SFUDP*, 102 Cal.App.4th at 693; Pub. Res. Code §§ 21002, 21002.1. The DEIR, therefore, must analyze a reasonable range of alternatives, and must provide reasoning for the chosen range of alternatives. CEQA Guidelines § 15126.6.

The DEIR instead, utterly fails to consider any alternatives that embrace a transition to green energy or that would present long term solutions to environmental health problems, and economic problems that confront residents of Contra Costa County and the greater Bay Area. Moreover, this Project is an opportunity for Refinery and for the County to demonstrate their commitment to the local community by a more healthy environment, green jobs, and by creating a partnership for leadership in renewable energy production. Yet, the DEIR does not analyze an alternative that would only add energy efficiency and environmental pollution controls.

A recirculated DEIR should discuss green energy alternatives and ways to move away from patterns of energy use that are creating global climate change. The proposals for alternatives to expansion of fossil fuels may cost more in the short run and mean decreased immediate profits for the Refinery, but in the long run, the overall benefits to the Refinery and the community will be optimal. Short term higher costs alone are not enough of a reason to reject a more environmentally responsible alternative.

The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.

Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County (1988) 197 Cal.App.3d 1167, 1181.

The public agency responsible for making the decision to approve a project under CEQA must make:

. . . findings as to whether specific economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or alternatives identified in the EIR, or whether there are specific overriding economic, legal, social, technological, or other benefits of the project that outweigh the significant effects on the environment.

Therefore, the County must demand more thorough information in order to assess the various potential alternatives that are not presently included in the DEIR.

VI. THE DEIR SHOULD BE REDRAFTED AND RECIRCULATED TO INCLUDE THE ANALYSIS AND INFORMATION IDENTIFIED ABOVE THAT IS REQUIRED BY CEQA.

In conclusion, the Project DEIR fails to meet CEQA's requirements for the reasons stated above. The existing analysis should be revised and the missing analyses should be added. Because these will be significant changes in the DEIR, the DEIR should be recirculated.

Sincerely,

Yana Garcia
Roger Lin
Communities for Better Environment