

## **EXHIBIT #2**

**FINDINGS, GROWTH MANAGEMENT PERFORMANCE STANDARDS, AND CONDITIONS OF APPROVAL FOR THE PHILLIPS 66 PROPANE RECOVERY PROJECT, COUNTY FILE #LP12-2073, AS APPROVED BY THE PLANNING COMMISSION ON NOVEMBER 19, 2013 (WITH PROPOSED ADDED AND MODIFIED CONDITIONS BY STAFF IN UNDERLINED TEXT)**

**A. CEQA Findings**

1. **Introduction:** The Contra Costa County Planning Commission adopts the following findings for certification of the Environmental Impact Report (EIR) and approval of the Propane Recovery Project pursuant to the California Environmental Quality Act, California Public Resources Code, Sections 21000, et seq. the Guidelines for Implementation of CEQA, Title 14 of the California Code of Regulations, Sections 15000, et seq. (CEQA Guidelines) and the County's CEQA Guidelines.

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Section 15091, no public agency shall approve and carry out a project where an EIR has been certified, which identifies one or more significant impacts on the environment that would occur if the project is approved, unless the public agency makes one or more findings for each of those significant impacts, accompanied by a brief explanation of the rationale for each finding. The possible findings, which must be supported by substantial evidence in the record, are:

- a. Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant impact on the environment.
- b. Changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
- c. Specific economic, legal, social, technological or other considerations make infeasible the mitigation measures or project alternatives identified in the EIR.

For those significant impacts that cannot be mitigated to below a level of significance, the public agency is required to find that specific overriding economic, legal, social, technological or other benefits of the project outweigh the significant impacts of the project. The Propane Recovery Project did not present any significant impacts that cannot be mitigated below or to a less-than-significant impact level.

2. **Project and EIR:** The project proposes refinery processing equipment improvements to recover for sale additional amounts of propane and butane from refinery fuel gas (RFG) and other process streams; and to decrease sulfur dioxide (SO<sub>2</sub>) emissions from the refinery as a result of

removing sulfur compounds from RFG streams. The proposed project would add and modify processing and ancillary equipment within the Phillips 66 Rodeo refinery in Contra Costa County.

The proposed project would add: 1) a hydrotreater, 2) new fractionation columns to recover propane and butane, 3) six propane storage vessels and treatment facilities, 4) two new rail spurs, and 5) the removal of two 265-foot heater stacks. To provide the steam required by the project, either a new 140 million Btu/hr steam boiler would be added or more steam would be provided by the existing steam power plant if the new boiler were not built. There would also be minor modifications to existing process units and utility systems for the purpose of tie-ins and to address any changes in operating pressure or temperature at the tie-in points. The project also would require hydrotreating a portion of the RFG, a process that would reduce the amount of sulfur in the fuel gas, and because fuel gas is now burned to produce heat for refinery processes, it would ultimately reduce the refinery's SO<sub>2</sub> emissions within the atmosphere.

The project would be built in two phases. The first phase (Phase I) would include all project components except propane storage and the additional rail loading rack and spurs. During the second phase, (Phase II), the facilities to store and ship propane would be added along with the piping and other ancillary equipment necessary to get the propane from the Propane/Butane Recovery Unit to the storage vessels and loading racks.

The Department of Conservation and Development determined that an EIR was required for the project. Accordingly, the County, as lead agency for this Project, distributed a Notice of Preparation on July 24, 2012. The Draft EIR, State Clearinghouse Number 2012072046, was released for public review on June 10, 2013. The initial public comment period was scheduled for 45 days and was extended an additional 15 days, ending on August 9, 2013. A public hearing before the Zoning Administrator to receive comments on the Draft EIR was held on July 15, 2013. The Final EIR was published and distributed in November 2013. The Zoning Administrator held a hearing on November 18, 2013 and recommended certification of the EIR.

The EIR, as referenced in these findings, includes the Draft EIR (and its appendices) as supplemented and revised by the Final EIR, and the Final EIR (and its appendices). The Final EIR contains EIR Text Revisions (Chapter 4) that restates and revises some text, figures and tables of the Draft EIR. When these findings refer to sections, tables, figures or text of the EIR, and unless the context clearly indicates otherwise, these findings refer to the revised versions in Chapter 4 of the Final EIR.

The EIR identifies potentially significant environmental impacts that would occur if the project were implemented, and feasible mitigation measures would reduce all of the potentially significant impacts to less than

significant levels. The EIR provides a comprehensive analysis of the project's impacts, and cumulative impacts to which the project would contribute. The EIR includes responses to all written and oral comments received during the comment period, and provides adequate, good faith, and reasoned responses to all comments raising significant environmental issues. The EIR also addresses a reasonable range of alternatives. Evidence regarding the range of alternatives, and the evidence indicating that offsite and reduced development alternatives were not studied in detail because they would not achieve most of the project objectives is in the EIR and in the record. The Commission adopts the analysis and conclusions of the EIR and bases its decision upon the evidence referenced in the EIR and its appendices.

The comprehensive analysis in the EIR provides the Commission with the necessary information required by the California Environmental Quality Act (CEQA) to properly analyze and evaluate any and all of the potential environmental impacts of the Project.

#### Certification of EIR

The Commission finds that the EIR has been completed in compliance with CEQA; that the Commission reviewed and considered the information contained in the EIR prior to approving the project; and the EIR reflects the County's independent judgment and analysis.

#### Recirculation is Not Required

CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR but before certification of the Final EIR. New information added to an EIR is not significant unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The Guidelines provide examples of significant new information under this standard, which involve evidence of a new or more severe significant impact, all as more specifically set forth in the EIR.

The Commission recognizes that the Final EIR incorporates information obtained since the Draft EIR was completed, and contains additions, clarifications, modifications, and other changes. Various minor changes and edits have been made to the mitigation measures, text, tables and figures of the Draft EIR, as described in the Final EIR. Information that confirms the conclusions of the Draft EIR has been provided in response to comments, and mitigation measures have been edited for clarity, feasibility, and to strengthen them. With respect to this information, the Commission adopts the conclusions and analysis of the EIR based upon the evidence to which the EIR refers. This information confirms and

provides additional support for the conclusions of the Draft EIR, and further confirms that impacts will remain less than significant.

Based on the foregoing, and having reviewed the information contained in the EIR and in the documents comprising the administrative record, the Commission finds that no significant new information has been added since public notice was given of the availability of the Draft EIR that would require recirculation of the EIR.

#### Differences of Opinion Regarding Environmental Analysis

In making its determination to certify the Final EIR and to approve the project, the Commission recognizes that the project involves controversial environmental issues and that a range of technical and scientific opinion exists with respect to those issues. The Commission has acquired an understanding of the range of this technical and scientific opinion by its review of the Draft EIR, the comments received on the Draft EIR and the responses to those comments in the Final EIR, as well as other testimony, letters, and reports submitted for the record. The Commission recognizes that some of the comments submitted on the EIR, and at the hearing, disagree with the conclusions, analysis, methodology and factual bases stated in the EIR. The EIR was prepared by experts, and that some of these comments were from experts, thus creating a disagreement among experts. The Commission has reviewed and considered, as a whole, the evidence and analysis presented in the EIR and in the record, and has gained a comprehensive and well-rounded understanding of the environmental issues presented by the project. In turn, this understanding has enabled the Commission to make its decisions after weighing and considering the various viewpoints on these important issues.

#### Impact Conclusions and Mitigation Measures

Exhibit I (the summary of impacts, mitigation measures, and resulting levels of significance that appears as Table 2-1 in the EIR) is attached to these findings and incorporated herein by reference. Exhibit I summarizes the environmental determinations of the EIR about the Project's impacts and describes mitigation measures. This exhibit does not attempt to describe the full analysis of each environmental impact contained in the EIR. Instead, Exhibit I provides a summary description of each impact, describes the applicable mitigation measures identified in the EIR and adopted by the Commission, and states the Commission's findings on the significance of each impact after imposition of the adopted mitigation measures. A full explanation of these environmental findings and conclusions can be found in the EIR. The Commission ratifies, adopts, and incorporates the analysis and explanation in the EIR, and ratifies, adopts, and incorporates in these findings the determinations and conclusions of the EIR relating to environmental impacts and mitigation measures. These findings are based upon the evidence contained in and referenced in the



EIR, in staff reports, in the submittals from the applicant, and on the record as a whole.

Exhibit C (the Mitigation, Monitoring Reporting Program [MMRP]) is attached to these findings and is hereby adopted by the Commission, and is incorporated into these findings. The mitigation measures will feasibly reduce or avoid the potentially significant and significant impacts of the project to less-than-significant levels, and will reduce some less-than-significant impacts as well. In adopting these mitigation measures, the Commission intends to adopt each of the mitigation measures identified by the EIR. Accordingly, in the event a mitigation measure recommended in the EIR has inadvertently been omitted from Exhibit C, such mitigation measure is hereby adopted and incorporated in these findings by reference. In addition, in the event the language describing a mitigation measure set forth in Exhibit C fails to accurately reflect the substance of the mitigation measures in the EIR due to a clerical error, the language of the mitigation measure as set forth in the EIR shall control, unless the language of the mitigation measure has been specifically and expressly modified by these findings. Some language has been modified to reflect County practices and procedures regarding department approval processes, and to reflect technical details of the project that do not substantively affect the mitigation of impacts.

The Commission finds that changes or alterations have been required in, or incorporated into, the project which feasibly avoid or substantially lessen the significant environmental effects on the environment. As shown in the MMRP exhibit, primary responsibility for implementation, monitoring and enforcement of all mitigation measures lies with the County. Other agencies may play a role in approving the project. For example, there may be consultation with the Regional Water Quality Control Board regarding stormwater plans and other water quality aspects of the project, and resource agencies may become involved should any resource issues need their input as a result of the project.

Comments on the Draft EIR, that were suggested by commenters as proposed additional mitigation measures or modifications to the mitigation measures identified by the EIR. Some of the EIR's mitigation measures were modified in response to such comments. Other comments requested minor modifications in mitigation measures identified in the Draft EIR, requested mitigation measures for impacts that were less than significant, or requested additional mitigation measures for impacts as to which the Draft EIR identified mitigation measures that would reduce the identified impact to a less-than-significant level; these requests are declined as unnecessary. The alternative and additional mitigation measures are not necessary to reduce impacts to a less-than-significant level, and some purported to address an impact that was not potentially significant. With respect to the additional measures suggested by commenters that were not added to the EIR, the Commission adopts the reasons set forth in the

responses to comments contained in the EIR as its grounds for not including the adoption of these mitigation measures.

3. The various documents and other materials constitute the record upon which the Commission bases these findings and the approvals contained herein. These findings cite specific pieces of evidence, but none of the Commission's findings are based solely on those pieces of evidence. These findings are adopted based upon the entire record, and the Commission intends to rely upon all supporting evidence in the record for each of its findings.

The location and custodian of the documents and materials that comprise the record is Contra Costa County, Department of Conservation and Development, 30 Muir Road, Martinez, CA, 94553, telephone (925) 674-7205.

**B. Growth Management Performance Standards**

1. **Traffic:** A traffic impact analysis was prepared for the Propane Recovery Project which suggested mitigation measures that, if implemented, would reduce any potential impacts on traffic during construction of the project to less-than-significant levels. The project was also reviewed by the Public Works Department and CalTrans for impacts on traffic and circulation, and is subject to compliance with their conditions of approval and the mitigation measures required and identified within the Final Environmental Impact Report. Therefore, the proposed project will not have an adverse impact on traffic in the area.
2. **Water:** The refinery currently receives approximately 3,000 gallons per minute of fresh water from the East Bay Municipal Utility District (EBMUD). Implementation of the project would require an increase in fresh water by approximately 20 gallons per minute. The additional fresh water required for the proposed project would be available from EBMUD's existing entitlements. The additional water supply required during project construction would be only a small, temporary increment as compared to existing and proposed water usage.
3. **Sewage Disposal:** Although the refinery lies within the Rodeo Sanitary District's service area, the refinery collects, treats, and discharges all wastewater and stormwater to its own on-site wastewater treatment system. Since the refinery does not discharge to the public wastewater treatment facilities, the capacity of the Rodeo Sanitary District's wastewater treatment facility would be unaffected by the project. The refinery currently discharges approximately 2.8 million gallons per day of wastewater to the on-site treatment plant, but it has the ability to treat up to 10 million gallons per day. The project would increase wastewater flows to the refinery's treatment plant by 0.03 million gallons per day, well below

the plant's 10-million-gallon maximum treatment capacity. Thus, the refinery has the capacity to treat the additional wastewater flow.

4. **Fire Protection:** The refinery is licensed by the State Fire Marshal to provide its own fire protection. The refinery is part of a Mutual Aid Organization, which is composed of more than half a dozen refineries that agree to provide one another with emergency response resources in the event of a major emergency. The Rodeo-Hercules Fire District could also provide emergency services to the refinery; however, the Rodeo-Hercules Fire District would be supported by the Pinole Fire Department, the Crockett-Carquinez Fire District, and the Contra Costa County Fire Protection District in the event that major assistance was needed at the refinery. Implementation of the Propane Recovery Project is not expected to require additional support from public fire protection agencies.
5. **Public Protection:** The Growth Management Element standard is 155 square feet of Sheriff's facility/station area and support facilities for every 1,000 member of the population. The Small population increase associated with this project is not considered significant because the project would create temporary new jobs and only two permanent jobs. Any population growth resulting from the new permanent job positions would be insignificant and positive to the economy and would not impact the County's ability to achieve the performance standard.
6. **Parks and Recreation:** The implementation of the project could possibly induce population growth and ancillary use by employees of nearby facilities due to the increase in employment opportunities. However, any population growth induced will not have a major cumulative effect on the demand for park and recreation facilities and is not subject to payment of park dedication fees.
7. **Flood Control and Drainage:** The proposed project elements would all be constructed within the previously-developed areas, where stormwater and runoff is controlled and treated onsite before discharge. Therefore, drainage patterns would not be altered by the proposed project.

C. **Land Use Permit Findings**

1. ***That the proposed conditional land use shall not be detrimental to the health, safety, and general welfare of the county.***

**Project Finding:** All significant environmental impacts of the Propane Recovery Project as identified in the Final EIR, including Air Quality and emissions associated with construction and operational activities will be reduced to less-than-significant levels after the implementation of mitigation measures 4.3-1 and 4.3-2. Further, the reduction of sulfur dioxide (SO<sub>2</sub>) is an environmental benefit. Therefore, based on the foregoing,



the Propane Recovery Project will not be detrimental to health, safety, and general welfare of the County.

2. ***That the proposed conditional land use shall not adversely affect the orderly development of property within the county.***

**Project Finding:** The refinery is approximately 1,100 acres in size and is located in the unincorporated area of Rodeo in Contra Costa County. Interstate Highway 80 (I-80) bisects the refinery in a northeast to southwest direction. All elements of the Propane Recovery Project would be located on about one acre within the existing boundaries of the 495-acre portion of refinery property already developed for refining operations. All elements of the project will be within the portion of the lands designated for Heavy Industry use by the County General Plan and zoned Heavy Industrial ("H-I") under the Contra Costa County Ordinance Code. Pursuant to these designations, oil refining and other manufacturing operations are allowed and are permitted uses, respectively. Based on the foregoing, the Propane Recovery Project will not adversely affect the orderly development of property with the County.

3. ***That the proposed conditional land use shall not adversely affect the preservation of property values and the protection of the tax base within the county.***

**Project Finding:** The refinery has been in operation at its current location since 1896. The proposed project will be situated on approximately one acre located throughout the 495-acre portion of the refinery property already developed for refining operations. The proposal will not change the refinery's current land use, nor will it be inconsistent with the present industrial uses in the vicinity of the refinery, including those conducted at the PG&E substation, the Shore Terminal (formerly NuStar) facility, and the Rodeo Sanitary District. The refinery also consists of approximately 600 acres of undeveloped land, a portion of which is used by the refinery as a buffer zone to limit potential impact of the refining operations on non-industrial land uses located in the refinery's general vicinity.

The construction and operation of the proposal will result in the hiring of temporary and permanent employees at the refinery. Further, implementation of the Propane Recovery Project would increase the assessed value of the refinery property, which would expand the County's tax base. The proposal will not adversely affect the preservation of property values and the protection of the tax base within the County.

4. ***That the proposed conditional land use shall not adversely affect the policy and goals as set by the general plan.***

**Project Finding:** The proposed project is consistent with the overall goals and policies of the General Plan. The Land Use Element supports

petroleum processing and refining within the Heavy Industrial Districts. The project meets the Growth Management Performance Standards section of the General Plan, and all potentially significant impacts on Air Quality, Cultural Resources, Noise, and Transportation & Traffic will be mitigated to less-than-significant levels. The mitigations as set forth in the Final Environmental Impact Report will protect the health, safety, and general welfare of the public.

5. ***That the proposed conditional land use shall not create a nuisance and/or enforcement problem within the neighborhood or community.***

**Project Finding:** The proposal to be constructed will be located on land designated Heavy Industry by the General Plan and zoned H-I by the County Ordinance Code. Industrial operations have occurred throughout the refinery property for many years. The residential development of Bayo Vista and the community of Rodeo are located south of the refinery. The refinery maintains an open space buffer zone between the oil processing areas and the closest sensitive receptors. The Shore Terminal is located directly to the north of the refinery, with the community of Tormey and Crockett as the closest neighborhoods in this direction; however, topographically these communities are physically separated from the refinery by rolling hills. The refinery abuts the San Pablo Bay to the west, with land designated by the General Plan as Open space (OS) to the east.

Airborne emissions of certain gasses do have the ability to produce odors, which can result in public nuisances and complaints from residential communities. As discussed within the Final Environmental Impact Report (FEIR) in Chapter 2—Master Responses on page 2-10, the refinery and the communities continue to work on a fenceline monitoring system, as required as part of a previous land use permit. The Propane Recovery Project appears unlikely to result in an increase of odorous emissions, as certain equipment and technology are anticipated to be installed and/or used as part of the fenceline monitoring system.

The Noise Element of the General Plan does contain land use compatibility standards for noise which are intended to limit the noise impacts. Noise from operation of the Propane Recovery Project was determined to be 44 decibels from 2,300 feet (the distance to the closest residential receptors), which would be less than the County exterior day-night noise level threshold of 60 decibels. As set forth in the Final EIR, any noise impacts from construction will be mitigated to less-than-significant levels.

Temporary traffic impacts for the construction of the proposed project would be the most likely potential source of project-related nuisances in the vicinity of the refinery. These traffic impacts will be mitigated to less-than-significant levels by the implementation of Mitigation Measures 4.17-2 (a) and (b), which include the requirement of traffic control plans and prescribed construction-traffic routes. Therefore, the proposal will not

create a nuisance and/or enforcement problem within the neighborhood or community.

6. ***That the proposed conditional land use shall not encourage marginal development within the neighborhood.***

**Project Finding:** The Propane Recovery Project will be located in areas zoned H-I under the County Ordinance Code and designated Heavy Industry in the County General Plan. Most of the undeveloped land adjacent to the 495-acre developed portion of the refinery is maintained by Phillips 66 as open space to serve as a buffer between refining operations and the adjacent non-industrial land uses. The areas to the north and southwest are already developed for industrial use. The refinery will not alter its use of the buffer zone. The proposal is intended to recover and sell the excess propane, which is a byproduct that is already produced at the refinery during the refining process and but not sold, but is rather burned as processing fuel in the refinery fuel gas. This project will maintain the existing land use in a manner that will ensure its continued ability to meet future demands. The proposal will not encourage marginal development within the neighborhood.

7. ***That special conditions or unique characteristics of the subject property and its location or surroundings are established.***

**Project Finding:** The Phillips 66 Rodeo refinery has existed in its present location for more than 100 years and is one of the few areas in the County suitable for the proposed project. The project areas are zoned Heavy Industrial District (H-I) by the County Ordinance Code. This designation allows a permitted use of oil refining and other manufacturing operations. The project will not result in any changes in the existing use of the refinery in that propane and butane are both already produced at the facility.

**CONDITIONS OF APPROVAL FOR PHILLIPS 66 COMPANY (APPLICANT & OWNER) PROPANE RECOVERY PROJECT, COUNTY FILE #LP12-2073 AS APPROVED BY THE PLANNING COMMISSION ON NOVEMBER 19, 2013 (WITH PROPOSED ADDED AND MODIFIED CONDITIONS BY STAFF IN UNDERLINED TEXT)**

THIS PROJECT IS SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:

**Land Use Permit Approval**

1. \_\_\_\_\_ A Land Use Permit to allow the implementation of the Propane Recovery Project at the Phillips 66 Rodeo refinery is APPROVED based on the following documents received by the Department of Conservation and Development, Community Development Division (CDD):
  - a) Application and materials received on June 22, 2012

- b) Draft Environmental Impact Report and appendices, dated June 2013
- c) Final Environmental Impact Report and appendices, dated November 2013
- d) Mitigation Monitoring Reporting Program, dated November 2013

### **Application Costs**

2. \_\_\_\_\_ This application is subject to an initial application deposit of \$2,700.00, which was paid with the application submittal, plus time and material costs if the application review expenses exceed 100% of the initial deposit. **Any additional costs due must be paid within 60 days of the permit effective date or prior to use of the permit, whichever occurs first.** The applicant may obtain current costs by contacting the project planner. If you owe additional fees, a bill will be sent to you shortly after permit issuance.

### **Notice of Determination Filing Fee**

3. \_\_\_\_\_ By November 20, 2013, Phillips 66 shall pay the California Department of Fish and Wildlife environmental review fee of \$2,995.25. Payment of this fee is mandated by Assembly Bill 3158, which became effective on January 1, 1991. Until the fee is paid, the project approval is not considered vested or final and no building permits can be issued. Also, if the fee is not paid on time, then the 30-day statutory time limit to file a legal challenge against the approval will be extended to 180 days.

### **Mitigation and Monitoring Fees**

4. \_\_\_\_\_ **At least 60 days prior to commencement of construction-related activities, issuance of grading permits or issuance of building permits, whichever occurs first,** Phillips 66 shall provide the County with an initial deposit of \$10,000.00 to cover costs of mitigation monitoring. Phillips 66 shall be responsible for providing adequate funding to cover all eventual costs of mitigation monitoring.

### **Indemnification**

5. \_\_\_\_\_ Phillips 66 shall deliver an executed indemnification agreement between Phillips 66 and Contra Costa County requiring Phillips 66 to defend, indemnify, and hold harmless Contra Costa County against any expenses arising from or related to claims or litigating regarding the County's actions in reviewing or approving this land

use permit application (County File No. LP12-2073). The Director of the Department of Conservation and Development is authorized to execute the indemnification agreement on behalf of the County.

### **Condition of Approval Compliance Report**

6. \_\_\_\_\_ **At least 45 days prior to commencement of construction-related activities, issuance of grading permits or issuance of building permits, whichever occurs first**, Phillips 66 shall submit an application for Condition of Approval Compliance Review to the CDD. The fee for this application is an initial deposit of \$5,000 that is subject to time and materials costs. Should staff costs exceed the deposit, additional fees will be required. Submittals for this application shall include a checklist describing how each condition of approval will be satisfied and applicable proof that each condition has been satisfied (i.e. documentation, plans, photographs, etc.). This application will remain active throughout the life of the project and additional submittals will be required to ensure compliance with each phase of development (grading, building), as described below.

### **Geotechnical Reports and Recommendations**

7. \_\_\_\_\_ **At least 45 days prior to commencement of construction-related activities, issuance of grading permits or issuance of building permits, whichever occurs first**, Phillips 66 shall submit a satisfactory geotechnical report prepared by a qualified individual or firm for the review of the County Planning Geologist and the review and approval of the CDD. At minimum, this report shall discuss liquefaction, slope stability, expansive soils, erosion, differential settlement, lateral spreading, subsidence and corrosive soils at each of the construction sites where earthwork will be performed and/or new storage units will be constructed. The report shall include specific design and construction recommendations appropriate for addressing any adverse soil conditions. Grading and building plans shall be prepared in accordance with the recommendations of the approved geotechnical report. A non-refundable deposit of \$750.00 shall be submitted with the report.
8. \_\_\_\_\_ **At least 45 days prior to commencement of construction-related activities, issuance of grading permits or issuance of building permits, whichever occurs first**, Phillips 66 shall submit satisfactory evidence for the review of the County Planning Geologist and the review and approval of the CDD, that the design of the project has been reviewed and that it conforms with the recommendations of the Planning Geologist, the project geotechnical engineer or engineering geologist and the project structural engineer and meets the following requirements:



- i. All above-ground and underground utilities shall be designed to accommodate estimated settlement without failure, especially across transitions between fills and cuts. Seismic design consistent with current professional engineering and industry standards shall be employed in construction for resistance to strong ground shaking.
- ii. The California Building Code and California Accidental Release Prevention Program seismic requirements, or more stringent standards, shall be followed during design and construction of all components of the project.
- iii. Additional requirements recommended by the project California Certified Engineering Geologist or Geotechnical Engineer, based on site-specific studied and specific project requirements, shall be followed and shall be incorporated in the Project design specifications.

9. \_\_\_\_\_ **At least 45 days prior to issuance of grading permits**, Phillips 66 shall submit grading plans for review and approval of the Department of Conservation and Development, Community Development Division (CDD). The grading plans shall be accompanied by an erosion-control plan. At a minimum, the erosion-control plan shall include the following requirements:

- i. Excavation and grading activities shall be conducted pursuant to all required grading permits issued by the Building Inspection Division.
- ii. Temporary erosion control measures shall be provided until vegetation is reestablished or impervious surfaces (asphalt, concrete, etc.) are constructed.
- iii. Best Management Practices selected and implemented for the project shall be in place and operational prior to commencement of major earthwork.

#### **Contact Persons and Information**

10. \_\_\_\_\_ **Prior to commencement of construction-related activities, issuance of grading permits or issuance of building permits, whichever occurs first**, Phillips 66 shall post a publicly visible sign stating the names, titles, and phone numbers of individuals responsible for control of construction noise, dust, litter, and traffic. A 24-hour emergency number shall also be stated. The sign shall be kept up to date and shall be placed in a conspicuous location on refinery property along San Pablo Avenue.

#### **Railcar Storage**

11. \_\_\_\_\_ Phillips 66 must continuously monitor the storage of railcars (primarily propane and butane railcars), and as needed contact the Union Pacific Railroad (UPRR) to request and encourage that UPRR utilize on-site areas for storage of railcars and to make space available on-site to the extent practicable for the storage of any propane and butane railcars.

MITIGATION MONITORING REPORTING PROGRAM (MMRP) CONDITIONS OF THE FINAL ENVIRONMENTAL IMPACT REPORT

**MMRP for Project Impacts on Air Quality**

12. \_\_\_\_\_ **Air Quality Mitigation Measure 4.3-1:** Phillips 66 and its construction contractors shall implement the following applicable Bay Area Air Quality Management District (BAAQMD) basic control measures.
- a) Water all exposed surfaces of active construction areas at least twice daily (using reclaimed water if possible). Watering should be sufficient to prevent airborne dust from leaving the site.
  - b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
  - c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day, or more if needed. The use of dry power sweeping is prohibited.
  - d) Limit vehicle speeds on unpaved roads to 15 miles per hour.
  - e) Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
  - f) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations. Clear signage to this effect shall be provided for construction workers at all access points.
  - g) All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

- h) Post a publicly visible sign with the telephone number and person to contact at the County regarding dust complaints. This person shall respond and require Phillips 66 to take corrective action within 48 hours. The telephone numbers of contacts at the BAAQMD shall also be visible.

13. \_\_\_\_\_ **Air Quality Mitigation Measure 4.3-2:** Phillips 66 shall permanently decommission the B-401 process heater in Unit 240 to offset significant NO<sub>x</sub> emissions related to the proposed Propane Recovery Project. Prior to operations of the Project, Phillips 66 shall provide documentation to the Department of Conservation and Development, Community Development Division (CDD) that shows that Phillips 66 has not applied for additional NO<sub>x</sub> or GHG emission reduction credits (ERCs) associated with the unit B-401 process heater shutdown.

#### **MMRP for Project Impacts on Cultural Resources**

14. \_\_\_\_\_ **Cultural Resources Mitigation Measures 4.5-1 and 4.5-2:** Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" shall be instituted. In the event that any prehistoric or historic-period subsurface cultural resources are discovered during ground-disturbing activities, all work within 100 feet of the find shall be halted and Phillips 66 shall consult with the County and a qualified archaeologist (as approved by the County) to assess the significance of the find per CEQA Guidelines Section 15064.5. If any find is determined to be significant, representatives of the County and the qualified archaeologist would meet to determine the appropriate course of action.

Avoidance is always the preferred course of action for archaeological sites. In considering any suggestion proposed by the consulting archaeologist to reduce impacts to historical resources or unique archaeological resources, the County would determine whether avoidance is feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery, interpretation of finds in a public venue) would be instituted. Work may proceed on other parts of the Project site while mitigation for historical resources or unique archaeological resources is carried out.

All significant cultural materials recovered shall be, at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documented according to current professional standards. In the event of an

inadvertent discovery of a unique archeological resource, this mitigation measure shall be implemented.

15. \_\_\_\_\_ **Cultural Resources Mitigation Measure 4.5-3:** In the event of the inadvertent discovery of a unique paleontological resource, or site, or unique geological feature, Phillips 66 shall notify both the County and a qualified paleontologist (as approved by the County) of unanticipated discoveries. The qualified paleontologist, under contract to Phillips 66, shall subsequently document the discovery. In the event of an unanticipated discovery of a fossil or fossilized deposit during construction, excavations within 100 feet of the find shall be temporarily halted or diverted until a qualified paleontologist examines the discovery. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. The paleontologist shall oversee implementation of these procedures once they have been determined.

16. \_\_\_\_\_ **Cultural Resources Mitigation Measure 4.5-4:** In the event that any prehistoric or historic subsurface human remains are discovered during ground disturbing activities, all work within 100 feet of the resources shall be halted and Phillips 66 shall consult with the County and a qualified archaeologist (as approved by the County) to assess the significance of the find per CEQA Guidelines Section 15064.5. If any find is determined to be significant, representatives of the County and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate mitigation. In considering any suggested mitigation proposed by the consulting archaeologist to mitigate impacts to historical resources or unique archaeological resources, the County would determine whether avoidance is feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) would be instituted. Work may proceed on other parts of the project site while mitigation is carried out. All significant cultural materials recovered shall be, at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documented according to current professional standards. CEQA Guidelines Section 15064.5(e)(1), below, shall also be followed:

- (e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

- (1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:
  - (A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and
  - (B) If the coroner determines the remains to be Native American:
    1. The coroner shall contact the Native American Heritage Commission within 24 hours;
    2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased Native American;
    3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or
- (2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance:
  - (A) The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the Commission;
  - (B) The identified descendant fails to make a recommendation; or
  - (C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.



**MMRP for Project Noise Impacts**

17. \_\_\_\_\_ **Noise Mitigation Measure 4.13-1a and 4.13-4:** The applicant shall implement the following construction noise nuisance control measures for the duration of construction.
- a) Ensure that construction equipment and trucks are well tuned and maintained according to the manufacturer's specifications, and that the equipment's standard noise reduction devices are in good working order;
  - b) Place construction equipment at locations to maximize the distance to the nearest residences; and
  - c) Notify nearby residents along Old County Road of the planned construction schedule at least one month prior to construction. Notification shall include the shift hours and include contact information of a designated construction noise coordinator who will maintain communication with affected residences throughout the construction period.
18. \_\_\_\_\_ **Noise Mitigation Measure 4.13-1b and 4.13-4:** The applicant shall coordinate with Contra Costa County to establish a daytime construction shift limited to between 7:00 a.m. and 5:30 p.m. as a Project-specific condition of approval.

**MMRP for Project Impacts on Transportation/Traffic**

19. \_\_\_\_\_ **Transportation/Traffic Mitigation Measure 4.17-2a:** Thirty (30) days prior to construction-related activities or issuance of permits, Phillips 66 shall document road conditions for all routes that will be used by project-related vehicles. Phillips 66 shall also document road conditions after project construction is completed. The pre- and post-construction conditions of the haul routes shall be reviewed by Public Works Department staff. Phillips 66 shall enter into an agreement prior to construction that will detail the pre-construction conditions and the post-construction requirements of a rehabilitation program. Roads damaged by construction would be repaired to a structural condition equal to that which existed prior to construction activity. A cash bond/deposit to finance damage to County roadways shall be required. An encroachment permit may be required from the County and a transportation/haul permit may be also required for any extra-legal loads used during construction. A pavement monitoring plan that describes measures that will be implemented to revitalize pavement along the proposed haul route deteriorated by project-related construction traffic shall also be included and be submitted for review by the Public Works Department prior to the commencement of any construction on-site.

20. \_\_\_\_\_ **Transportation/Traffic Mitigation Measure 4.17-2b:** Thirty (30) days prior to construction-related activities or issuance of permits, access and hauling routes shall be specified to minimize traffic impact to the area wide roadways. Construction traffic should not deviate from this route, except in the event that the route is rendered impassable due to accidents or other unanticipated road closures. In such instances, Phillips 66 shall submit a traffic control plan to the Public Works Department staff for review.

## CONSTRUCTION MANGAGEMENT CONDCTIONS

### **Litter Control and Recycling**

21. \_\_\_\_\_ Phillips 66 shall maintain project construction sites and surrounding areas in an orderly fashion. Litter and debris shall be contained in appropriate receptacles and shall be removed as necessary. Following cessation of construction activity, all construction materials and debris shall be removed. To the extent possible, demolition debris and construction waste shall be diverted from the waste stream. At least thirty (30) days prior to commencement of demolition or construction, Phillips 66 shall meet with the Conservation Programs staff to identify opportunities for the diversion of waste. These requirements shall be stated on the face of all construction drawings.

### **Construction Hours**

22. \_\_\_\_\_ The following work hours are limited to work related to the Propane Recovery Project which takes place off the refinery:

All construction activities, including transport of equipment and materials, shall be limited to the hours of 7:00 a.m. to 5:30 p.m., Monday through Friday, and shall be prohibited on Saturday, Sunday and the following state and federal holidays:

New Year's Day (State and Federal)  
 Martin Luther King, Jr. Day (State and Federal)  
 Washington's Birthday/Presidents' Day (State and Federal)  
 Lincoln's Birthday (State)  
 Cesar Chavez Day (State)  
 Memorial Day (State and Federal)  
 Independence Day (State and Federal)  
 Labor Day (State and Federal)  
 Columbus Day (State and Federal)  
 Veterans Day (State and Federal)  
 Thanksgiving Day (State and Federal)  
 Day after Thanksgiving (State)  
 Christmas Day (State and Federal)

These restrictions shall be stated on the face of all construction drawings. The following websites provide details on the actual days that the state and federal holidays occur:

Federal Holidays:

<http://www.opm.gov/fedhol>

California Holidays:

[http://www.edd.ca.gov/payroll\\_taxes/State\\_Holidays.htm](http://www.edd.ca.gov/payroll_taxes/State_Holidays.htm)

### **Traffic Control Personnel**

23. \_\_\_\_\_ Phillips 66 shall make a good-faith effort to avoid interference with existing neighborhood traffic flows. To achieve this, Phillips 66 shall provide traffic control personnel at all construction ingress and egress points along San Pablo Avenue.

### **Construction Trailers**

24. \_\_\_\_\_ Phillips 66 may locate construction trailers onsite. Such trailers may be located onsite for up to two months prior to the start of project construction and must be removed within two months after construction is complete.

### **Community Outreach**

25. \_\_\_\_\_ In order to help support the local economy, Phillips 66 shall encourage its employees and subcontractors to patronize local businesses and restaurants during breaks and mealtimes, and that they use personal vehicles during these break times and not construction equipment, such as dump trucks or other large construction vehicles, so as to minimize unnecessary road wear by heavy trucks on local roadways.
26. \_\_\_\_\_ Phillips 66 shall provide the Rodeo Municipal Advisory Council, Crocket Improvement Association and Crockett Community Foundation with quarterly newsletters informing the community of the project status and other relevant information. The first of these newsletters shall be sent no later than one month after issuance of grading or building permits, whichever is issued first.
27. \_\_\_\_\_ Phillips 66 shall advise nearby community organizations, such as the Bayo Vista Residence Council and the Crockett Improvement Association of any employment opportunities that may develop during project construction.

### **PUBLIC WORKS RECOMMENDED CONDITIONS OF APPROVAL**

**Phillips 66 shall comply with the requirements of Title 8, Title 9 and Title 10 of the Ordinance Code. Any exception(s) must be stipulated in these Conditions of Approval. Conditions of Approval are based on the application**

submitted to Department of Conservation and Development, Community Development Division, on June 22, 2012.

**COMPLY WITH THE FOLLOWING CONDITIONS OF APPROVAL PRIOR TO ISSUANCE OF A BUILDING PERMIT AND PRIOR TO INITIATION OF THE USE PROPOSED UNDER THIS PERMIT.**

**General Requierments**

28. \_\_\_\_\_ Improvement plans prepared by a registered civil engineer shall be submitted, if necessary, to the Public Works Department, Engineering Services Division, along with review and inspection fees, and security for all improvements required by the Ordinance Code for the conditions of approval of this subdivision. Any necessary traffic signing and striping shall be included in the improvement plans for review by the Transportation Engineering Division of the Public Works Department.

**Construction Traffic**

29. \_\_\_\_\_ The applicant shall gain access to the project site from Interstate 80 to Cummings Skyway and San Pablo Avenue for the construction operation. In the event that this route is rendered impassible due to unanticipated road closures, the applicant shall submit an alternative construction operation route to be reviewed and approved by the Public Works Department prior to use of this alternative route. (See Mitigation Measure 4.17-2b).
30. \_\_\_\_\_ The applicant shall provide a pavement analysis for those roads along the proposed haul route or any alternate route(s) that are proposed to be utilized by the construction operation. This study shall analyze the existing pavement conditions and determine what impact the construction operation will have over the life of the project. The study shall provide recommendations to mitigate identified impacts. The applicant shall be responsible for the cost of constructing the recommended repairs. Prior to issuance of grading, building, or encroachment permits, the applicant shall execute a bonded road improvement agreement to assure the roadway repairs. (See Mitigation Measure 4.17-2a).

**Access to Adjoining Property (Encroachment Permit)**

31. \_\_\_\_\_ Applicant shall obtain an encroachment permit from the County's Application and Permit Center for the construction of any improvements within the public road rights-of-way of San Pablo Avenue and Cummings Skyway, and/or any impacted public road rights-of-way.

**Drainage Improvements (Collect & Convey)**

32. \_\_\_\_\_ The applicant shall collect and convey all stormwater entering and/or originating on this property, without diversion and within an adequate storm drainage system, to an adequate natural watercourse having definable bed and banks, or to an existing adequate public storm drainage system which conveys the storm waters to an adequate natural watercourse, in accordance with Division 914 of the Ordinance Code.

Exception: The applicant shall be permitted an exception from the collect and convey requirements of the Ordinance provided all stormwater generated on-site is directed to a wastewater treatment plant (with adequate treatment capacity) prior to being discharged to San Pablo Bay.

**National Pollutant Discharge Elimination System (NPDES)**

33. \_\_\_\_\_ The applicant shall be required to comply with all rules, regulations and procedures of the National Pollutant Discharge Elimination System (NPDES) for municipal, construction and industrial activities as promulgated by the California State Water Resources Control Board, or any of its Regional Water Quality Control Boards (San Francisco Bay - Region II, or Central Valley - Region IV).

Compliance shall include developing long-term Best Management Practices (BMPs) for the reduction or elimination of storm water pollutants. The project design shall incorporate wherever feasible, the following long-term BMPs in accordance with the Contra Costa Clean Water Program for the site's stormwater:

- Minimize the amount of directly connected impervious surface area.
- Place advisory warnings on all catch basins and storm drains using current storm drain markers.
- Construct concrete driveway weakened plane joints at angles to assist in directing run-off to landscaped/pervious areas prior to entering the street curb and gutter.
- Develop a perpetual maintenance program for on-site water/drainage facilities.
- Trash bins shall be sealed to prevent leakage, OR, shall be located within a covered enclosure.
- Other alternatives comparable to the above as approved by the Public Works Department.

**Stormwater Management and Discharge Control Ordinance**

34. \_\_\_\_\_ In compliance with Provision C.3 of the National Pollutant Discharge Elimination System (NPDES) Permit and the County's



Stormwater Management and Discharge Control Ordinances (§1014), it has been determined that this project does not require submittal of a Stormwater Control Plan (SWCP); all stormwater generated on-site is directed to a wastewater treatment plant prior to discharging to San Pablo Bay (a controlled point source). The proposed project would not be subject to Provision C.3 of the stormwater permit since the refinery stormwater runoff is discharged to its water treatment plant and regulated under the existing NPDES permit.

#### **Area of Benefit Fees**

35. \_\_\_\_\_ The applicant will be required to comply with the requirements of the Bridge/Thoroughfare Fee Ordinance for the Hercules/Rodeo/Crockett and the West Contra Costa Transportation Advisory Committee (WCCTAC) bridges/roads, and WCCTAC transit Areas of Benefit, as adopted by the Board of Supervisors.

#### **SUPPLEMENTAL CONSERVATION AND DEVELOPMENT CONDITION**

36. \_\_\_\_\_ Phillips 66 Company shall ensure that the throughput of propane and butane at the LPG Recovery Unit shall not exceed 14,500 barrels per day.

#### **ADVISORY NOTES**

**ADVISORY NOTES ARE NOT CONDITIONS OF APPROVAL; THEY ARE PROVIDED TO ALERT THE APPLICANT TO ADDITIONAL ORDINANCES, STATUTES, AND LEGAL REQUIREMENTS OF THE COUNTY AND OTHER PUBLIC AGENCIES THAT MAY BE APPLICABLE TO THIS PROJECT.**

- A. NOTICE OF OPPORTUNITY TO PROTEST FEES, ASSESSMENTS, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.

Pursuant to California Government Code Section 66000, et seq., the applicant has the opportunity to protest fees, dedications, reservations or exactions required as part of this project approval. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and must be delivered to the Community Development Division within a 90-day period that begins on the date that this project is approved. If the 90<sup>th</sup> day falls on a day that the Community Development Division is closed, then the protest must be submitted by the end of the next business day.

- B. Additional requirements may be imposed by the Building Inspection Division. The Applicant is strongly encouraged to review this agency's requirements prior to continuing with the project.

- C. Additional requirements may be imposed by the Public Works Department. The Applicant is strongly encouraged to review this agency's requirements prior to continuing with the project.
- D. Additional requirements may be imposed by the Health Services Department, Hazardous Materials Programs. The Applicant is strongly encouraged to review this agency's requirements prior to continuing with the project.
- E. Additional requirements may be imposed by the Bay Area Air Quality Management District. The Applicant is strongly encouraged to review this agency's requirements prior to continuing with the project.
- F. Additional requirements may be imposed by the Regional Water Quality Control Board. The Applicant is strongly encouraged to review this agency's requirements prior to continuing with the project.
- G. Additional requirements may be imposed by the Rodeo-Hercules Fire Protection District. The Applicant is strongly encouraged to review this agency's requirements prior to continuing with the project.
- H. Additional requirements may be imposed by the California Department of Fish and Wildlife. The Applicant is strongly encouraged to review this agency's requirements prior to continuing with the project.
- I. Additional requirements may be imposed by the California Department of Transportation. The Applicant is strongly encouraged to review this agency's requirements prior to continuing with the project.
- J. Additional requirements may be imposed by the East Bay Municipal Utility District. The Applicant is strongly encouraged to review this agency's requirements prior to continuing with the project.
- K. Additional requirements may be imposed by the Pacific Gas and Electric Company. The Applicant is strongly encouraged to review this agency's requirements prior to continuing with the project.
- L. Additional requirements may be imposed by the San Francisco Bay Conservation and Development Commission. The Applicant is strongly encouraged to review this agency's requirements prior to continuing with the project.

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