

## BACKGROUND SECTION OF MAY 3, 2022 STAFF REPORT REGARDING APPEAL OF THE PHILLIPS 66 RODEO RENEWED PROJECT (COUNTY FILE# CDLP20-02040)

### INTRODUCTION

This is a hearing on an appeal of the County Planning Commission's March 30, 2022 decision to approve a Land Use Permit for the Phillips 66 Rodeo Renewed Project.

### PROJECT SUMMARY

Phillips 66 proposes to modify the existing Rodeo Refinery into a repurposed facility that would process renewable feedstocks into renewable diesel fuel, renewable components for blending with other transportation fuels, and renewable fuel gas. Repurposing of the Rodeo Refinery would assist California in meeting its stated goals of reducing greenhouse gas emissions and ultimately transitioning to carbon neutrality. Under the project, up to 80,000 barrels per day (bpd), calculated over a 12-month rolling average, of renewable feedstocks could arrive at the Rodeo Refinery and would be processed in the proposed Pre-treatment Unit (PTU). The Refinery would supply up to 107,000 bpd of renewable and petroleum-based transportation fuels. The project would produce up to 55,000 bpd of a variety of renewable transportation fuels from renewable feedstocks. The Rodeo Refinery as a whole would produce up to 67,000 bpd of renewable fuels. To maintain the current facility capacity to supply regional market demand for transportation fuels, including renewable and conventional fuels, the Rodeo Refinery could receive, blend, and ship up to 40,000 bpd of gasoline and gasoline blendstocks.

### GENERAL INFORMATION

1. General Plan: Heavy Industry (HI).
2. Zoning: Heavy Industrial District (H-I).
3. California Environmental Quality Act (CEQA) Compliance: The Department of Conservation and Development, Community Development Division (CDD) determined that an EIR was required for the project and distributed a Notice of Preparation (NOP) on December 21, 2020.

An Environmental Impact Report (EIR) was prepared and published for the project (State Clearinghouse #2020120330). The 60-day public review period for the Draft EIR started on October 18, 2021 and closed on December 17, 2021. During the comment period, the County received 86 comment letters on the Draft EIR and over 1,600 form letters both for and against the project. A Final EIR has been prepared that includes the comments received on the Draft EIR and the County's responses to those comments. The Final EIR also includes associated text changes relating to the comment responses. The Final EIR is included as an attachment to this report.

Pursuant to CEQA Guidelines Sections 15091 and 15097, a Mitigation Monitoring Program has been prepared, based on the identified mitigatable significant impacts and mitigation measures in the project EIR. Additionally, the EIR identified significant and unavoidable effects for the project in the areas of Air Quality, Biological Resources, Hydrology/Water Quality, and Hazards/Hazardous Materials that cannot be fully mitigated to less-than-significant levels with implementation of

identified mitigation measures; therefore, Public Resources Code section 21081(b) requires that the County make findings of overriding considerations to demonstrate that economic, legal, social, technological, or other benefits of the project outweigh the significant environmental effects of the project. Accordingly, the County has made the requisite findings of overriding consideration and has found that the potential benefits of the project do in fact outweigh the environmental impacts. The Statement of Overriding Considerations is included in the CEQA Findings attached to this report

4. Tribal Cultural Resources: As required by CEQA and Assembly Bill 52, Contra Costa County submitted a request for formal consultation to the Wilton Rancheria on October 21, 2020. Mariah Mayberry of the Wilton Rancheria responded on October 25, 2020, requesting consultation. Based on discussion between Contra Costa County and the Wilton Rancheria it was agreed that inclusion of four mitigation measures into the project EIR for the Project will satisfy the consultation requirements under AB 52.

## SITE AND AREA DESCRIPTION

### Project Sites:

1. Rodeo Refinery Site (1380 San Pablo Ave, Rodeo, CA 94572) - Refers to the 495-acre area within the Rodeo Refinery where the main project activities would occur.
2. Carbon Plant Site (2101 Franklin Canyon Rd, Rodeo, CA 94572) - Refers to the current location of the Carbon Plant in Franklin Canyon (within the 1,100-acre Rodeo Refinery).
3. Santa Maria Site (2555 Willow Rd, Arroyo Grande, CA 93420) - Refers to the Santa Maria Refinery, including the applicant-owned buffer land, located near Nipomo, San Luis Obispo County.
4. Pipeline Sites - Refers to four pipelines (i.e., Lines 100, 200, 300, and 400) that provide crude oil from the Santa Maria Site to the Rodeo Refinery.

The parcels in Contra Costa County that are part of the project site are Assessor Parcel Nos. 357-310-001, 358-010-008, 357-300-001, 357-300-008, 357-010-001, 357-320-002, 357-010-002, 358-020-004, 358-030-034, 357-300-005, 357-210-009, 357-210-010.

### Area Description:

The Rodeo Refinery includes approximately 1,100 acres of land. The Rodeo Site, where the main components of the Project would take place, is the 495-acre developed portion of the property northwest of Interstate 80 (I-80). The Rodeo Site is currently covered by a mixture of impervious surfaces associated with process equipment, parking areas, roads, and other pervious surfaces. The remaining portion of the Rodeo Refinery, southeast of I-80, consists of a tank farm, the Carbon Plant Site, and undeveloped land that serves as a buffer zone. The Rodeo Refinery is bordered by San Pablo Bay on the north and west, open land to the east and southeast, the NuStar Energy tank farm on the northeast, the Bayo Vista residential area of Rodeo to the southwest, and the residential enclave of Tormey, located east and adjacent to the Nustar Energy tank farm. Originally constructed in 1896, at which time the land was essentially vacant and agricultural, the Rodeo Refinery occupied 22 acres. During the second half of the twentieth century, it was expanded considerably as capacity and new processes were added and as vacant buffer zone land was acquired. The areas adjacent to the Rodeo

Refinery are characterized by a mix of land uses including undeveloped land and industrial, commercial, office, and residential uses.

Directly abutting the Rodeo Site on the north is San Pablo Bay and the Union Pacific/Amtrak railroad right-of-way. Abutting the eastern boundary is the NuStar Energy tank farm, and beyond that a small residential enclave of Tormey along Old County Road and undeveloped, hilly open space. I-80 runs through the Rodeo Refinery roughly from southwest to northeast and divides the refinery portion of the property (i.e., the Rodeo Site) from the undeveloped portion of the property, part of the tank farm, and the Carbon Plant Site. San Pablo Avenue runs through the Rodeo Site in roughly the same direction as I-80 but is approximately 0.75 mile to the northwest.

To the south and west of the Rodeo Refinery, beyond a buffer zone of vacant land, is the Community of Rodeo. The enclave of Tormey and the Bayo Vista residential neighborhood of Rodeo, with several schools, at least one daycare center, several churches, and a few commercial establishments, are the closest residential area to the Rodeo Refinery. Because of the buffer zone, no residential or commercial uses directly abut the refinery. An apartment complex is located at the eastern edge of Bayo Vista. This complex comprises approximately 60 multi-unit buildings, the closest of which is approximately 400 feet from the refinery's border and is separated by the buffer zone space. All other residential uses are at least 0.25 mile (1,300 feet) from the refinery. No schools are within 0.5 mile (2,600 feet) of the Rodeo Refinery. The two closest schools are a Montessori academy on Parker Avenue (approximately 0.63 mile from the refinery) and the Rodeo Hills Elementary School on Rodeo Avenue (approximately 0.8 mile from the Refinery). Most commercial uses in the vicinity are located in an area centered on San Pablo Avenue/Parker Avenue, approximately 0.5 mile southwest of the refinery.

## PROJECT DESCRIPTION

Phillips 66 proposes to modify the existing Rodeo Refinery into a repurposed facility that would process renewable feedstocks into renewable diesel fuel, renewable components for blending with other transportation fuels, and renewable fuel gas. Repurposing of the Rodeo Refinery would assist California in meeting its stated goals of reducing greenhouse gas emissions and ultimately transitioning to carbon neutrality. It would also provide a mechanism for compliance with California's Low-Carbon Fuel Standard and Cap and Trade programs and the federal Renewable Fuels Standard, while continuing to meet regional market demand for transportation fuels.

Once the project is in operation, no crude oil would be processed at the Rodeo Refinery. As the Rodeo Refinery transitions from a facility that refines petroleum feedstocks to one that processes renewable feedstocks, the refinery may (in order to maintain current production levels during the transitional period) temporarily increase deliveries of crude oil and gas oil feedstocks by tanker vessel, resulting in increased annual vessel calls to the Marine Terminal compared to baseline conditions. This temporary increase of crude and gas oil feedstocks at the Marine Terminal would not increase the amount of crude and gas oil that can be processed at the Rodeo Refinery, but it would shift the source of these materials from the Pipeline Sites to the Marine Terminal. The temporary or transitional increase in vessel traffic is estimated to last 7 months in the year prior to project startup, and would occur parallel to the end of the construction period. No modifications to the Marine Terminal or Marine Oil Terminal Engineering and Maintenance Standards Program are proposed.

Under the project, up to 80,000 barrels per day, calculated over a 12-month rolling average (bpd), of renewable feedstocks could arrive at the Rodeo Refinery and would be processed in the proposed Pre-treatment Unit (PTU). The majority of the time, the feedstocks treated by the PTU would be processed on site to produce renewable fuels. In situations where excess treated feedstock produced by the PTU is not processed onsite, this material could be exported from the Rodeo Refinery via the Marine Terminal. Marine traffic would increase relative to the baseline period. Marine traffic would include tanker vessels and barges used to import renewable feedstocks and gasoline blendstocks, and export renewable fuels and feeds. Baseline vessel traffic consists of 80 tankers of various sizes and 90 barges and is estimated to increase to a total of 201 Handymax tankers and 161 articulated tug barges at full project operation. No physical changes are needed at the Marine Terminal as part of the project.

Under the project, the Rodeo Refinery would supply up to 107,000 bpd of renewable and petroleum-based transportation fuels. The project would produce up to 55,000 bpd of a variety of renewable transportation fuels from renewable feedstocks. The Rodeo Refinery as a whole would produce up to 67,000 bpd of renewable fuels. To maintain the current facility capacity to supply regional market demand for transportation fuels, including renewable and conventional fuels, the Rodeo Refinery could receive, blend, and ship up to 40,000 bpd of gasoline and gasoline blendstocks.

## ENVIRONMENTAL REVIEW

The County prepared an Environmental Impact Report (EIR) for the project (State Clearinghouse# 2020120330). The project EIR is composed of both a Draft EIR and Final EIR. The Notice of Preparation (NOP) of the EIR was posted on December 21, 2020 and a public Scoping Meeting was held on January 20, 2021. Both written and oral comments were received during the NOP public comment period and the Scoping Meeting; the comments were responded to in the Draft EIR, which was released for public review on October 14, 2021 with a Notice of Availability. A 60-day comment period for the Draft EIR began on October 18, 2021 through December 17, 2021. During the comment period, the County received 86 comment letters on the Draft EIR and over 1,600 form letters both for and against the project. The comment topics included concerns about refinery emissions, hazardous materials, land use relating to renewable feedstock crops, and public safety. The County's Responses to the comments received are provided in the Final EIR that has been prepared for certification by the County Board of Supervisors.

The EIR for the proposed project identified significant and unavoidable effects for the project in the areas of Air Quality, Biological Resources, Hydrology/Water Quality, and Hazards/Hazardous Materials:

1. Rail transport outside the San Francisco Bay Area Air Basin would expose sensitive receptors to substantial pollutant concentrations, resulting in a significant impact for the project.
2. The effects of vessel cargo loading/offloading (accidental oil spills) and the introduction of nonindigenous invasive species would have a substantial adverse effect on Biological Resources, resulting in a significant impact for the project.
3. The effects of vessel cargo loading/offloading (accidental oil spills) would have a substantial adverse effect on Hydrology/Water Quality, resulting in a significant impact for the project.

4. The effects of vessel cargo loading/offloading (accidental oil spills) would have a substantial adverse effect due to Hazardous Materials, resulting in a significant impact for the project.

When a public agency determines that a project will have significant and unavoidable effects, Public Resources Code section 21081 provides that the public agency may approve the project if it finds that economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make imposition of mitigation measures or Project alternatives infeasible. The agency must also adopt statement of overriding considerations that economic, legal, social, technological, or other benefits of the project outweigh the significant environmental effects of the project. The County can make the requisite findings and adopt the statement of overriding consideration that the potential benefits of the project do in fact outweigh the environmental impacts. The project's benefits include:- A just transition process that will preserve the existing work force.

- The Rodeo refinery would no longer process crude oil for petroleum-based fuels.
- The project would assist California in meeting goals of reducing greenhouse gas emissions and ultimately transitioning to carbon neutrality.
- The project would also provide a mechanism for complying with California's Low-Carbon Fuel Standard and the Federal Renewable Fuels Standard, while continuing to meet regional market demand for transportation fuels.
- The project would reduce emissions of air pollutants relative to existing conditions.

The County's findings and statement of overriding consideration are attached to this staff report in the project's findings and proposed conditions of approval.

In addition, other potentially significant impacts were also identified, all of which can be mitigated to a less-than-significant level. These impacts affect the environmental topics of:

- air quality,
- biological resources,
- cultural & tribal cultural resources,
- geology and soils, and
- transportation & traffic.

Environmental analysis contained in the EIR determined that measures were available to mitigate these potential adverse impacts to less-than-significant levels.

A Final EIR has been prepared that includes the written comments received on the Draft EIR and the County's responses to the comments received. The Final EIR also includes County-initiated updates and errata to the Draft EIR. These errata constitute minor text changes to the Draft EIR in the sections relating to the Executive Summary, Project Description, Air Quality, Biological Resources, Cultural Resources, Geology & Soils, Greenhouse Gas Emissions, Hazards/Hazardous Materials, Hydrology & Water Quality, Tribal Cultural Resources, Alternatives Analysis, Cumulative Impacts, and Appendix B. The changes were made primarily to correct grammatical and typographical errors, as well as to improve accuracy and readability of certain passages. The text changes are not the result of any new significant adverse environmental impact, and do not alter the effectiveness of any mitigation included in the pertinent section, and do not alter any findings in the Draft EIR. Pursuant to CEQA Guidelines Section 15088.5(a), recirculation of a Draft EIR is required only if:

- “1. a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
2. a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance;
3. a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it; or
4. the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.”

None of the text edits or changes to the Draft EIR meet any of the above conditions. Therefore, recirculation of any part of the Draft EIR is not required. The information presented in the project EIR support this determination by the County.

Pursuant to CEQA Guidelines Sections 15091 and 15097, a Mitigation Monitoring Program has been prepared, based on the identified significant impacts and mitigation measures in the project EIR. The Mitigation Monitoring Program is intended to ensure that the mitigation measures identified in the EIR are implemented. The Mitigation Monitoring Program is included herein (Exhibit 4). All mitigation measures are included in the Conditions of Approval.

## STAFF ANALYSIS

### 1. General Plan Consistency

The majority of the Rodeo refinery is designated Heavy Industry (HI). The HI designation allows activities such as oil refining and other manufacturing operations requiring large areas of land with convenient truck and rail access. The following standards apply to the Heavy Industry designation:

- Maximum site coverage: 30%
- Maximum floor area ratio: 0.67
- Average employees per gross acre: 45 employees

The Rodeo Renewed Project does not conflict with the overall goals, standards, and policies of the General Plan because it is consistent with the Heavy Industry land use designation for the site; and is consistent with the Growth Management Performance Standards.

### Noise Element:

The Noise Element sets various goals and policies that apply to all development projects in the county. Most of these policies address land use compatibility for evaluating the acceptability of existing and future exterior noise levels for new projects, such as commercial and residential developments, and for proposing noise-sensitive receptors; thus, they are not directly applicable to the project, which is in an existing industrial zone. Notwithstanding, Noise Element Policy 11-8 is applicable to the project.

Policy 11-8. Construction activities shall be concentrated during the hours of the day that are not noise-sensitive for adjacent land uses and should be commissioned to occur during normal work hours of the day to provide relative quiet during the more sensitive evening and early morning periods.

Project demolition and construction activities would be conducted during daytime or normal working hours on industrial-zoned land. Project operational noise from mechanical equipment would not be substantially different than existing noise emanating from equipment presently in use at the project site.

The environmental impact report (EIR) analyzed the proposed project for its impacts relating to noise associated with day-to-day operation of the refinery, temporary construction and demolition activities, and ground-borne vibration. The EIR analysis found that noise impacts under the proposed project will be less than significant; therefore, the project does not conflict with the applicable goals and policies of the Noise Element.

#### Transportation and Circulation Element:

The Transportation and Circulation Element includes the following policies that are applicable to the proposed project:

Policy 5-4. Development shall be allowed only when transportation performance criteria are met and necessary facilities and/or programs are in place or committed to the developed within a specified period of time.

Policy 5-14. Physical conflicts between pedestrians, bicyclists, and vehicular traffic shall be minimized.

Policy 5-17. Emergency response vehicles shall be accommodated in development of project design.

The Transportation and Circulation Element of the General Plan shows designated arterials and expressways that are part of the County roadway network. San Pablo/Parker Avenue is designated as an arterial roadway in the General Plan and as a route of regional significance by the Contra Costa Transit Authority. San Pablo Avenue is a four-lane arterial that provides north-south access in the project vicinity and runs through the refinery site. San Pablo Avenue connects with Interstate I-80 via the Cummings Skyway interchange north of the refinery and in Crockett. The speed limit on San Pablo Avenue in the vicinity of the Rodeo Site is 45 mph. Parker Avenue is a two-lane divided roadway that connects San Pablo Avenue to Willow Avenue, providing access to the Willow Avenue interchange with I-80 to the south of the refinery site. The speed limit on Parker Avenue is 30 mph. Contra Costa County currently has plans for a road improvement project on San Pablo Avenue between Rodeo and Crockett, adjacent to the Rodeo refinery. Phillips 66 is not proposing modifications to existing Rodeo refinery access points.

Day-To-Day Operations. The project EIR found that operation and maintenance of the project would not result in increased traffic on any roadway segments currently being used by pedestrian, bicycle, or transit facilities in the area, and the use of these existing facilities would not increase because project operation would be accommodated with the existing workforce. Employee traffic would not change with implementation of the proposed project. With the demolition of the Carbon Plant, truck traffic related to the transport of petroleum coke to and from the Carbon Plant site, which totaled 32,673 round trips in 2019, would no longer occur. As a result, annual truck round trips under the project would decrease to approximately 16,026 truck roundtrips per year. Therefore, operation and maintenance of the project would not result in a conflict with a plan, ordinance, or policy establishing measures of effectiveness for the performance of the circulation system, including transit, roadway, bicycle, and pedestrian facilities.



Construction and Demolition. The project would result in increased truck and employee traffic to and from the Rodeo site and the Carbon Plant during the construction/demolition phase of the project. Materials such as concrete, structural steel, pipe and fittings, vessels and associated equipment, electrical equipment, insulation and construction services equipment (e.g., portable toilets, temporary office trailers for construction contractors) would be delivered by truck. Asphalt, steel, and concrete generated by demolition and site preparation activities would be transported off site by truck. These traffic increases would be temporary and would cease upon completion of the construction and demolition activities. Furthermore, with implementation of an approved Traffic Management Plan, potential traffic impacts associated with all phases of construction and demolition of the project would be less than significant.

Rail Traffic. The Rodeo refinery is served by two rail lines: the Union Pacific/Amtrak mainline passing through the Rodeo site along the shoreline and the Burlington Northern-Santa Fe mainline passing by the Carbon Plant site through Franklin Canyon. The Union Pacific line supports daily service to the Rodeo site to handle approximately five butane railcars per day at a rail loading facility adjacent to the mainline tracks. The Burlington Northern-Santa Fe line supports a thrice-weekly service handling an average of seven petroleum coke railcars per week (a little more than two per visit on average). Rail traffic would be altered by the project, but the effects would result in a reduction in rail cars overall.

Emergency Access. Multiple roadways provide external access to the Rodeo site, and internal roadways within the Rodeo refinery also provide access for both general and emergency vehicles. These access points include several temporary/emergency vehicle access entrances on San Pablo Avenue, in addition to the main signalized entrance intersection with Refinery Road.

Safety Element: The Safety Element of the General Plan contains relevant goals and policies regarding hazardous materials and fire protection. The hazardous materials goal is to provide public protection from hazards associated with the use, transport, treatment and disposal of hazardous substances and is supported by policies that require appropriate storage and containment of hazardous substances. Fire protection goals are intended to provide public protection services in a disaster. The project will be replacing petroleum feedstocks that are regulated as hazardous materials with renewable feedstocks which are not categorized as hazardous materials, and therefore conforms to the goals and policies of the Safety Element.

## 2. Zoning Consistency

The majority of the Rodeo refinery, including the locations of all proposed project units and modifications, is zoned Heavy Industrial District (H-I), which allows heavy industrial manufacturing uses of all kinds, including, but not limited to, lumber, steel, chemicals, explosives, fertilizers, gas, rubber, paper, cement, sugar, and all other industrial or manufacturing products including the processing of petroleum and the manufacturing of petroleum products (i.e. crude oil refining). Renewable fuels processing and refining is considered a permitted use in the H-I District, but a land use permit is required for this project because of the change in use of the facility from a petroleum refining facility to one that processes renewable feedstocks. As proposed, the project is consistent with the H-I zoning district.

## 3. Development Standards

The Heavy Industrial zoning district requires a 10-foot setback from any property line fronting on a roadway. The project conforms to this standards.



#### 4. County Hazardous Materials Programs

The Contra Costa County Health Services Department oversees the hazardous materials regulatory programs relating to aboveground storage tanks, underground storage tanks, hazardous waste generators, Hazardous Materials Business Plans (HMBP), as well as facility inspections and permitting related to CalARP.

Contra Costa County has adopted the Contra Costa County Hazardous Materials Area Plan, which outlines the procedures that county regulatory and response agencies will use to coordinate management, monitoring, containment, and removal of hazardous materials in the event of an accidental release. The purpose of the HMBP Program is to prevent or minimize the damage to public health and safety and the environment from a release or threatened release of hazardous materials and also to satisfy community right-to-know laws. The program requires facilities that handle hazardous materials in quantities equal to or greater than 55 gallons of a liquid, 500 pounds of a solid, 200 cubic feet of compressed gas, or extremely hazardous substances above the threshold planning quantity to prepare and submit a HMBP that contains:

- A hazardous materials inventory,
- Site maps,
- Emergency Response Contingency Plans, and
- Employee Training Plan.

The County verifies the information included in the HMBP and provides it to agencies responsible for the protection of public health and safety and the environment. These agencies may include fire departments, hazardous materials response teams, and local environmental regulatory groups. Businesses must amend the HMBP and submit to Contra Costa Health Services, Hazardous Materials Programs, within 30 days if there is:

- A 100 percent or more increase in the quantity of the previously disclosed amount,
- Any handling of a previously undisclosed hazardous material in a reportable quantity,
- A change of business address,
- A change of business ownership,
- A change of business name, or
- A significant change in business operations affecting handling of hazardous materials.

The project will comply with the requirements of the Contra Costa Hazardous Materials Programs.

#### 5. Stormwater Management and Discharge Control

The Contra Costa Clean Water Program is responsible for coordinating compliance with Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permits

for jurisdictions throughout Contra Costa County. The program is conducted in compliance with the NPDES Municipal Regional Permit issued by the San Francisco Bay Regional Water Quality Control Board (RWQCB). The permit contains a comprehensive plan to reduce the discharge of pollutants to the “maximum extent practicable” and mandated that participating municipalities implement an approved stormwater management plan. The program incorporates Best Management Practices (BMPs) that include construction controls (such as a model grading ordinance), legal and regulatory approaches (such as stormwater ordinances), public education and industrial outreach (to encourage the reduction of pollutants at various sources), inspection activities, wet-weather monitoring, and special studies.

Under the MS4 NPDES Municipal Regional Permit issued by the San Francisco Bay RWQCB, Contra Costa County requires construction sites to have site specific and seasonally BMPs in the following five categories: erosion control; run-on and runoff control; sediment control, active treatment systems; good site management; and non-stormwater management. The permit contains a comprehensive plan to reduce the discharge of pollutants to the “maximum extent practicable” and mandates that participating municipalities implement an approved stormwater management plan. The plan incorporates BMPs that include construction controls, permanent stormwater management (treatment and flow control) facilities to manage runoff from new development and redevelopment projects, legal and regulatory approaches (such as stormwater ordinances), public education and industrial outreach (to encourage the reduction of pollutants at various sources), inspection activities, wet-weather monitoring, and special studies. The project area is regulated by the Rodeo Refinery’s NPDES permit, which is in compliance with the County’s MS4 NPDES permit with specific requirements for development and implementation of a Storm Water Pollution Prevention Program (SWPPP).

Stormwater falling on the Rodeo Refinery and adjacent areas, including internal roadways, is collected onsite and conveyed through a drainage network to the onsite Wastewater Treatment Plant (Unit 100). The collection network includes screens to separate out trash and settling sumps to initiate clarification. Normally, stormwater is conveyed directly to the Unit 100 storage tanks, but heavy rains can result in capacity exceedance, necessitating the diversion of stormwater to holding basins before being treated and released. The primary storm basin holds 2.3 million gallons, and the main storm basin holds an additional 7.2 million gallons; these basins are empty under normal operation. Stormwater from the Marine Terminal wharf and causeway is routed to NPDES discharge outfall on the wharf structure. The existing SWPPP establishes a monitoring program to confirm the effectiveness of the BMPs and overall stormwater quality, which is routinely monitored as part of NPDES permit requirements. The Rodeo Refinery is not covered by a separate industrial stormwater permit because rain and runoff from operation areas are collected, treated, and discharged under the NPDES permit.

## APPEAL OF THE PLANNING COMMISSION'S DECISION

A Land Use Permit for the applicant’s project was approved by the County Planning Commission on March 30, 2022. Public testimony was taken for and against the project. Commenters raised a list of concerns including adequacy of the project description, accuracy of the baseline evaluation, adequacy of the hazard analysis related to hydrogen, adequacy of food-system-impact review, job creation impacts, emissions impacts, and other issues, both positive and negative, regarding the project implementation. The Commission voted 6-0 to certify the Project environmental impact report and approve the land use permit application.

Subsequently, during the 10-day appeal period, three separate appeals were filed by the following parties:

1) Natural Resources Defense Council (NRDC), et.al. (consisting of Biofuelwatch; California Environmental Justice Alliance; Center For Biological Diversity; Communities for a Better Environment; Richmond City Council members Claudia Jimenez, Eduardo Martinez, and Gayle McLaughlin; Extinction Rebellion San Francisco Bay Area; Friends of the Earth; Interfaith Climate Action Network of Contra Costa County; Rodeo Citizens Association; San Francisco Baykeeper; Stand.Earth; Sunflower Alliance; The Climate Center; and 350 Contra Costa County).

2) Mr. Charles Davidson.

3) Crockett Community Foundation.

Staff has prepared the following responses to each of the appeals.

#### [NRDC et. al. Appeal](#)

##### [Appeal Point I. “The Decision to Certify the FEIR is Contrary to Law and Not Supported by Substantial Evidence”](#)

Section I of the Appeal presented by the NRDC, et al, asserts that the decision to certify the EIR is contrary to law and not supported by substantial evidence, and that the EIR fails to meet the requirements of CEQA in the following areas:

- Project Description
- CEQA Baseline
- Hazards from increased operational upsets
- Global food system oil consumption
- Deferment of odor mitigation
- Cumulative impacts
- Climate pathways
- Transportation risk impacts

Appellants assert that the County failed to adequately respond to comments received on the Notice of Preparation and the Draft EIR regarding these issues. Each of these points is responded summarized below followed by staff’s responses.

##### [Appeal Subpoint \(a\) “Failure to provide an adequate project description.”](#)

The Appellants contend the Draft EIR provided “essentially no information” regarding the type of process technology (Hydrotreating Esters and Fatty Acids [HEFA]) proposed by the Project that is to be used at an unprecedented scale. They contend that lack of this information renders the project description inadequate and thus fails to meet the standards of CEQA, particularly referencing the “undisclosed bottlenecking” issue raised in comments on the Draft EIR that were only partially addressed in the Final EIR.

### Staff Response

The document thoroughly discusses applicable processing technologies pertaining to the types of renewable feedstocks proposed to be refined at the Rodeo facility. Draft EIR Chapter 3, Project Description (Sections 3.5 through 3.9), and Final EIR Master Response No. 5, Renewable Fuels Processing, which provides supporting technical background information, specifically address the Project's process technology. Specifically, the key components of the proposed renewable fuels processing – the use of hydrotreaters, the use of hydrogen, and the use of vegetable oils or animal fats – are described in the EIR. The proposed process is depicted in Figure 3-7 of the Project Description, which includes the Hydrotreater Units 240 and 246. Section 3.8.2, Anticipated Project Feedstocks, describes the various feedstocks to be utilized, including used cooking oils (UCO), fats, oil and grease (FOG), vegetable-based oils, including inedible corn oil, canola oil soybean oil and tallow. Section 3.9.1.1, Reconfiguration of Process Units for Renewable Feedstock Processing, lists Units 240 and 246, each identified as a Hydrocracker, along with the existing Hydrogen Plant. Regarding the issue of “debottlenecking”, a bottleneck implies that the Project has the capacity to produce more renewable fuels if it only had more hydrogen. Appellants assert that the Applicant intends to relieve this bottleneck by producing additional hydrogen to produce more renewable fuels than reported in the Draft EIR.

Hydrogen capacity at the Rodeo Refinery is limited by the existing Hydrogen Plant (Unit 110) and Air Liquide's facility, which is a third-party supplier of hydrogen to the Rodeo Refinery. The Project does not propose to produce additional hydrogen. However, the Draft EIR acknowledges that the Project has the potential to indirectly increase the use of hydrogen that would be supplied by Air Liquide, but also states that this potential increase would not require Air Liquide to modify its operations. Information contained in revised Draft EIR Appendix B, Air Quality and Greenhouse Gas Emissions Technical Data is summarized below to show the amount of hydrogen production at baseline and post-Project.

#### Rodeo Refinery Hydrogen Production (Unit 110)

Baseline: 12 million standard cubic feet (scf)/day

Post Project: 22 million scf/day

#### Air Liquide Hydrogen Production

Baseline: 93.26 million scf/day

Post Project: 120 million scf/day

#### Baseline vs. Project Totals

Total Baseline: 105.26 scf/day

Total Post Project: 142 scf/day

Thus, Total additional hydrogen required by the project = 36.74 million scf/day.

As indicated above, at maximum operating limits the Project would require an additional 36.74 million scf/day or approximately 35 percent more hydrogen above baseline conditions. For the purposes of CEQA and as cited above, the EIR assumes the maximum existing production capacities to provide a

reasonable worst-case analysis for hydrogen use. However, it is not expected that the Project would require the maximum available hydrogen primarily due to fluctuating feedstock supply and demand; the amount of hydrogen needed for the renewable fuels process is based on the type and mixture of feedstock being processed.

The Draft EIR includes the 35 percent increase in hydrogen use in the air emissions modeling. Even though the hydrogen use per barrel of feed may increase, the processing units will process fewer barrels of renewable feedstocks as compared to crude oil feedstocks, and the overall hydrogen usage per processing unit is within this historic range of the Rodeo Refinery. Accordingly, hydrogen demand of a renewable diesel hydrotreater (or hydroprocessor) is similar to that of existing process units at Rodeo Refinery. Impacts related to the increased use of hydrogen are found to be less than significant. Therefore, the Draft EIR does not dismiss the increase in hydrogen use and the Project would not produce more renewable fuels than reported in the Draft EIR.

It should be noted an EIR is to be “written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents” (CEQA Guidelines, Section 15140). The Draft EIR provides sufficient information to evaluate the environmental effects of the proposed processing method for renewable fuels, including the use of hydrogen. Therefore, the Project Description is adequate under CEQA Guidelines 15124(c).

*Appeal Subpoint (b) “Improper baseline.”*

The Appellants contend that the Project baseline is inaccurate and thus skews all analysis in the Draft EIR. Specifically, Appellants state that the baseline is “inconsistent with available facts, which demonstrate severe and increasing constraints on the Refinery’s access to crude feedstock”, implying that the baseline should assume no or a “diminished” throughput.

Staff Response

County staff considers a “no operation” or diminished operational baseline as inappropriate since it relies on a hypothetical future scenario presented by the Appellants rather than actual facility emissions. The Appellant’s baseline is based on a “future scenario” under which neither the Rodeo Refinery nor the Santa Maria Refinery exist due to no or low supply of crude or semi-refined crude. To require analysis of such a hypothetical future baseline is inconsistent with the requirements of CEQA and would misinform the public and decision makers since, as determined by County staff, it is a scenario that would not happen. Final EIR Master Response No. 1, Baseline provides detail and evidence to support that determination.

CEQA Guidelines require that the baseline is the point in time or the set of conditions against which expected future environmental conditions associated with the Project are compared. Changes in the baseline environmental conditions resulting from a project represent the project impacts that must be disclosed under CEQA. Therefore, definition of an appropriate baseline is an integral part of the CEQA process. Section 15125 of the CEQA Guidelines provides the following direction for establishing the baseline:

“An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.

This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.”

The baseline year is typically selected as the year in which the Notice of Preparation ("NOP") is released for a proposed project. However, the lead agency has the discretion to select a more appropriate baseline year for purposes of the environmental analysis conducted in the EIR if conditions warrant such a selection. The NOP for the Project was released in 2020 but, as described in the Draft EIR, 2020 was not an appropriate year for the Project baseline because of the Covid 19 pandemic and the Refinery's compliance with BAAQMD Regulation 9 Rule 14 that went into effect on January 1, 2019, which requires the owner/operator of a petroleum coke calcining operation to comply with the following sulfur reduction regulations:

- To operate all Petroleum Coke Calcining Kilns such that the SO<sub>2</sub> emissions from all kilns combined do not exceed 320 pounds per hour, averaged over any consecutive 24 hours.
- To operate all Petroleum Coke Calcining Kilns such that the SO<sub>2</sub> emissions from all kilns combined do not exceed 1,050 tons per year on a twelve-month rolling average basis.

Further, the Refinery would continue to operate without the Project contrary to the documentation provided by the Appellants. The Applicant has not stated or indicated otherwise to County staff.

As addressed in Final EIR Master Response No. 1, CEQA Baseline, if the supply of crude or semi-refined crude became severely constrained, the Applicant would procure it by other means as has been historically done to accommodate the fluctuating crude oil market. The Draft EIR acknowledges that the crude oil market fluctuates, but County staff does not believe, based on the supporting documentation presented in the Final EIR, that the supply of crude oil is expected to substantially decrease or become completely unavailable to the point that the Applicant would have no choice but to shut down the Rodeo Refinery and Santa Maria Refinery.

*Appeal Subpoint (c) "Failure to account for potentially increased operational upsets."*

The Appellants contend that HEFA biofuel processing can lead to increased process upsets.

#### Staff Response

As addressed in Draft EIR Section 4.9, Hazards and Hazardous Materials, and Final EIR Master Response No. 5, Renewable Fuels Processing, which provides supporting technical background information, the Project does not have an increased risk of hazards from the processing of renewable feedstocks. The causal events for upset conditions in hydrotreating would be the same for HEFA and petroleum. Those events include loss of cooling, loss of power, loss of feed, and loss of hydrogen. As detailed in Final EIR Master Response No. 5, the process of hydrotreating of fats, oils, and greases (all renewable feedstocks) to renewable diesel is completed at temperatures and pressures similar to existing petroleum processing steps. Because the operating conditions are so similar, the risk of a causal event that would result in a process upset would be the same for HEFA and petroleum. In response to claims that renewable feedstocks could “gum or plug process flows,” Master Response No. 5 provided further information regarding the PTU. Again, renewable fuels processing is very similar to crude oil processing and “the purported increase in hazards described by comments is not supported by the science.” (Master Response No. 5, p. 3-46.) As a result, the EIR concludes that the transition from petroleum processing to HEFA would not result in more or additional process upsets.

In addition, as described in Section 4.9, hydrogen processing units, regardless of feedstock, must be evaluated for process safety risks. A principal purpose of process safety is to reduce the magnitude of incidents, thereby reducing the harm to people and the environment. All refinery design changes undergo review by qualified engineering professionals, and when County permits are required, the changes will undergo review by County engineering and hazmat staff. These review efforts ensure the proposed design meets industry process safety management requirements and acceptable level of risk.

Flaring. Flares are essential safety devices used at the Rodeo Refinery to burn hydrocarbon gases that cannot be recovered or recycled. Refineries are designed and operated so that there is a balance between the rates of gas production and consumption. Flares are used to safely combust the excess, rather than release hydrocarbon to the atmosphere. With implementation of the Project, the amount of flaring would not increase, and there would be no change to the flare gas recovery compressors number or use. Phillips 66 proposes no physical changes to its flare system and will continue to operate the system under current regulatory requirements. Regardless, the Refinery, as it exists now and as a post-project facility processing renewable fuels, is strictly regulated by the BAAQMD, including Regulation 12, Rule 11: Flare Monitoring at Refineries and Regulation 12, Rule 12: Flares at Refineries, including BAAQMD Regulation 12-12404. In addition, the Rodeo facility's BAAQMD Major Facility Review Permit includes conditions for flaring which will continue to apply with the Rodeo Renewed Project. Therefore, project process hazards and flaring operations impacts will be similar to, or reduced, as compared to petroleum processing operations.

*Appeal Subpoint (d) "Failure to account for impact of massive food system oil consumption."*

The Appellants contend they have provided extensive documentation of the environmental impacts risks from the "massive disruption in the food system" that the Project would create, especially the risk that soybean oil demand and associated price spikes will incentivize production of palm oil and associated deforestation.

Staff Response

The Final EIR Chapter 3, Section 3.2, Master Response 4: Land Use and Feedstocks, pp. 3-29 to 3.37, addresses Draft EIR comments on the LCFS program, indirect land use impacts, and feedstock sources and mixes. As discussed in Section 3.8 of the Draft EIR, the Applicant proposes use of a variety of feedstocks (used cooking oil, fats and greases, animal fat, inedible corn oil, canola oil, other vegetable-based oils, including soybean oil). The precise types, sources and amounts of feedstocks are unknown due to the many layers of highly variable inputs (highly variable market conditions, individual government regulations and incentives can be different), and therefore, the Project's effect on the food system is speculative.

The EIR discusses these issues in the Draft EIR Chapter 3, Project Description, Section 3.8, Project Renewable Feedstocks, and Master Response No. 4, Land Use and Feedstocks. It is not proposed or expected that the Applicant would rely on a single renewable feedstock, such as soybean oil. To address fluctuating markets, the Applicant has stated it currently secures contracts in excess of the crude oil feedstocks supply needed to process the more than 2 million barrels of crude oil per day. The Applicant's position in the market is then adjusted as needed over time, depending on the market conditions for that year or month (or appropriate time interval); it would be similar for the procurement of renewable feedstocks. The Applicant could secure market positions in oilseeds, vegetable oils, and waste oils, and by having an excess of the amounts needed for processing, the Applicant has the



flexibility to adapt to market conditions and process the optimal mix of renewable feedstocks to achieve maximum low carbon credits and meet its business objectives.

In addition, the Rodeo Refinery is uniquely situated to secure renewable feedstocks available through marine shipping by having direct marine access through the Marine Terminal in addition to rail and truck transportation. By having these transportation options, the Applicant has greater flexibility in selecting renewable feedstocks from a broad variety of sources, including international sources.

For the reasons above, the Project will have the ability to process a broad range of untreated renewable feedstocks. Whether the selection looks more or less favorably on any particular renewable feedstock to process at the Rodeo Refinery in 2024 and beyond will depend on all of the factors that comprise the costs, transportation logistics, and carbon intensity associated with that particular feedstock. To assume the majority of feedstock would be soybean oil or any other single feedstock is not realistic. It is also not reasonable or expected under CEQA to assume an extreme or maximum worst case scenario, such as soybean oil being the primary feedstock, in order to evaluate the impacts of the Project.

As addressed in Final EIR Master Response No. 3, Cumulative Impacts, like the Project's own individual feedstock-related impacts, the contribution to indirect global impacts of the Project's feedstock use is speculative and unable to be quantified. Irrespective of the market-based projections that may or may not be available for other projects, this Project's feedstock mixes and sources cannot be predicted at this time without speculation (refer to Master Response No. 4, Land Use and Feedstocks). In turn, because the identities and availability of the Project's feedstocks cannot be determined at this time, the County cannot reasonably evaluate the Project's global impacts related to these inputs beyond the information provided in the Draft EIR. Assessment of the Project's incremental contribution to cumulative impacts related to feedstocks would necessarily involve several layers of speculation. Because speculation precludes assessment of this Project's own feedstock cultivation impacts, it is unknowable whether the Project's feedstock demands will have an adverse environmental impact at all, let alone one that is cumulatively considerable.

CEQA Guidelines state that an EIR's discussion of cumulative, or global indirect, impacts should be guided by the standards of practicality and reasonableness. Addressing the global implications of the Project is beyond the scope of CEQA – which is a state statute not intended to address nationwide or worldwide implications of an individual project.

*Appeal Subpoint (e) "Improper deferment of odor mitigation plan."*

The Appellant contends that the formulation of mitigation measures, specifically the Odor Management Plan, cannot be deferred until after the CEQA process and cannot be completed only "prior to operation of the Project". The Appellants argue that the EIR improperly delayed addressing potential odors from the project "whose impacts may be considerable depending on what feedstocks are used." The Appellants further state that this deferral is prohibited by CEQA (Guidelines § 15126.4(a)(1)(B)) since "the point of CEQA is to disclose and allow the public to vet essential mitigation measures."

Staff Response

CEQA allows an agency to defer the specific details of a mitigation measure when it is impractical or infeasible to include these details during the project's environmental review provided that the agency (i) commits itself to the mitigation, (ii) adopts specific performance standards that the mitigation will

achieve, and (iii) identifies the type(s) of potential action(s) that can feasibly achieve those performance standards [CEQA Guidelines Section 15126.4(a)(1)(B)]. Mitigation Measure AQ-4 meets these criteria: the measure requires the County to confirm that the Applicant has prepared and implemented an Odor Prevention and Management Plan prior to operations; adopts specific, objective, and measurable performance standards, in this case regarding the number of odor complaints; and directs the Applicant to identify equipment and procedures to use to address odor issues, including operating procedures to inspect and evaluate the effectiveness of odor control equipment and specifies remedial actions in the event that the performance criteria are not met.

Proper deferment requires the agency to ensure that the mitigation will be in place prior to implementation of the project component that triggers the need for mitigation. In this case, the potential for objectionable offsite odors arises from project operations and not construction. Because the Odor Prevention and Management Plan would be implemented prior to project operations, its timing is not improperly deferred.

In the Final EIR, County staff revised the language of the Odor Management Plan mitigation measure to respond to the same Appellants comments on the Draft EIR. As stated in Mitigation Measure AQ-4 in the Final EIR:

“ Phillips 66 shall develop and implement an Odor Prevention & Management Plan (OPMP). The OPMP shall be an integrated part of daily operations at the Rodeo Site, to effect diligent identification and remediation of any potential odors generated by the Facility.

— The OPMP shall be developed and reviewed by the County in consultation with the BAAQMD prior to operation of the Project, and implemented upon commencement of the renewable fuels processes.

— The OPMP shall be an “evergreen” document that provides continuous evaluation of the overall system performance, identifying any trends to provide an opportunity for improvements to the plan, and updating the odor management and control strategies as necessary.

— The OPMP shall include guidance for the proactive identification and documentation of odors through routine employee observations, routine operational inspections, and odor compliant investigations.

— All odor complaints received by the facility shall be investigated as soon as is practical within the confines of proper safety protocols and site logistics. The goal of the investigation will be to determine if an odor originates from the facility and, if so, to determine the specific source and cause of the odor, and then to remediate the odor.

— The OPMP shall be retained at the facility for Contra Costa County, the BAAQMD, or other government agency inspection upon request.”

Regarding the Rodeo Renewed Project, there would be a significant odor impact. The detailed Odor Prevention & Management Plan will be implemented prior to operation of the Project, when potential odor impacts would be experienced. In addition, the mitigation measure lists the components and steps necessary to mitigate odor impacts, and performance standards are identified. If developed too early, the plan would not be effective. Therefore, the plan will be developed and implemented at the appropriate phase of the project’s construction and during project operation. The document will evolve

to maximize effectiveness, which CEQA allows. Therefore, the mitigation measure is acceptable under CEQA and mitigation was not inappropriately deferred.

Regarding the statement that impacts may be considerable depending on what feedstocks are used is irrelevant. The mitigation measure addresses “all odor complaints” that originate from the facility. Regardless of whether the source is from a specific renewable fuel does not matter – the mitigation measure addresses any reported odors.

*Appeal Subpoint (f) “Failure to account for cumulative impacts.”*

The Appellants contend that the Draft EIR does not adequately evaluate cumulative impacts, specifically citing the Marathon Project as not being included in the cumulative analysis. Additionally, due to the cumulative impact of both projects, Appellants state there is a great risk of causing deforestation thus negating any potential climate benefit.

Staff Response

CEQA directs the lead agency to define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used, which is what the EIR did. Final EIR Master Response No. 3, Cumulative Impacts, provides clarification regarding the cumulative context for assessing the Project’s impacts. The EIR used a combination of list of projects as well as future projections based on local regional plans and documents. The cumulative context encompasses the projects that would have the potential to contribute to the significant impacts of the Project, including the Marathon Project. As provided in the Draft EIR, Chapter 6, and further clarified in Master Response 3, County staff did analyze the cumulative effects of both projects, and found that there would be significant and unavoidable adverse impacts that would be cumulatively considerable related to increased vessel traffic and the increased potential for accidental vessel spills. For the other environmental issues identified in the EIR, there would be no significant cumulative impacts because Project-specific mitigation would be implemented to reduce the Project’s contribution to the cumulative effect, or the impact was less than significant.

Other Appellant comments indicate County staff should have gone beyond the requirements of CEQA and analyze cumulative impacts from the global perspective. CEQA Guidelines state that an EIR’s discussion of cumulative impacts should be guided by the standards of practicality and reasonableness. To require the County to address the global implications of this project is beyond the scope of CEQA – which is a state statute not intended to address nationwide or worldwide implications of an individual project. Master Response 3 of the Final EIR provides a detailed response regarding the scope of the cumulative analysis stating:

“Statements made in the LCFS EA repeatedly emphasize that its program-level evaluation is based on certain predictions about responses to the LCFS program—responses that may or may not be borne out through any given set of projects under examination. The LCFS EA states directly that its predictions are merely “illustrative,” and are rife with uncertainty (refer to LCFS EA, pages 33 and 34), noting the unpredictability of feedstock sourcing locations and market movements. Such language demonstrates CARB’s uncertainty about the occurrence, location, and significance of any feedstock-related impacts even in that aggregated setting. The likelihood of any individual project contributing to potential impacts is only less certain. This supports the County’s determination that it is overly speculative to draw

conclusions about the Project's feedstock-related incremental contribution to any supposed cumulative impact."

Furthermore, Master Response 4 describes the issue of land use change. The response provides the following analysis regarding specificity of feedstock sources and cumulative market impacts:

"This section discusses the agricultural factors, commodity uses and substitutions, incentives and government regulations, and transportation costs affecting the Project's anticipated feedstock use. As further explained, the Project's exact mix of feedstocks and their sources cannot presently be determined because it depends on a web of interconnected variables including weather, commodity prices, individual market participants, and national and international incentives and regulations. The impacts of such variables on availability and sources of feedstocks cannot and need not be modeled as part of this project-level CEQA analysis as described in more detail below."

In addition, Final EIR Master Response 4 addresses potential upstream and downstream effects renewable feedstocks production on a worldwide basis.

*Appeal Subpoint (g) "Inconsistency with California climate pathways."*

The Appellants contend the Project would provide an oversupply of renewable diesel that exceeds the supply anticipated in analysis of California's climate pathways, and that the Project could actually cause a net increase in greenhouse gas emissions (GHG) by increasing exports.

Staff Response

A key Project objective is to "[p]rovide/maximize production of renewable fuels to assist California in meeting its goals for renewable energy, GHG emission reductions, and reduced CI [carbon intensity] for transportation fuels,". The Project has been designed to achieve this objective and assist California in ultimately transitioning to carbon neutrality (see Draft EIR at page 3-22). The Project's renewable fuels are intended as part of the state's GHG emissions reduction strategies. Consistent with the Governor's Executive Order (EO) B-55-18, which sets a goal to achieve carbon neutrality no later than 2045, CARB is currently in the process of developing the 2022 update to the Scoping Plan with a focus on achieving carbon neutrality by 2045. The EO notes that that "clean renewable fuels play a role as California transitions to a decarbonized transportation sector,".

Among the reports that CARB has stated are informing the 2022 update is the Appellant's referenced study developed for CARB entitled "Achieving Carbon Neutrality in California - PATHWAYS Scenarios Developed for the California Air Resources Board". This document evaluates potential scenarios for achieving carbon neutrality by 2045. In developing this report, the authors reviewed numerous carbon neutrality studies published to date (primarily in Europe) and observed several commonalities among them, including a reliance on "low carbon fuels, including low-carbon electricity and some reliance on low-carbon liquid and gaseous fuels, such as hydrogen, for hard-to electrify sectors," (page 11). The report goes on to note that "Most decarbonization pathways show a significant reliance on low-carbon (or zero carbon) liquid and/or gaseous fuels across all sectors of the economy (buildings, industry, transportation, and electricity) in order to meet climate goals, and in particular when targeting net zero emissions," and includes renewable diesel and renewable jet fuel in its use of the term biofuel (page 27). Of the three pathways to 2045 carbon neutrality considered in this report, renewable transportation fuel is a consistent component in each of them.

Discussion regarding other relevant reports and regulations can be found in Final EIR Master Response No. 6, Purpose of Project. Consistent with these various federal, state, and regional goals, the Project helps to mitigate climate change by contributing to the reduction of GHG emissions within industries that are difficult to decarbonize, such as heavy industry and aviation, where use of renewable fuels will ultimately help lower the lifecycle carbon emissions of their transportation fuel. The Project provides a mechanism for compliance with California's LCFS and Cap-and-Trade programs and the RFS, while continuing to meet regional market demand for transportation fuels. As discussed above, development and deployment of renewable transportation fuels is a component of a suite of measures intended to help achieve California's goal of carbon neutrality by 2045.

*Appeal Subpoint (h) "Failure to adequately mitigate transportation risk impacts."*

The Appellant contends that concerns provided in comments on the Draft EIR with regard to marine impacts were dismissed by County staff under the assumption that non-petroleum feedstocks will react to cleanup methodologies identical to petroleum. It is further stated there is no guarantee that a large spill of vegetable oil will even be responded to, let alone cleaned up effectively, and there is no analysis of what such a cleanup would entail or the damage such a spill could cause.

Staff Response

As stated in the Draft EIR Section 4.9, Hazards and Hazardous Materials, generally renewable feedstocks are not identified as marine pollutants by the US Department of Transportation (USDOT, Title 49 Part 171), the United Nations, or the International Maritime Organization, which regulate the movement of materials throughout the world. However, although renewable feedstocks may not be classified as pollutants, the USEPA "found that a worst-case discharge or substantial threat of discharge of animal fats and vegetable oils to navigable waters, adjoining shorelines, or the exclusive economic zone could reasonably be expected to cause substantial harm to the environment, including wildlife that may be killed by the discharge" (40 CFR Part 112).

The EIR acknowledges (Final EIR page 4-5) the feedstocks handled at the Marine Terminal are not regulated under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (e.g., renewable feedstocks such as soybean oil and tallow) and therefore not subject to Office of Spill Prevention and Response (OSPR) oversight, and are also not subject to the California State Lands Commission (CSLC) oversight efforts (Marine oil Terminal Engineering and Maintenance Standards [MOTEMS], Article 5, Article 5.3 and Article 5.5, depending on the materials handled). Regulated products (i.e. "Oil" and "Renewable Fuels" defined in Pub. Resources Code sec. 8750), however, will continue to be transferred at the Marine Terminal, which do require MOTEMS-compliant Terminal Operating Limits for those products that reside within the jurisdiction of the CSLC. In addition, Assembly Bill 148, adopted in 2021, defined the terms "renewable fuel," "renewable fuel production facility," and "renewable fuel receiving facility" for purposes of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, which includes renewable fuel within the definition of "oil" for purposes of the act.

To minimize impacts, the County is requiring that the Applicant comply with the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act for all vessels calling at the Marine Terminal regardless of feedstock material type (refer to Mitigation Measure HAZ-1 below). In addition, Mitigation Measure HAZ-2 requires a coordinated response with the Facility and Oil Spill Response Organization for on-water equipment deployment and recovery to protect sensitive shoreline and nearshore resources. Mitigation Measure BIO-3 requires that the Applicant's Facility Response Plan and Spill Prevention, Control, and

Countermeasure Plan be updated to address the change in proposed feedstocks, and also requires consultation with OSPR to address how to quickly contain a spill of renewable feedstocks.

In summary, EIR mitigation measures require that the renewable feedstocks be addressed under the same regulations as petroleum-based products, and the recent addition of renewable fuels under Assembly Bill 148, to minimize impacts. However, because the risk of a spill cannot be eliminated, it was determined potential impacts on water quality and special-status species and their habitat would remain significant and unavoidable despite implementation of these mitigation measures.

As with any regulation, experience will dictate new and revised regulations to address the use, transport, treatment and disposal of renewable feedstocks. Until that time, and for the purposes of the proposed project, and in line with USEPA 40CFR112, it was assumed the project's use of renewable feedstocks and production of renewable fuels would be as detrimental as petroleum-based feedstocks and fuels, which could cause substantial harm to the environment in the event of an accidental spill. Therefore, a spill was identified as a significant and unavoidable impact, to be addressed by the following mitigation measures:

#### Mitigation Measure HAZ-1 - Implement Release, Monitoring and Avoidance Systems

[Begin Citation] - "The following actions shall be completed by Phillips 66 prior to Project operations, including the transitional phase, and shall include routine inspection, testing and maintenance of all equipment and systems conducted in accordance with manufacturers' recommendations and industry guidance for effective maintenance of critical equipment at the Marine Terminal.

Feedstocks handled at the Marine Terminal are not regulated under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (LKS Act) (e.g. renewable feedstocks such as soybean oil and tallow) and therefore not subject to OSPR oversight, and are also not subject to the CSLC oversight efforts (MOTEMS, Article 5, Article 5.3 and Article 5.5, depending on the materials handled). Yet materials may be detrimental to the environment if spilled.

Regulated products (i.e. "Oil" and "Renewable Fuels" defined in Pub. Resources Code sec. 8750) will continue to be transferred at the Marine Terminal, which do require MOTEMS-compliant Terminal Operating Limits for those products that reside within the jurisdiction of the CSLC. To ensure that Project operation continues to meet those standards, the following measures are required.

#### Applicability of MOTEMS, Article 5, 5.3, 5.5 and Spill Prevention Requirements.

As some materials transferred at the terminal may be feedstocks or other non-regulated materials/feedstocks/products, Phillips 66 shall comply with the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (LKS Act) for all vessels calling at the Marine Terminal regardless of feedstock/material type. In addition, MOTEMS operational regulations, as codified in Article 5. Marine Terminals Inspection and Monitoring (2CCR §2300 et seq), Article 5.3 Marine Terminals Personnel Training and Certification (2CCR §2540 et seq), and Article 5.5 Marine Terminals Oil Pipelines (2CCR §2560 et seq), including items such as static liquid pressure testing of pipelines, shall be implemented for all operations at the Marine Terminal regardless of feedstock/material type and LKS Act regulatory status.

Upon request, Phillips 66 shall provide evidence to relevant regulatory agencies that these facilities, operational response plans, and other applicable measures have been inspected and approved by CSLC and OSPR and determined to be in compliance.

If terminal operations do not allow for regular compliance and inspection of LKS and MOTEMS requirements by the CSLC and OSPR, Phillips 66 shall employ a CSLC-approved third-party to provide oversight as needed to ensure the same level of compliance as a petroleum-handling facility, and to ensure maximum protection of the environment from potential spills and resulting impacts. Phillips 66 shall provide evidence of compliance upon request of relevant regulatory agencies.

#### Remote Release Systems.

The Marine Terminal has a remote release system that can be activated from a single control panel or at each quick-release mooring hook set. The central control system can be switched on in case of an emergency necessitating a single release of all mooring lines. However, to further minimize the potential for accident releases the following is required:

- Provide and maintain mooring line quick release devices that shall have the ability to be activated within 60 seconds.
- These devices shall be capable of being engaged by electric/push button release mechanism and by integrated remotely-operated release system.
- Document procedures and training for systems use and communications between Marine Terminal and vessel operator(s).
- Routine inspection, testing and maintenance of all equipment and systems in accordance with manufacturers' recommendations and necessity, as well as guidance provided by SIGTTO/OCIMF 2008 "Jetty Maintenance and Inspection Guide" Section 2.3.1.1, 2.3.1.2 and 2.3.1.4, are required to ensure safety and reliability. The inspections, testing, and maintenance will be performed by Phillips 66 or its designated representatives.
- In consultation with the CSLC and prior to Project operation, Phillips 66 shall provide a written evaluation of their existing equipment and provide recommendations for upgrading equipment to meet up-to-date best achievable technology standards and best industry practices, including but not limited to consideration of equipment updates and operational effectiveness (e.g. visual and audible alarm options, data display location and functionality, optional system features). Phillips 66 shall follow guidance provided by SIGTTO/OCIMF 2008 "Jetty Maintenance and Inspection Guide" Section 2.3.1.1, 2.3.1.2 and 2.3.1.4.

Best achievable technology shall address:

- Functionality – Controlled release of the mooring lines (i.e. a single control system where each line can be remotely released individually in a controlled order and succession) vs. release all (i.e. a single control system where all lines are released simultaneously via a single push button). See SIGTTO/OCIMF 2008 "Jetty Maintenance and Inspection Guide" Section 2.3.1.2.1.



—Layout – The location(s) of the single control panel and/or central control system to validate that it is operationally manned such that the remote release systems can actually be activated within 60 seconds.”

This measure would allow a vessel to leave the Marine Terminal as quickly as possible in the event of an emergency (fire, explosion, accident, or tsunami that could lead to a spill). In the event of a fire, tsunami, explosion, or other emergency, quick release of the mooring lines within 60 seconds would allow the vessel to quickly leave the Marine Terminal, which could help prevent damage to the Marine Terminal and vessel and avoid and/or minimize spills. This may also help isolate an emergency situation, such as a fire or explosion, from spreading between the Marine Terminal and vessel, thereby reducing spill potential. The above would only be performed in a situation where transfer connections were already removed and immediate release would not further endanger terminal, vessel and personnel.

#### Tension Monitoring Systems.

— Provide and maintain Tension Monitoring Systems to effectively monitor all mooring line and environmental loads, and avoid excessive tension or slack line conditions that could result in damage to the Marine Terminal structure and/or equipment and/or vessel mooring line failures.

— Line tensions and environmental data shall be integrated into systems that record and relay all critical data in real time to the control room, Marine Terminal operator(s) and vessel operator(s).

— All systems data shall be required to be recorded and readily accessible to enable tasks such as: (1) verification that systems are routinely operated in compliance with the MM (e.g. vessels are berthing within the MOTEMS compliant speed and angle Rodeo Renewed Project Final Environmental Impact Report March 2022 Comment Letter 2. California State Lands Commission (CSLC) 3-111 requirements), and (2) post-event investigation and root-cause analysis (e.g. vessel allision during berthing).

— System shall include, but not be limited to, quick release hooks only (with load cells), site-specific current meter(s), site-specific anemometer(s), and visual and audible alarms that can support effective preset limits and shall be able to record and store monitoring data.

— Document procedures and training for systems use and communications between Marine Terminal and vessel operator(s).

— Routine inspection, testing and maintenance of all equipment and systems in accordance with manufacturers’ recommendations and necessity, as well as guidance provided by SIGTTO/OCIMF 2008 “Jetty Maintenance and Inspection Guide” Section 2.3.1.1, 2.3.1.2 and 2.3.1.4, are required to ensure safety and reliability. The inspections, testing, and maintenance will be performed by Phillips 66 or its designated representatives.

— Install alternate technology that provides an equivalent level of protection.

— All systems data shall be required to be recorded and readily accessible to enable tasks such as: (1) verification that systems are routinely operated in compliance with the MM, and (2) post-event investigation and root-cause analysis.

The Marine Terminal is located in a high-velocity current area and currently has only limited devices to monitor mooring line strain and integrated environmental conditions. Updated MOTEMS Terminal

Operating Limits (TOLs), including breasting and mooring, provide mooring requirements and operability limits that account for the conditions at the terminal. The upgrade to devices with monitoring capabilities can warn operators of the development of dangerous mooring situations, allowing time to take corrective action and minimize the potential for the parting of mooring lines, which can quickly escalate to the breaking of hose connections, the breakaway of a vessel, and/or other unsafe mooring conditions that could ultimately lead to a petroleum product spill. Backed up by an alarm system, real-time data monitoring and control room information would provide the Terminal Person-In-Charge with immediate knowledge of whether safe operating limits of the moorings are being exceeded. Mooring adjustments can be then made to reduce the risk of damage and accidental conditions.

#### Allision Avoidance Systems.

- Provide and maintain Allision Avoidance Systems (AASs) at the Marine Terminal to prevent damage to the pier/wharf and/or vessel during docking and berthing operations. Integrate AASs with Tension Monitoring Systems such that all data collected are available in the Control Room and to Marine Terminal operator(s) at all times and vessel operator(s) during berthing operations. The AASs shall also be able to record and store monitoring data.

- All systems data shall be required to be recorded and readily accessible to enable tasks such as: (1) verification that systems are routinely operated in compliance with the MM, and (2) post-event investigation and root-cause analysis (e.g. vessel allision during berthing).

- Document procedures and training for systems use and communications between Marine Terminal and vessel operator(s).

- Routine inspection, testing and maintenance of all equipment and systems in accordance with manufacturers' recommendations and necessity, as well as guidance provided by SIGTTO/OCIMF 2008 "Jetty Maintenance and Inspection Guide", are Rodeo Renewed Project Final Environmental Impact Report 3-112 Comment Letter 2. California State Lands Commission (CSLC) March 2022 required to ensure safety and reliability. The inspections, testing, and maintenance will be performed by Phillips 66 or its designated representatives.

- Velocity monitoring equipment is required to monitor reduced berthing velocities until permanent MOTEMS-compliant corrective actions are implemented.

- The systems shall also be utilized to monitor for vessel motion (i.e. surge and sway) during breasting/mooring operations to ensure excessive surge and sway are not incurred.

The Marine Terminal has a continuously manned marine interface operation monitoring all aspects of the marine interface. The Automatic Identification System is monitored through TerminalSmart and provides a record of vessel movements. Pursuant to the CSLC January 26, 2022 letter entitled Phillips 66 (P66) Rodeo Marine Terminal – Review of New September 2021 Mooring & Berthing Analyses and Terminal Operating Limits (TOLS), the single cone fenders shall not be used as the first point of contact during berthing operations. Therefore, all berthing operations shall utilize the double cone fenders. P66 shall incorporate TOL diagrams with landing point statements in the Terminal Information Booklet. For all vessels, a Phillips 66 Marine Advisor is in attendance and is in radio contact with the vessel master and pilot prior to berthing, reviewing initial contact point and then monitoring.

Excessive surge or sway of vessels (motion parallel or perpendicular to the wharf, respectively), and/or passing vessel forces may result in sudden shifts/redistribution of mooring forces through the mooring lines. This can quickly escalate to the failure of mooring lines, breaking of loading arm connections, the breakaway of a vessel, and/or other unsafe mooring conditions that could ultimately lead to a spill. Monitoring these factors will ensure that all vessels can safely berth at the Marine Terminal and comply with the standards required in the MOTEMS.”

Mitigation Measure HAZ-2: USCG Ports and Waterways Safety Assessment (PAWSA) Workshops, Spill Response and Pilotage Requirements

“— Phillips 66 shall participate in the USCG’s PAWSA workshops for the San Francisco Bay Area (Bay Area) to support overall safety improvements to the existing Vessel Traffic Service in the Bay Area or approaches to the bay if such workshops are conducted by the USCG during the life of the lease.

— Spill Response to Vessel Spills. Phillips 66 shall respond to any spill near the Marine Terminal from a vessel traveling to or from the Marine Terminal or moored at the Marine Terminal as if it were its own, without assuming liability, until such time as the vessel’s response organization can take over management of the response actions in a coordinated manner.

— For all tankers and barges, Phillips 66 shall require that pilotage is utilized while transiting the Bay Vessels 300 GRT or larger and will cooperate in meeting USCG/NOAA VSR program to keep speed limited to 10 knots in the Bay and lower upon approach to the Marine Terminal due to tug escort speed limitations.

Vessel owners/operators are responsible for spills from their tankers. Tanker and barge owners/operators are required by federal and state regulations to demonstrate that they have, or have under contract, sufficient response assets to respond to worst-case releases. Tankers and barges operating in United States and California waters must certify that they have the required capability under contract. All terminals are under contract with one or more OSRO to respond to spills with all the necessary equipment and manpower to meet the response requirements dictated by regulations. This mitigation would further reduce the risk of spills in the San Francisco Bay or near approaches to the bay by requiring participation in USCG Ports and Waterways Safety Assessment workshops for the Bay Area to improve transit issues and response capabilities in general, and to support overall safety improvements to the existing VTS in the future.

While vessel owners/operators are responsible for their spills, if a spill were to occur near the Marine Terminal, Phillips 66 and its contractors may be in a better position to provide immediate response to a spill using their own equipment and resources, rather than waiting for mobilization and arrival of the vessel’s response organization. The Phillips 66 staff is fully trained to take immediate action in response to spills. Such action could result in a quicker response and more effective control and recovery of spilled product. This mitigation would also require Phillips 66 to respond to any spill from a vessel traveling in the San Francisco Bay to or from the Marine Terminal or moored at its wharf, without assuming liability, until the vessel’s response organization can take over management of the response actions in a coordinated manner. This requirement would further limit the potential for impacts from spills in the San Francisco Bay from vessels calling at the Marine Terminal.

In addition, Phillips indicates that it is their policy to utilize pilots for all tankers and barges while within the bay, even if the tanker or barge is under the required size requirements, and to limit vessels speeds below the required maximum. This mitigation ensures that all tankers and barges utilize pilots and speed limits in order to reduce the probability of groundings, collisions or allisions.”

Mitigation Measure BIO-3: Update and Review Facility Response Plan and Spill Prevention, Control, and Countermeasure Plan with OSPR

“—The Facility Response Plan and Spill Prevention, Control, and Countermeasure (SPCC) Plan shall be updated to address the change in proposed feedstocks. Phillips 66 will consult with OSPR during update of the SPCC Plan, especially adequacy of booms at the Marine Terminal to quickly contain a spill of renewable feedstocks.

— In accordance with CCR Title 14, Chapter 3, Subchapter 3, several types of drills are required at specified intervals. Due to the potential for rapid dispersion of biofuels and oils under high energy conditions, Phillips 66 shall increase the frequency of the following drills to increase preparedness for quick response and site-specific deployment of equipment under different environmental conditions.

— Semi-annual equipment deployment drills to test the deployment of facility-owned equipment, which shall include immediate containment strategies, are required on a semiannual pass/fail basis – if there is fail during first six months, then another drill is required. Phillips 66 will require that both semi-annual drills are conducted and schedule them under different tide conditions.

- An OSRO field equipment deployment drill for on-water recovery is required at least once every three years. Phillips will increase the frequency of this drill to annual.

- CDFW-OSPR shall be provided an opportunity to help design, attend and evaluate all equipment deployment drills and tabletop exercises. To ensure this, Phillips 66 shall schedule annual drills during the first quarter of each year to ensure a spot on OSPR’s calendar.” - [End Citation]

**Appeal Point II.** “The FEIR Improperly Rejected the Direction of BAAQMD, and the Request of Commenters, to Include Modified Unit 250 in the Project Analysis”

Appellants contend the Final EIR Improperly rejected the direction of BAAQMD, and the request of commenters, to include modified unit 250 in the project analysis.

#### Staff Response

Unit 250 is not part of or operationally related to the Project and can process feedstocks with or without the Project. Unit 250 did undergo modification in 2021 to obtain the flexibility to process both petroleum and renewable feedstocks; however, the air emissions did not change with these modifications. Since Unit 250 has been in operation since 2021, it is included in the EIR analysis as part of the baseline.

As explained in the Master Response No. 7 in the Final EIR – “Project Description – Piecemealing”, Unit 250 is an existing piece of equipment at the Rodeo facility that, because of its inherent capability and unique flexibility, was updated last year to process both petroleum-based and renewable feedstocks, and it started processing renewable feedstocks in April 2021.

Unit 250 has been operating at the Rodeo facility since 2005 and was permitted as the primary unit for producing Ultra Low Sulfur Diesel. Beginning in at least 2017, Phillips 66 began exploring the option of co-processing renewable feedstocks in Unit 250.

In their comments to the Draft EIR, Appellants claimed that Unit 250 is part of the Rodeo Renewed Project based on assumptions regarding Unit 250's role at the Rodeo facility, and the County responded to these comments in Master Response No. 7, explaining that Unit 250 was an independent project. Unit 250 has processed renewable feedstocks for nearly a year and does not rely on the Rodeo Renewed Project, and the Rodeo Renewed Project could be constructed and implemented without Unit 250. Conversely, if Rodeo Renewed is not implemented, Unit 250 can and will continue to process both renewable and petroleum-based feedstocks, either selection of which is dependent on market conditions, feedstock availability, and logistics economics and capabilities.

Large industrial facilities frequently update and upgrade equipment, and many such improvements are independent of long-term projects being processed by that facility. These long-term projects often take years to process, and ongoing changes to existing equipment often proceed independently, as not all changes to an industrial facility are linked to long-term projects. Here, Unit 250 operations are functionally independent of the Rodeo Renewed Project.

The EIR's project description is clear and consistent about Unit 250. The Executive Summary, Project Description, and Alternative Analyses sections of the Draft EIR explicitly reference Unit 250 as being part of the existing facility and not part of the Rodeo Renewed Project: "The facility currently has the capacity to produce approximately 12,000 bpd of renewable fuels from pretreated feedstocks using Unit 250, which was previously used to process petroleum-based feedstocks." (Draft EIR, Table ES-1, Asterisk to Table, p. xxii of Executive Summary; Draft EIR, Table 3-2, footnote a, p. 3-24 of Project Description.)

The Draft EIR explained with respect to the No Project Alternative:

"As explained in the Project Description, Section 3.7, Project Operation, the facility currently has the capacity to produce approximately 12,000 bpd of renewable fuels from pretreated feedstocks using Unit 250, which was previously used to process petroleum-based feedstocks. Unit 250 is not included in the Project as the Project does not propose any changes for Unit 250 and it would continue to produce 12,000 bpd of renewable fuels. Given that Unit 250 is not part of the Project, Unit 250 feedstock and production numbers are not included in this chart under the No Project Alternative."

(see also Draft EIR, Table 5-1, footnote d, p. 5-11 of Alternatives Analysis)

The County explained the operations of Unit 250 throughout the CEQA process, and the Rodeo Renewed Project has been described accurately and consistently throughout the EIR.

Although Unit 250 is not required by CEQA to be included as part of the Rodeo Renewed Project, the air emissions from Unit 250 are included in the FEIR's air emissions calculations based on 2019 operations when Unit 250 processed petroleum-based feedstocks. [ FEIR, Appendix B, Attachment B, Stationary Source Table 1.] Existing equipment that was not part of the Project, including Unit 250, were included in both the baseline and the post-Project calculations of air emissions. Again, these amounts for Unit 250 were based on processing petroleum-based feedstocks. This is important because Appellants are demanding that Unit 250 emissions be included in the Project, and while Unit 250 (updated to process renewable fuels) is not part of the Project, the air emissions from Unit 250 (processing petroleum-based

feedstocks) are included in the post-Project calculations. Thus, the purported environmental effect that Appellants seek to have considered in the FEIR relates solely to the delta or difference between Unit 250's processing of petroleum-based feedstocks and renewable feedstocks.

However, the difference in air emissions between Unit 250's processing of petroleum-based feedstocks and renewable feedstocks is negligible, as renewable fuels processing operates within the same range of operations as petroleum-based operations. Using a five-year average (2017-2021) of Unit 250's emissions, the 2021 air emissions from Unit 250 processing renewable feedstocks for all criteria pollutants are approximately the same, with NO<sub>x</sub> and SO<sub>2</sub> increasing by 0.06 and 0.09 tons per year, respectively, and CO, POC and PM 10/2.5 decreasing by 0.01, 0.05 and 0.08 tons per year.

Furthermore, the 2021 air emissions from Unit 250 are negligible as compared to air emissions for the Project as a whole, and adding (or subtracting) these differences from the post-Project totals do not change the resulting CEQA impacts to air quality. (Draft EIR, Table 4.3-15.) The post-Project air emissions from Unit 250 (processing renewable feedstocks) constitute approximately 0.52% or less for any criteria air pollutant of the total post-Project air emissions for facility stationary sources.

Using the delta, the Unit 250 air emissions as compared to the post-Project air emission totals for facility stationary sources decrease with respect to CO, POC and PM 10/2.5, and increase by 0.03% for NO<sub>x</sub> and SO<sub>2</sub>.

In addition, the greenhouse gas (GHG) emissions for Unit 250 processing renewable fuels decrease substantially as compared to Unit 250 processing petroleum-based fuels, a reduction of 1,912 metric tons per year. This decrease is a small percentage compared to the total GHG emissions for facility stationary sources at 0.18% (Draft EIR, Table 4.8-5), but contributes to the Project's overall decrease in GHG emissions.

Appellants seek to have Unit 250 emissions added to the Project, which would be improper under CEQA, but in no case does it affect the resulting impacts to air quality or GHG emissions – all remain less than significant. No discretionary permits were required from the County to process renewable fuels feedstocks from Unit 250.

### **Appeal Point III. "The FEIR Fails to Comply with the CEQA Requirement to Respond to Public Comments"**

Appellants contend the Final EIR fails to comply with the CEQA, stating the Final EIR did not respond to comments pertaining to project greenhouse gas emissions and potential hydrogen "debottlenecking" impacts of certain project components.

#### **Staff Response**

This is not the case. As stated in Staff Response to appeal topic (a) above, and reiterated here, the Draft EIR provides a complete discussion and analysis of the hydrogen uses associated with the project. At maximum operating limits the Project would require an additional 36.74 million scf/day or approximately 35 percent more hydrogen above baseline conditions, and the Draft EIR includes this 35 percent increase in hydrogen use in the air emissions modeling. Even though the hydrogen use per barrel of feed may increase, the processing units will process fewer barrels of renewable feedstocks as compared to crude oil feedstocks, and the overall hydrogen usage per processing unit is within this historic range of the Rodeo Refinery. Accordingly, hydrogen demand of a renewable diesel hydrotreater

(or hydroprocessor) is similar to that of existing process units at Rodeo Refinery. Impacts related to the increased use of hydrogen are found to be less than significant. Therefore, the Draft EIR does not dismiss the increase in hydrogen use and the Project would not produce more renewable fuels than reported in the Draft EIR.

#### **Appeal Point IV. “The County Has Made No Findings Concerning Choice of Alternatives and Throughput Volumes”**

The Appeal notes that the FEIR reviews three alternatives in addition to the no project alternative, and identifies an “environmentally superior” alternative. But the Appeal contends that the FEIR does not identify the “preferred alternative” and that identification of the “preferred alternative” should be supported by findings based on evidence in the record.

#### **Staff Response**

DEIR Section 5, Alternatives Analysis, pursuant to CEQA Guidelines 15126.6, Consideration and Discussion of Alternatives to the Proposed Project, analyzed the No Project Alternative, the Reduced Project Alternative, the Terminal Only Alternative, and the No Temporary Increase in Crude Oil Alternative. The chapter reviews impacts of each alternative for each environmental topic, noting the level of significance of the impact compared to the impacts of the Project.

Section 5.5.4.3, Table 5-2, Summary Comparison of the Environmental Effects of Alternatives Relative to the Project summarizes and compares the alternatives with the Project. The Project would have unavoidable significant environmental impacts, even considering implementation of feasible mitigation measures, related to air quality, biology, hazards and hazardous materials, and hydrology and water quality. Table 5-2 shows that the Reduced Project Alternative would also have significant unavoidable impacts for the four topics above, although the degree of effect would be reduced for biology, hazards and hazardous materials, and hydrology and water quality. In accordance with CEQA Guidelines 15126.6(e)(2), Section 5.6 (Environmentally Superior Alternative) concludes the Reduced Project Alternative to be the environmentally superior alternative:

“The Reduced Project Alternative would be the Environmentally Superior Alternative under CEQA. This alternative would meet or partially meet all but one of the Project objectives. The only objective not met is to maintain the facility’s current capacity to supply regional market demand for transportation fuels, including renewable and conventional fuels. The Reduced Project Alternative would not maintain the capacity to produce approximately 120,000 bpd to supply regional market demand for both renewable and conventional fuels, as it would provide an overall supply of 102,000 bpd (50,000 bpd of renewable fuels, 40,000 bpd of conventional fuels, and 12,000 bpd of existing capacity for renewable fuels). However, this alternative would reduce the number of annual marine vessels to 326 instead of 362, as proposed under the Project. Other elements of the Reduced Project would be identical to the Project, including demolition of the Carbon Plant and the Santa Maria Site, and cleaning and removal from active service of the Pipeline Sites.”

CEQA does not require identification of, or findings for, a “preferred alternative.” The FEIR reviews alternatives to the Project and identifies for the record the conclusions for the Environmentally Superior Alternative.



Nevertheless, staff has prepared additional findings to supplement the findings made by the County Planning Commission under Public Resources Code section 21081(a) and CEQA Guidelines section 15091(a), including specific findings related to the alternatives analyzed in the environmental impact report. The additional findings are included in the CEQA findings in the project's Findings and Conditions of Approval (see Attachment 2).

**Project Throughput Limits.** The Appeal contends that the FEIR does not discuss conditions of Project approval that would limit Refinery throughput to 67,000 barrels per day (bpd) of feedstock. The Appeal states that EIR analyzed the impact of 67,000 bpd, "yet nothing in the conditions limits the Refinery to that amount."

As analyzed in the FEIR, the Project would propose to process up to 67,000 barrels per day (bpd) of renewable feedstock. DEIR Chapter 3, Project Description, under Section 3.5 Project Overview, page 3-22 states:

"The Project would produce up to 55,000 bpd of a variety of renewable transportation fuels from renewable feedstocks. The Rodeo Refinery as a whole post-Project would produce up to 67,000 bpd."

Section 3.7 Project Operation, page 3-23 then states:

"Of the 67,000 bpd of renewable fuels that would be produced, 55,000 bpd would occur as a result of the Project. This amount would be in addition to the Rodeo Refinery's existing capability (as of 2021) of producing 12,000 bpd from pretreated feedstocks using Unit 250 (previously used to process petroleum-based feedstocks)."

The 67,000-bpd throughput limit is both a physical limit based on the configuration of the facility and a legal limit based on permitting constraints that will be implemented by BAAQMD. The 67,000-bpd throughput would be limited, as noted above, by on-site operating conditions. Further, the EIR discusses that Project throughput would be subject to Bay Area Air Quality Management District (BAAQMD) regulations and permitting.

DEIR Section 4.3, Air Quality, explains that the Project would require an Authority to Construct (ATC) from the BAAQMD. That ATC permit would be based on the proposed 67,000 bpd throughput. Section 4.3.3.5, page 4.3-44, notes that the Phillips 66 has submitted an application to the BAAQMD for an Authority to Construct permit to updated its operating permit for the Project.

Therefore, Project throughput, with an approved BAAQMD ATC, would be limited to 67,000 bpd. Any proposed increase in that throughput would require BAAQMD review and approval, including, as appropriate, CEQA review. If Phillips 66 were to desire to increase throughput limits, that change to the project would require a modified BAAQMD permit. If there is a substantial change to the project because of a proposed increase in the throughput limit, the substantial change would trigger subsequent environmental review under CEQA (CEQA Guidelines, § 15162).

#### **Appeal Point V. "New Information Describing the Project Provided in the Response Must be Re-Circulated to Allow for Public Comment"**

The Appellants contend the Final EIR presents new information that should have been disclosed for public comment during the Draft EIR comment period.

### Staff Response

Pursuant to CEQA Guidelines Section 15088.5(a), recirculation of a Draft EIR is required only if:

- “1) a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
- 2) a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance;
- 3) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it; or
- 4) the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.”

All aspects of the project were fully disclosed and discussed in the Draft EIR. All information and materials provided in the Final EIR in response to comments constitutes only clarifying information that supports the analysis contained in the Draft EIR. No new analysis or information was provided that requires public review. None of the text edits or changes to the Draft EIR meet any of the above conditions.

Therefore, recirculation of any part of the Draft EIR is not required. The information presented in the Draft and Final EIRs support this determination by the County.

### Appeal Point VI. “The Statement of Overriding Considerations is Inadequate”

Appellants contend that the County’s statement of overriding considerations is inadequate in that it is used in place of feasible mitigation measures. Appellant contend, specifically, that the County failed to analyze the alternative of reduced throughput and that the mitigation for proposed for odors is inadequate and unlawful.

### Staff Response

Staff’s response to Appellants’ contention regarding the County’s alternatives analysis is discussed above in the staff response to appeal topic IV. Staff’s response to Appellants’ contention regarding the Odor Management Plan is discussed above in the staff response to appeal topic I(e).

As the lead agency under CEQA for preparation, review, and certification of the FEIR, the County is responsible for determining the potential environmental impacts of the proposed project, which of these impacts would be significant, and which impacts can be mitigated through implementation of feasible mitigation measures to avoid or minimize such impacts to a level of “less than significant”.

CEQA requires the lead agency to balance the benefits of a proposed project against its significant and unavoidable adverse impacts when determining whether to approve the project. In particular, Public Resources Code Section 21081(a) provides that no public agency may approve or carry out a project for which an environmental impact report has been certified that identifies one or more significant effects on the environment that would occur if the project is approved or carried out, unless the public agency makes one or more of three findings with respect to each significant effect.

A public agency may find that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR and thereby leave significant unavoidable effects. Under Public Resources Code Section 21081(b), before approving the project, the lead agency must also find that the economic, legal, social, technological, or other benefits of the project outweigh the significant effects of the project.

When the lead agency approves a project which would result in significant effects identified in the FEIR, but would not be avoided or substantially lessened, the agency must state in writing the specific reasons to support its action based on the Final EIR and/or other information in the record. The County's CEQA Findings and Statement of Overriding Considerations (Statement) in the CEQA findings in the project's Findings and Conditions of Approval (see Attachment 2), meet that requirement.

The County's Statement discusses the rationale for approving the Project based on the infeasibility of implementing mitigation measures to sufficiently reduce identified impacts and the project's outweighing benefits. As noted in the Statement, the Project benefits, individually and collectively, outweigh potential significant unavoidable adverse impacts.

Key findings in the Statement are summarized below.

The County finds that the project will provide the following benefits to the residents of the County and of the State of California:

1. **Reductions in Greenhouse Gas Emissions from the Combustion of Renewable Fuels:** The combustion of renewable fuels produced by the project would result in reductions of greenhouse gas emissions of approximately 45-75 percent as compared to petroleum-based fuels. Based on the carbon intensity of the renewable diesel sold in California in 2021, the project would reduce the lifecycle carbon emissions of transportation fuels by approximately 8.5 million metric tons per year. (Final EIR, p. 3-50.)
2. **Attainment of Regulatory and Policy Goals:** The Rodeo Renewed Project transforms an existing crude oil production facility into a renewable fuels processing facility providing for the production of up to 55,000 barrels of renewable transportation fuels per day to assist California in meeting a number of goals. The project's renewable fuels products would produce fewer lifecycle GHG emissions per barrel, and their use in transportation would have a lower carbon footprint than conventional petroleum-based fuels.

— Assist Attainment of Goals. Governor Newsom's Executive Order N-79-20 states: "clean renewable fuels play a role as California transitions to a decarbonized transportation sector" and "to support the transition away from fossil fuels consistent with the goals established in this Order and California's goal to achieve carbon neutrality by no later than 2045, the California Environmental Protection Agency and the California Natural Resources Agency, in consultation with other State, local and federal agencies, shall expedite regulatory processes to repurpose and transition upstream and downstream oil production facilities..." The Governor's Order also directs CARB to "develop and propose strategies to continue the State's current efforts to reduce the carbon intensity of fuels beyond 2030 with consideration of the full life cycle of carbon. Additionally, the California Air Resources Board's November 19, 2020, "California's Greenhouse Gas Goals and Deep

Decarbonization” presentation anticipates that biofuels will comprise 19 percent of the transportation “fuel” sector by 2045.” As a major producer of renewable fuels, the project would materially contribute to California’s efforts to meet the goals of Executive Order N-79-20.

— Compliance With Federal and State Standards. The federal Renewable Fuel Standard (RFS) program was created under the Energy Policy Act of 2005 as an amendment to the Clean Air Act (CAA), and expanded by the Energy Independence and Security Act of 2007. EPA implements the program in consultation with U.S. departments of Agriculture and Energy. The RFS requires a certain volume of renewable fuel to replace or reduce the quantity of petroleum-based transportation fuel, heating oil or jet fuel. The program has a goal of producing, nationally, 36 billion gallons of total renewable fuel per year; by producing over 800 million gallons of renewable fuels per year the project would materially promote that goal.

Under California Assembly Bill (AB) 32, the Global Warming Solutions Act of 2006, refineries are subject to regulations aimed at reducing California’s global warming emissions and transitioning to a sustainable, low-carbon future (CARB 2021). The latest Update to the Climate Change Scoping Plan (CARB 2017) sets goals of a 40-percent GHG emission reduction below 1990 emission levels by 2030 and a substantial advancement toward the 2050 goal to reduce emissions by 80 percent below 1990 emission levels. Key provisions of AB 32 include the Low-Carbon Fuel Standard, which is intended to reduce California’s dependency on petroleum by encouraging the provision of low-carbon and renewable alternative fuels, and the Cap-and-Trade Regulation, which discourages major sources of GHG emissions and encourages investment in cleaner, more efficient technologies. By increasing production of renewable fuels, the project will provide a mechanism for compliance with these provisions through providing facilities in California.

Furthermore, by reducing emissions of air pollutants from existing conditions, the project will forward the goals of the Bay Area Air Quality Management District’s 2017 Clean Air Plan.

Specifically, the project would be consistent with the plan’s Refinery Emissions Reduction Strategy by eliminating sources associated with petroleum refining, and with the plan’s call for refineries to transition to clean energy companies by 2050.

3. **Maintaining Current Employment Levels:** Numerous letters of support for the project were received during the comment period from labor unions and individuals citing the retention of family-wage jobs and the creation of construction jobs as key benefits of the project. The project will preserve and protect approximately 650 existing family-wage jobs in Contra Costa County and will continue to provide indirect support to thousands of other jobs in the Bay Area. In addition, construction of the project will provide up to 500 construction jobs.
4. **Sustainability and Reinvestment in Community:** The Rodeo Renewed Project is a substantial investment in the community and facility and supports sustainability by re-using and transforming an existing industrial facility and by producing renewable transportation fuels.
5. **Transportation Fuel Supply Security:** Interruptions in the regional supply of transportation fuels have occurred as a result of refinery shutdowns for various reasons. These incidents have adversely affected Contra Costa County’s residents and businesses through inconvenience and higher fuel prices. A reliable supply of fuels is thus essential for the economic well-being of the region. The project will maintain the Rodeo facility’s current capacity to supply regional market demand for

transportation fuels by producing up to 67,000 barrels of renewable fuels per day and distributing up to 40,000 barrels of conventional gasoline per day. Furthermore, shortages that could result from a refinery shut-down during construction of the project will not occur because the project will continue to import and refine crude oil during the project construction period.

6. **Recycling Benefits:** Recycling organic wastes and by-products such as used cooking oils, rendering wastes, and other fats, oils, and greases has a number of environmental and financial benefits. These include reducing demand on landfill space, reducing the carbon footprint of fuels, and generating a second revenue stream from the same material. These benefits improve quality of life and help businesses thrive. By accepting large quantities of recyclable fats, oils, and grease to be processed into renewable fuels, the project will help Contra Costa County, the region, and the State of California realize those benefits.
7. **Demolition of Santa Maria Refinery and Carbon Plant:** The project provides for the demolition of these two sites, eliminating uncertainty regarding the re-use of these sites as currently developed.
8. **Reduction of Truck Traffic near Rodeo:** Rodeo Refinery truck traffic in 2019 consisted of approximately 40,000 roundtrips per year. With the Rodeo Renewed Project, including the elimination of truck traffic from the Carbon Plant, truck traffic would be reduced to approximately 16,000 truck roundtrips per year.
9. **Reductions in Energy Usage (Electricity and Natural Gas):** The proposed Project would result in modest reductions in electricity usage and substantial reductions in natural gas usage.

Each of these benefits are sufficient to outweigh the adverse environmental impacts of the proposed Project and to justify approval of the project and certification of the EIR.

#### **Appeal Point VII. “The Provisions Regarding Site Cleanup Need to be Strengthened to Ensure Effectiveness”**

##### **Staff Response**

The appeal raises concerns with the provisions of the project conditions of approval related to site cleanup, including concerns regarding the timeline being too slow; lack of provisions to include soil remediation in the work plan or the costs of this work in a modified corporate guarantee; need for annual review of corporate guarantee; and required cleanup levels not aggressive enough.

Staff does not concur with these concerns as the conditions that have been proposed for the project related to site cleanup would establish for the first time provisions and standards the County can enforce regarding demolition and removal of the facility and investigation of soil conditions. These conditions not only address clean-up related to the proposed project but also achieve significant public benefits by establishing parameters for clean-up of the site as whole so it can be productively put to another use in the future. Construction of the Rodeo Refinery occurred well before zoning laws came into effect in California, and neither the County, nor to our knowledge any other agency, has regulations of general applicability to industrial or other facilities that impose requirements, a schedule and financial assurances for demolition, soil investigation and cleanup.

Conditions of approval 5 through 8 address the cleanup of the entire facility and include the following overview of the requirements:

“The Permittee shall demolish and remove all portions of the facility that will not be used for any phase of the Project or any intended future use of the facility. Upon the permanent closure of the facility, the Permittee shall demolish and remove all remaining portions of the facility. During the operation of the Project, the Permittee shall investigate soil conditions at the site and, where necessary, clean-up and restore the site to a condition suitable for commercial and industrial land uses.”

To assure the performance of these requirements, a number of detailed provisions are included in the conditions, including requirements for creating and updating a Work Plan to establish the specific schedule for demolition, investigation and cleanup and for a Corporate Guarantee to assure there is funding for the work (initial value of the Guarantee will be \$100 million).

The conditions include reasonable provisions regarding the timeline for investigating soil conditions and demolishing portions of the facility that will not be used for the Project. The Contra Costa Carbon Plant located east of Interstate 80 and visible from Highway 4 is required to be demolished and removed no later than two years following the commencement of operations of the Project. In addition, the process units that have operating permits relinquished as part of the Project, such as Crude Unit 267, Sulfur Plant 236 and Sulfur Plant 238, must be demolished and removed within 5 years of permanent cessation of operations in the respective process units. The initial Work Plan, required to be submitted within 30 months of approval of the land use permit for the Project, will establish the schedule for remaining demolition work as well as soil investigation and clean-up work. The Work Plan must include a series of detailed schedules demonstrating steady progress will be made in all areas of work and provides a limit of 15 years to complete all soil investigation work and 20 years to complete all demolition of portions of the facility not used by the project. The Corporate Guarantee provides a further incentive for the Permittee to make progress as that liability may decrease as work is completed. In the view of staff these provisions are reasonable and will provide the County with the ability it does not currently have to enforce site demolition and clean-up. A more aggressive set of requirements would not have been reasonable because many of the idled assets are physically intertwined with active assets, requiring significant planning and work to demolish and remove. Further, allowing adequate time for idled assets to be repurposed or reused meets both private and public objectives. Finally, the amount of demolition and clean-up work is substantial and sufficient time must be allotted to feasibly perform this work.

Soil clean-up work is required by the conditions and the Corporate Guarantee is required to be updated as a result of soil investigations. Condition 5 states, “...the Permittee shall investigate soil conditions at the site and, where necessary, clean-up and restore the site to a condition suitable for commercial and industrial land uses.”

Further, conditions 6.c through 6.e relate to the Work Plan and provide as follows:

“(c) The Work Plan must include a schedule for completing the investigation of soil conditions at the site. The soil investigation must be completed no later than 15 years after final approval of the land use permit.”

“(d) The Work Plan must include a schedule for restoring the site to a condition suitable for commercial and industrial land uses as determined by the applicable regulatory agencies having oversight of restoration activities.”

“(e) The Work Plan must include cost estimates for demolition and removal, and for site investigations and associated potential clean-up.”

Finally, condition 7.e provides as follows:

“(e) Within 30 days after the County’s approval of the Work Plan and each amended Work Plan, the value of the Corporate Guarantee shall be updated to reflect all updated cost estimates included in the Work Plan or amended Work Plan, as applicable.”

It should also be noted that soil and groundwater contamination at the facility is already regulated by the California Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, and any new contamination discovered through implementation of the project conditions would also be regulated by these bodies. The proposed conditions are intended to supplement and complement the regulatory work of these agencies.

The value of the Corporate Guarantee will be adjusted at reasonable intervals. The amount will be adjusted annually for inflation in a manner consistent with the financial assurance programs widely employed by agencies regulating soil and groundwater contamination (see condition 5.a). The amount will also be adjusted with the completion of each Work Plan. The Work Plan will be required to be submitted 30 months after issuance of the land use permit and must be updated at least once every five years (see condition 6.f).

The requirement in condition 5 that the Permittee “clean up and restore the site to a condition suitable for commercial and industrial land uses” sets a reasonable minimum standard. It is not clear at this time that a higher standard will be feasible or appropriate. Soil and groundwater cleanup activities regulated by the state typically establish a cleanup standard on a case-by-case basis and are guided by the uses allowed by the current zoning. The proposed conditions are intended to set a consistent standard across the facility that would enable a broad range of commercial and industrial future uses, including various forms of manufacturing, warehousing, retail and office. This is a broader array of potential uses than would be allowed under the current heavy industrial zoning.

### Charles Davidson Appeal

The Appellant contends the Project’s renewable diesel is not a low-carbon fuel, and that the per barrel carbon intensities will “actually increase significantly (despite the decrease in throughput)”, as such the Project is inconsistent with California climate pathways and the Low Carbon Fuel Standard (LCFS). It is further stated this is because the hydro-deoxygenation reaction needed to produce renewable diesel is the most energy-intensive process which requires the Refinery to “greatly expand its hydrogen usage”, thereby negating any carbon benefit derived from the Project. In addition, the Appellant states that the “default principal feedstock is expected to be soybean oil” resulting in the use of “33,000 square miles of soybean acreage.”

### Appeal Point 1. Hydrogen Use

#### Staff Response

Regarding statements that the Project would actually increase carbon intensities since the proposed processing requires a substantial increase in hydrogen usage are not true. Similar comments were received during the public review period of the Draft EIR and are addressed in detail in Final EIR Master Response No. 5, Renewable Fuels Processing.



In summary, Hydrogen Plant capacity at the Rodeo Refinery is limited by the capacities of the existing Hydrogen Plant (Unit 110) and Air Liquide's facility, which is a third-party supplier of hydrogen to the Rodeo Refinery. The Project does not propose to increase Hydrogen Plant capacity. However, the Draft EIR acknowledges that the Project has the potential to indirectly increase the use of hydrogen that would be supplied by Air Liquide, but also states that this potential increase would not require Air Liquide to increase capacity. The following hydrogen production volumes summarizes information contained in revised Draft EIR Appendix B, Air Quality and Greenhouse Gas Emissions Technical Data, to show the amount of hydrogen production at baseline and post-Project.

Rodeo Refinery Hydrogen Production (Unit 110)

Baseline: 12 million standard cubic feet (scf)/day

Post Project: 22 million scf/day

Air Liquide Hydrogen Production

Baseline: 93.26 million scf/day

Post Project: 120 million scf/day

Baseline vs. Project Totals

Total Baseline: 105.26 scf/day

Total Post Project: 142 scf/day

Total Additional Hydrogen Required by the Project = 36.74 million scuf/day

**Appeal Point 2. Climate Pathways and the LCFS**

Staff Response

Regarding inconsistency with California's Climate Pathways and the LCFS, as discussed in Draft EIR Section 4.8, Greenhouse Gas Emissions, the Project would result in a reduction in GHG emissions as compared to the 2019 baseline. In addition, and to the point of the Appellant, the emissions evaluation in the Draft EIR conservatively underestimates the GHG emissions reductions from the Project. This is because the GHG reductions resulting from the combustion of renewable fuels as opposed to the combustion of petroleum-based fuels have not been relied upon to determine the Project's impacts to GHG emissions, as the precise amount of the reductions would depend on the feedstocks being used, which as described previously are unknown.

The LCFS is a market-based program that encourages the production of lower carbon intensity (CI) transportation fuels. The CI benchmarks are reduced annually, with a mandate to reduce CI of the transportation fuel pool by 20 percent by 2030. The CI takes into account the life cycle GHG emissions associated with each fuel type.

To comply with the LCFS is one of the Project's main objectives. The Project would cease refining crude oil feedstocks and process renewable feedstocks to generate transportation fuels that have lower carbon intensity (CI) than the gasoline or diesel LCFS baseline fuels. By providing renewable fuel to the supply pool, the Project would support the overall objectives of the LCFS to increase the availability of lower carbon fuels and to lower the CI of the overall transportation fuel pool. Based on the average CI of the renewable diesel sold in California in 2021, the Project would assist California by providing

transportation fuels that reduce the lifecycle carbon emissions by approximately 8.5 million metric tons per year.

It is important to note that the Project is one step of many that will need to occur to achieve carbon neutrality - the Project's renewable fuels are intended as part of the state's GHG emissions reduction strategies. Refer to Final EIR Master Response No. 6, Purpose of Project for additional information.

Also see NRDC Appeal Response (g) regarding the LCFS program achieving the State's climate goals. Draft EIR Section 4.8, Greenhouse Gas Emissions, Impact 4.8-3 specifically addresses these, and other regulations related to CI and reducing GHG emissions.

### **Appeal Point 3. Soybean as "default principal feedstock"**

#### **Staff Response**

Regarding the statement that soybean oil will be the dominant feedstock by default implies that the Applicant will have no choice but to use soybean oil. This is incorrect. First, the Applicant proposes use of a variety of feedstocks, including soybean oil, and has not proposed or stated to County staff that their intention is to use primarily soybean oil. Second, the feedstock market is highly variable so the precise means types, sources and amounts of feedstocks cannot be known with certainty. Given this uncertainty, it cannot be assumed that soybean oil, or any other single renewable feedstock, will be predominantly used at the Rodeo Refinery. These points are discussed in the Draft EIR Chapter 3, Project Description and supported with technical information provided in Final EIR Master Response No. 4, Land Use and Feedstocks and Master Response No. 5, Renewable Fuels Processing. Also see NRDC Appeal Response (d).

### **Crockett Community Foundation Appeal**

**Appeal Point:** Appellants contend that "Terms of proposed Community Benefits Agreement were not sufficiently defined."

#### **Staff Response**

A draft of the proposed CBA is included in the materials for this hearing. The CBA would grant the County discretion to expend the funds to benefit the community, providing as follows:

"The County shall, in its sole discretion, allocate funds received pursuant to this Agreement to projects and programs that benefit the communities near the Refinery by improving the health, well-being, and quality of life of residents, and that support building and sustaining a strong and resilient local economy and workforce, including the development and implementation of workforce development and training programs to prepare residents for new renewable and clean energy career pathways and jobs."

## **CONCLUSION**

The proposed Phillips 66 Rodeo Renewed Project, with the attached Conditions of Approval, is consistent with the General Plan and the Heavy Industrial zoning designation for the site; all environmental impacts would be mitigated to less-than-significant levels or overriding considerations exist; the health, safety, and general welfare of the public would be preserved; and there would be economic benefits as a result of the project, such as reductions in greenhouse gas emissions, demolition of the Carbon Plant and the Santa Maria refinery, retaining current employment levels, reinvestment in

the community, reductions in energy and natural gas usage, and benefits as listed in the project statement of overriding considerations.

Staff recommends that the Board of Supervisors DENY the appellants' appeal, CERTIFY that the EIR was completed in compliance with CEQA, was reviewed and considered by the Board of Supervisors before project approval, and reflects the County's independent judgment and analysis, CERTIFY the EIR, ADOPT the CEQA findings, ADOPT the Mitigation Monitoring and Reporting Program for the project, ADOPT the Statement of Overriding Considerations for the project, DIRECT the Department of Conservation and Development to file a CEQA Notice of Determination with the County Clerk, SPECIFY that the Department of Conservation and Development is the custodian of the documents and other material which constitute the record of proceedings upon which the decision of the Board of Supervisors is based, APPROVE the attached Community Benefits Agreement, and APPROVE the Phillips 66 Rodeo Renewed Project (County File No. CDLP20-02040) based on the attached findings and subject to the attached conditions of approval.