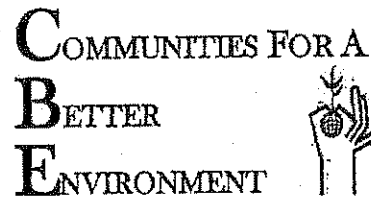


CONTRA COSTA
2013 DEC -2 PM 2:55
APPLICATION & PERMIT CENTER



December 2, 2013

RE: Appeal of Planning Commission Certification of the Final Environmental Impact Report for the Phillips 66 Propane Fuel Recovery Project

To the Contra Costa County Board of Supervisors:

Communities for a Better Environment ("CBE") appeals the Contra Costa County Planning Commission's certification of a deficient Final Environmental Impact Report ("FEIR") for the Phillips 66 "Propane Fuel Recovery Project" ("Project"). This appeal is based on the arguments set forth herein, in addition to those set forth in CBE's comments to the Draft Environmental Impact Report for the Project ("DEIR"), the comments submitted by the Rodeo Citizens Association and other commenters to the same DEIR, as well as any arguments and information presented before the County Planning Commission at its November 19, 2013 hearing on the matter.

The FEIR has failed to cure critical errors identified by CBE and others in their comments to the DEIR. In particular, CBE's comments identified the project proponent's lack of good faith in disclosing information regarding integral project components, and the DEIR's subsequent failure to include an adequate project description that details the reality of a larger project; one that would enable the Project proponent to process lower quality oil feedstock. CBE's findings, detailed in the Expert Report of Greg Karras, were corroborated by the comments of the Rodeo Citizens Association, submitted on November 18, 2013, including the Comments of technical expert, Phyllis Fox, which also reveal additional, fundamental flaws in the DEIR, similarly left uncured in the FEIR.

The FEIR neither discloses the Project's true specifications nor its overall objective and, therefore, cannot provide any meaningful discussion of significant environmental impacts, mitigation of those impacts, and feasible alternatives. For this, and the additional reasons explained below, the County Planning Commission should neither have certified such an insufficient document, nor approved any subsequent land use permit based on its inadequate analysis and conclusions unsupported by substantial evidence as required by the California Environmental Quality Act ("CEQA"). In addition, the County did not meet CEQA's notice requirements, in part, as a result of the inadequacy of the project description contained in the environmental documents, as well as the County's failure to otherwise provide adequate written notice to the public of this Project. The Board should, therefore, reject the Planning Commission's certification of this insufficient document and initiate procedures to have the document immediately revised and recirculated.

CBE1

The Project Description Fails to Disclose that this Project is Part of a Larger Project to Enable the Refinery to Process Lower Quality Oil Feedstock

CBE 2 A, "finite project description is indispensable to an informative, legally adequate EIR."¹ Moreover, when comments submitted by the public raise significant environmental issues and hold a position contrary to that of the lead agency, the lead agency must address those comments *in detail* and give reasons why specific comments and suggestions were not accepted.² "There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice."³

Although the FEIR provides several cross references to various responses to comments addressing the issue of crude quality raised by CBE and other commenters, overall, its responses fail to address the substance of such comments. Indeed, the FEIR's response to comments sections, including Master response 2.2, B4-5, B4-36 through B-73, B4-9, B4-11, do nothing more than cross reference each other, and the DEIR, in order to conclusively deny CBE's position without any meaningful analysis, or statements of evidentiary support.

FEIR Master Response 2.2 is Insufficient

Master Response 2.2 constitutes the majority of the FEIR's response to the question of whether the Project will result in a switch to a lower quality oil feedstock. The County asserts that the Project does not propose to add, change or modify the operation of other process units, and offers little more than such a conclusory statement.

CBE 3 In response to any suggestion of the use of a different crude slate, the County merely cites repeatedly to Section 3.2.1 on page 3-5 of the DEIR; the section containing the Project's stated description. The County also states that there is, "nothing in the record," (the record being that which was prepared for the DEIR) to suggest that this Project is part of a larger project to change the crude slate processed at the refinery. This overall conclusive reliance on a document, whose very substance and omissions are called into question, is essentially non-responsive and cannot constitute substantial evidence.

The sparse additional evidence in Master Response 2.2 is also insufficient. For instance, in regard to Phillips 66 management's statements to its investors promoting the company's strategic switch to, "advantaged crude," the County's response in the FEIR suggests that there is no definition of "advantaged crude." In fact, the very same Phillips 66 document offers the definition, which includes, "heavy crude oil from Canada."⁴ Furthermore, Chief Executive Officer, Greg Garland adds: "the single biggest lever we have to improve value in our refining business is through lowering our feedstock costs."⁵ Also stated in CBE's Comments, Phillips 66 management signals its intent to bring this "advantaged crude" directly to its San Francisco

¹ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199.

² 14 Cal. Code Reg. § 15088(c).

³ 14 Cal. Code Reg. § 15088(c).

⁴ Phillips 66 Delivers on Advantaged Crude Strategy, available at <http://www.phillips66.com/EN/newsroom/feature-stories/Pages/AdvantagedCrude.aspx>, last accessed Aug 7, 2013

⁵ *Id.*

CBE 3

refineries, both the Rodeo and Santa Maria facilities by rail or barge.⁶ Nevertheless, despite the inclusion of this information and other investor-targeted statements identified by CBE and others, the FEIR ignores these specific strategies, obscuring the project proponent's true intent.

The Project is Improperly Piecemealed

"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."⁷

Master Response 2.2 also discusses Phillips 66's Santa Maria Facility ("SMF"). The response identifies SMF's new proposed project, currently in the application stage with San Luis Obispo County, to increase crude oil shipments via rail car in addition to pipeline. The County asserts that "there is no request for or discussion of this project requiring any change to the SMF to accept different crude feedstocks." In stark contrast, the SMF new proposed project description reads: "the purpose of the project is to allow SMF to access a full range of competitively priced crude oil."⁸ The FEIR omits publicly available information that shows the true link between these two facilities and the Project.

CBE 4

Both the Comments of Greg Karras and Phyllis Fox highlight the direct link between this Project and the proposed modifications at the SMF. Their extensive analyses identify projects at the Rodeo and Santa Maria refineries, that although separate in time, are connected in purpose, including: other projects at the Rodeo facility, the direct pipeline link between the Rodeo and Santa Maria facilities and the production of propane and butane at the same, the overall reliance of the Rodeo facility on the SMF for the stated objective of this Project, and the new rail spur at the SMF that would enable tar sands crudes to be imported to and processed at the SMF, and/or shipped directly to Rodeo. The DEIR failed to identify, much less analyze the potential impacts of these projects in relation to one another, and despite comments regarding the need for such an analysis, the FEIR also fails to provide any substantial evidence to contradict these independent and corroborating analyses. The FEIR similarly omits any mention of any other related projects, including but not limited to Phillips 66's proposed project to increase storage and desalination capacity at its Carson facility in Los Angeles, currently under review with the South Coast Air Quality Management District – an additional integral project component to enable Phillips 66's refineries to switch their crude slate, statewide.

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⁶ FEIR 3.2-26.

⁷ *Orinda Ass'n v. Board of Supervisors* (1986) 182 CA 3d 1145, 1171.

⁸ Project Purposes and Objectives, available at:

<http://www.slocounty.ca.gov/Assets/PL/Santa+Maria+Refinery+Rail+Project/description.pdf>

The Project Will Enable a Switch in Crude Quality

CBE 5

The FEIR similarly offers little more than conclusory statements to satisfy CBE's concerns regarding the switch in crude quality itself.⁹ Moreover, the County seems to confuse CBE's identification of this larger project, or the switch in crude slate, with, "purchasing raw materials," that does not constitute a CEQA, "project," and therefore does not require an EIR analysis.¹⁰ This position directly conflicts with the spirit of the statements made by the Phillips 66 representative at the Planning Commission hearing, who confirmed this future switch in crude slate, and assured the Commissioners that the company would obtain an EIR for that switch when it happens.

Notably, Phillips 66's attempts to obscure their underlying intent to switch the crude quality at the San Francisco Refinery will result in impermissible, deferred mitigation of the resulting potential impacts. California Courts have consistently held that foreseeable changes, which would have an effect on a proposed project, must be discussed at the time of the project's approval process.¹¹ As noted above, the Phillips 66 representative present at the hearing before the County Planning Commission did not negate the company's overall plan to switch its crude slate. Instead, he said only that the company would obtain CEQA review at the time in which such a switch was underway. Contrary to what appears to be Phillips 66's position on this matter, however, Phillips 66 must get that County approval *now*. If the LPG is derived from the oil feedstock, and the feedstock is likely to change, that change will evidently have an effect on LPG production that the FEIR should have documented, and addressed through mitigation measures where necessary. Thus, Phillips 66 should not be permitted to defer an analysis that is, in this case, required *now*.

CBE 6

The FEIR's response is also inadequate. The FEIR should have included an analysis of increased emissions and worker safety risks as a result of a change in feedstock. As stated in the Fox comments, "the amount and composition of sulfur in the crude slate...ultimately determines the amount of SO₂ that will be emitted from every fired source in the refinery," and this Project would commit the refinery to continued coking of the highest density part of the crude resource.¹² Such coking is necessary to meet the Project's export objectives, otherwise the refinery would not be able to produce enough propane and butane.¹³ "Denser coker feeds produce more gases and more LPG..." and in order to produce the Project's 8000 barrels per day of LPG, the refinery will have to process a certain density of coker feed.¹⁴ The very project components themselves, therefore, reveal that the project *relies* on a switch in crude feedstock.

CBE 7

In regards to worker safety, CBE proposed that the County discuss the findings of the Chemical Safety Board ("CSB"), in particular, the nexus between a lower quality oil feedstock, increased risks of hazards to workers, and the need to reduce those risks to the As Low As

⁹ See e.g., FEIR comment response B4-5.

¹⁰ See FEIR at 3.2-118.

¹¹ *Laurel Heights Improvement Assn. v. Regents of University of California*, (1988) 47 Cal. 3d 376, 396.

¹² Karras Report at 6.

¹³ *Id.*

¹⁴ *Id.* at 7.

Reasonably Practicable ("ALARP") level. The County's response merely states that, "there is no apparent nexus...to require compliance with this advice."¹⁵

CBE 7
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CBE's requests for further information or verification on crude quality were also met with the same general and conclusory responses. For instance, CBE seeks further information on how the Project will meet its export objective without changing its feedstock. Comment response B4-12 merely refers CBE back to the, already identified as deficient, DEIR section detailing the capacity and storage of tanks. This comment response is but one example of the FEIR's inability to confirm how the Project will meet its export goals and the County's failure to cure that error. Similarly, in response to Karras' identified Project reliance on severe processing of denser oils in the crude stream in order to create enough byproduct gases to meet the Project's objectives, the FEIR still offers wholly conclusory, irrelevant or insufficient responses, for the most part, simply "reiterating" the inadequate project description.¹⁶

The FEIR Fails to Discuss Foreseeable Significant Environmental Impacts of the Project

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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."¹⁷

CBE 8
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FEIR comment response B4-2 introduces a whole discussion of the, "lifecycle," of emitting sources and how the CEQA guidelines no longer use this term due to its lack of definition. Nevertheless, CBE also does not use the term, lifecycle. CBE has merely identified that this Project will produce goods that will fulfill their emitting destiny at some point in time in the future - they are indirect emissions. That is foreseeable, and an impact that the FEIR should have included. A discussion of "lifecycle" terminology does nothing other than to confuse the issue. Ultimately, this Project's objective, "good," will be sold and used somewhere, creating some emissions that the FEIR should have identified, analyzed and, if necessary, mitigated.

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The County suggests that there is, "uncertainty concerning the locations, quantities and types of fuel that might be replaced by the propane/butane...whether such production could have the potential to affect the overall consumption of propane/butane or the use or non-use of another fuel." The County determines that these issues are too "speculative for inclusion in the EIR analysis." Nevertheless, the County is in possession of data from the refinery that will easily allow for an estimate of the emissions from combustion of its product, also possible at liberal and conservative ranges, to account for possible future fluctuations in demand. Furthermore, Phillips 66 currently sells butane from its Rodeo Refinery in California. Emissions from the use of this fuel are a clearly and reasonably foreseeable impact caused by this Project that the FEIR failed to discuss.

¹⁵ FEIR at B4-28.

¹⁶ See FEIR at 3.2-131.

¹⁷ *Supra*, footnote 11.

The FEIR Fails to Adequately Analyze Significant Environmental Impacts

CBE identifies the following significant environmental impacts that the FEIR fails to properly address. CEQA requires project proponents to address all of a proposed project's anticipated environmental impacts.¹⁸ This requires an analysis of both short-term and long-term significant environmental impacts.¹⁹

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CBE 9
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1. *Risk of explosion/accident/fire/catastrophic failure.* A lower quality oil feedstock is directly correlated to the increased frequency of catastrophic failures, such as the August 6, 2012 fire at the Chevron Richmond Refinery. In addition, site specific factors of this Project exacerbate dangers of the storage of propane in high pressure tanks. As noted below, the accounting for such risk under the Industrial Safety Ordinance ("ISO") has not yet occurred, but is in fact illegally deferred until a later date.

Moreover, as the FEIR consistently denies the Project's reliance on a switch in crude slate, it evidently also does not see the need to address this significant impact.²⁰

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CBE 10
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2. *Significant Air Pollution Impacts from the Refining of a Lower Quality Oil Feedstock.* The refining of this lower quality crude slate is likely to result in increased, "emergency," flaring. Each of these flaring episodes comes with associated and extremely high levels of additional pollution. In addition, the daily operation and refining of a lower quality crude slate will result in increased daily emissions of pollutants, including fugitive emissions and heightened concentrations of toxic compounds.

The FEIR again avoids any discussion of any impact associated with a switch in crude quality.²¹ Noteworthy however, comment response B4-20 attempts to bolster its position by a corroborating reference to Phillips 66's corresponding Air District application for Emissions Reduction Credits; an application that Phillips 66 recently withdrew.

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CBE 11
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3. *Significant Biological Resource Impacts due to OTC system.* CBE highlights the potential impact the continued use of the OTC system will have on species in and around the San Francisco Bay, and may even result in the "taking" of endangered species.

The Regional Water Quality Board has in fact determined that this impact could prove so potentially harmful, that they have ordered the Project proponent to study replacing the OTC system - prior to any expansion. This study is already

¹⁸ Public Resources Code section 21100(b)(1); *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 199.

¹⁹ CEQA Guidelines section 15126.2(a).

²⁰ See FEIR at B4-19.

²¹ See FEIR at B4-20.

CBE 11



CBE 12



CBE 13



signed and submitted to the Water Board. It is referenced and attached to CBE's comments to the DEIR, and documents the feasibility of replacing the cooling system. However, by contrast, the FEIR supports expanding the old system, which forecloses any replacement. Even more surprising, the FEIR denies the existence of this study.²²

4. *Significant Cumulative Impacts.* The FEIR's failure to properly address cumulative impacts stems from its flawed project description. Certainly, the lack of a good faith and accurate project description will render any proper analysis of cumulative impacts necessarily meaningless. Comment response B4-22 merely recites the CEQA guidelines for the analysis of cumulative impacts, wholly failing to address the DEIR's insufficient discussion and response to CBE's concerns, especially taking into account the potential geographic reach of this Project.

5. *Significant Greenhouse Gas Emissions.* The FEIR fails to adequately consider both on and off-site GHG emissions. On-site, the FEIR does not acknowledge a crude switch and therefore does not address the higher GHG emissions in refining a lower quality oil feedstock. Off-site, the FEIR fails to provide any meaningful discussion of GHG emissions from the Project's objective product, propane, wherever it is used. Inevitably, this Project's propane will be used somewhere. The County should have at least provided some estimate of how much, including resultant GHG emissions.

The FEIR's response comments do little to address these concerns. B4-23 states that as crude quality data was not used to estimate GHG emissions, then there is no need to address how a switch in crude quality could affect emissions. If there is a switch to lower crude quality, however, the GHG emissions will also increase. Whatever variables the County used to estimate GHG emissions will be affected by a switch in crude quality.

In regard to off-site emissions, FEIR B4-23 again mistakes the propane use as a, "lifecycle," emission, ignoring a proper analysis that such emissions are ultimately foreseeable, and therefore, indirect emissions that the FEIR should have addressed.

Moreover, the bare measurement of GHG emissions included in the FEIR raises significant concern. The FEIR includes comment responses defending reliance on BAAQMD significance thresholds that are currently the subject of litigation.²³ Nevertheless, BAAQMD itself calls this Project into question:

'the DEIR provides no supportive technical detail to determine if emission estimates are accurate. In addition, the supplemental documents requested by District staff had missing information. Without this information, staff

²² See FEIR at B4-47.

²³ See FEIR at B4-24.

CBE 13

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CBE 14

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is unable to determine if calculations and emissions estimates are correct, and thus, cannot support the conclusions related to the significance of air quality or GHG impacts.²⁴

6. *Significant Environmental Impacts from the Use of the OTC System.* Lead agency guarantees of permit limit adherence cannot substitute for any meaningful analysis under CEQA. The FEIR fails to properly analyze a significant impact, instead stating that if the significant impact occurs, another agency has the authority to remedy that impact. That is deferred mitigation. As such, the FEIR still does not address the significant direct and cumulative impacts of the Project's continued use of the OTC system.²⁵

The FEIR Fails to Adequately Discuss Mitigation Measures

The FEIR subsequently cannot adequately analyze mitigation measures for significant environmental impacts that the County will not investigate in the FEIR, despite abundant evidence to the contrary. In addition, as noted above, the County improperly defers its analysis of hazard management under the Industrial Safety Ordinance, including risks due to catastrophic failure of Project components. Surprisingly, however, the County maintains its reliance on the same inherently safer systems analysis but applied to, and eventually used to exclude, Refrigerated Liquified Gas Storage as a feasible alternative.²⁶ Overall, the County's analysis of mitigation measures is inadequate and not based on substantial evidence, but rather the flawed assurances left uncorrected from the DEIR.

Local and State Regulations

The FEIR still improperly defers an analysis under the Industrial Safety Ordinance. Similarly, the FEIR fails to address the Project's conflicts with the County General Plan and the Regional Water Quality Control Board.

County Industrial Safety Ordinance

A mitigation measure requiring the completion of studies *after* project approval, constitutes deferred mitigation and is contrary to CEQA.²⁷

CBE and other commenters alert the County of the need for an inherently safer systems analysis under the ISO *now*. Instead, the County merely states that, "the Refinery operates under

²⁴ See FEIR, Comment Letter A6. The County's response to the Air District is also inadequate, merely referring District staff and the public to the Appendix of the DEIR or other mysterious documents at the County office, which wholly negates CEQA's single EIR document requirement.

²⁵ (See FEIR at B4-25, informing the public that the RWQCB has the authority to require modifications to a facility's operations to ensure water quality standards.)

²⁶ FEIR at B4-28.

²⁷ *Sundstrom v. County of Mendocino*, (1988) 202 Cal. App. 3d 296, 207.

rules that provide the necessary hazards analysis."²⁸ Such studies, "will be carried out prior to (Project) startup...upon completion of the Project...the Risk Management Plan would be updated," and modified as a result of the Project.²⁹ Especially in lieu of all of the risks of catastrophic failure, the recent explosion at the Chevron Richmond Refinery, and the surrounding dangers in the natural environment, such as liquefaction, this deferred mitigation is unacceptable and left uncured by the FEIR.

CBE 15

Contra Costa County General Plan

As noted in CBE's comments on the DEIR, the County's General Plan includes the goal of increased deployment of renewable energy systems, such as wind, solar and biomass methane production. Every refinery has the option of partially repowering itself with these renewable resources. A key component of this Project is the repowering of the refinery, now by natural gas purchased from PG&E, a discussion that should have involved renewables, especially bearing in mind the General Plan. The FEIR fails to correct this deficiency as well as other conflicts with the General Plan such as liquefaction potential and seismicity at the Project site.³⁰

Regional Water Quality Board/OTC system

As noted in CBE's comments on the DEIR and above, the Project conflicts with the Regional Water Quality Control Board's Orders to retire OTC systems, and also, the specific feasibility study regarding the retiring of this particular OTC system.

The FEIR Provides An Inadequate Discussion of Project Alternatives

An EIR must identify a range of reasonable alternatives "which would feasibly attain most of the basic objectives of the project *but would avoid or substantially lessen any of the significant effects of the project.*"³¹

CBE 16

The FEIR only includes the analysis of three alternatives that all would have greater environmental impacts than the Project. The County did not analyze one alternative that would reduce the environmental impacts of the proposed project; in the County's analysis, even the No Project alternative would have greater impacts than the Project. The failure to consider even a single alternative with lesser environmental impacts than the proposed project is contrary to the purpose of the CEQA alternatives requirement.

The FEIR also fails to consider alternatives that embrace alternative forms of cleaner energy, pursuant to the General Plan as discussed above. CBE noted that while environmentally beneficial alternatives may be more costly in the short run, "[t]he fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially

²⁸ FEIR at B4-19.

²⁹ *Id.*

³⁰ See FEIR at B4-16

³¹ 14 Cal. Code Reg. § 15126.6(a) (emphasis added).

infeasible."³² CBE asked the County to request more information from the refinery in order to assess the various alternatives to the proposed project which were not included in the DEIR.³³ Nevertheless, the FEIR's discussion is identical to the DEIR's discussion of alternatives.

CBE 16

The information requested by CBE is important. It is impossible to determine or verify the impacts of the alternatives posited in the FEIR, even the No Project alternative, when the County has failed to identify what those alternatives would even look like. It is similarly impossible to compare the impacts of the reduced-project alternative to those of the proposed project when the County fails to identify significant environmental impacts.³⁴ The FEIR's analysis of alternatives is not sufficient, but instead an identification of alternatives, if even that.³⁵

Further, the County dismissed the alternatives suggested by CBE by noting that if they were to be considered in the EIR, they would likely be rejected as either not meeting the project's objectives or being infeasible.³⁶ The County provides no evidence beyond its own conclusory statement that the additional alternatives would be infeasible, or would otherwise be beyond the reasonable range of alternatives required by CEQA.³⁷ Consequently, this is an insufficient response under the CEQA Guidelines.³⁸

Finally, the County notes in its response that "although all impacts of the proposed Project are either less than significant or mitigated to less than significant, a reduced sized project is marginally superior to the proposed Project."³⁹ However, even if the County believes that significant environmental impacts will be mitigated, this does not excuse the County from preparing a meaningful analysis of feasible project alternatives.⁴⁰

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³² *Citizens of Goleta Valley v. Bd. of Supervisors of Santa Barbara Cnty.*, (1988) 197 Cal.App.3d 1167, 1181.

³³ CBE Comments at 25.

³⁴ DEIR at p. 6-7.

³⁵ See *Laurel Heights I*, 47 Cal. 3d at 406 ("It defies common sense for the Regents to characterize this as a discussion of any kind; it is barely an identification of alternatives, if even that.").

³⁶ FEIR at p. 3.2-128.

³⁷ See 14 Cal. Code Reg. § 15126.6(f) ("The range of alternatives required in an EIR is governed by a 'rule of reason' . . .").

³⁸ 14 Cal. Code Reg. § 15088(c) (in response to comments, "[c]onclusory statements unsupported by factual information will not suffice").

³⁹ FEIR at p. 3.2-128.

⁴⁰ *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 401 (*Laurel Heights I*) (holding that an EIR must include a meaningful analysis of feasible project alternatives, even when the lead agency assumes that significant impacts will be substantially avoided by mitigation measures alone).

The County Failed to Adequately Notify the Community of this Project

"If a final EIR does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decision-making cannot occur under CEQA and the final EIR is inadequate as a matter of law."⁴¹

CBE 17
Certifying the FEIR in its current deficient state would be a complete disservice to the public. Although CBE appreciates the County's efforts to provide the statutorily mandated CEQA comment periods and deadlines, the County has nevertheless utilized the minimum amount of time authorized under CEQA for review of the FEIR. The County allowed ten short days for review of the highly dense and technical FEIR. The spirit of CEQA does not require the County to offer the least amount of time authorized by statute for review of a project, let alone a highly technical one, but should allow for the best time frame to encourage this, "intelligent weighing," of environmental consequences.

Furthermore, the overall notice that this Project afforded the community is inadequate. Several community members, a staff member at the local school, and even the Sanitary District stated that they had, "no idea," about this Project. (See e.g., FEIR at 3.1-8, 3.1-40, 3.3-175, 3.3-177, 3.3-181, 3.3-223). In addition to CEQA's notice requirements, in order to satisfy the Constitutional requirement of due process, the County should have provided actual notice to all parties that may be subject to any, "taking," such as a decrease in property values, as a result of this Project.

Conclusion

For the above reasons, the County Planning Commission prejudicially abused its discretion by failing to proceed in the matter required by law and certifying an insufficient document not supported by substantial evidence.⁴² The Board should reject the Planning Commission's certification of the FEIR for this Project. The FEIR should be revised and recirculated.

In health,

/s/

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Heather Lewis
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⁴¹ *CBE v. City of Richmond and Chevron Products Company* (2010) 184 Cal. App. 4th 70, 82-83.

⁴² Pub. Res. Code §§ 21168, 21168.5