



Contra  
Costa  
County

To: Board of Supervisors  
From: Catherine Kutsuris, Conservation and Development Director  
Date: January 21, 2014

Subject: Hearing to Consider Two Appeals on the Phillips 66 Propane Recovery Project (County File #LP12-2073)

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### **RECOMMENDATION(S):**

1. OPEN the public hearing and take testimony on the Phillips 66 Propane Recovery Project.
2. CLOSE the public hearing.
3. CERTIFY the Final Environmental Impact Report (FEIR) dated November 2013, finding it to be adequate and complete, finding that it has been prepared in compliance with the California Environmental Quality Act (CEQA) and the State and County CEQA Guidelines, and finding that it reflects the County's independent judgment and analysis, and specify that the Department of Conservation and Development, Community Development Division (30 Muir Road, Martinez, CA) is the custodian of the documents and other material which constitute the record of proceedings upon which this decision is based.
4. CERTIFY that the Board has considered the contents of the FEIR prior to making a decision on the project.
5. DENY the appeals from Communities For A Better Environment and Shute, Mihaly &

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY

☐ RECOMMENDATION OF BOARD

ADMINISTRATOR

COMMITTEE

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Action of Board On: **01/21/2014** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes:

Hearing continued

#### **VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor

Candace Andersen, District II Supervisor

Mary N. Piepho, District III Supervisor

Karen Mitchoff, District IV Supervisor

Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: January 21, 2014

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: 925-674-7786

cc:

Weinberger and UPHOLD

the County Planning Commission's decision to APPROVE the Land Use Permit (County File #LP12-2073) with the attached conditions of approval.

## RECOMMENDATION(S): (CONT'D)

6. ADOPT the findings contained in County Planning Commission Resolution No. 19-2013, which includes the CEQA findings, Growth Management Standards, and additional language to Land Use Permit findings, shown as underlined text, as the basis for the Board's actions.

7. ADOPT the Mitigation Monitoring and Reporting Program.

8. DIRECT the Community Development Division to post a Notice of Determination with the County Clerk.

## FISCAL IMPACT:

None. The applicant, Phillips 66, is obligated to pay any additional costs above the initial application deposit associated with the processing of the application.

## BACKGROUND:

### 1. Timeline

The following timeline illustrates the land use permit application's progress from submittal to present:

- **June 22, 2012** – Phillips 66 Company applied for approval of a Land Use Permit for the Propane Recovery Project.
- **July 24, 2012** – Notice of Preparation of an EIR distributed.
- **August 20, 2012** – Scoping session held in Martinez.
- **June 10, 2013** – Draft EIR (DEIR) distributed for public review.
- **July 15, 2013** – Public hearing held before the Zoning Administrator in Martinez to accept comments on DEIR.
- **July 23, 2013** – End of public review period for DEIR extended from July 25, 2013 to August 9, 2013.
- **August 9, 2013** – End of public review period for DEIR.
- **November 6, 2013** – FEIR distributed.
- **November 18, 2013** – Closed hearing held before the Zoning Administrator to consider the adequacy of the FEIR. The Zoning Administrator recommended certification of the FEIR by the Planning Commission.
- **November 19, 2013** – Public hearing held before the Planning Commission in Martinez regarding the Land Use Permit and the adequacy of the FEIR. The Commission determined that the FEIR was adequate and approved the Land Use Permit.
- **November 25, 2013** – Appeal from Shute, Mihaly & Weinberger on behalf of the Rodeo Citizens Association received by the Clerk of the Board.
- **December 2, 2013** – Appeal from Communities for a Better Environment received

by the Community Development Division.

## 2. County Planning Commission Hearing

The County Planning Commission opened the public hearing on the project on November 19, 2013. Oral testimony covered a wide variety of topics such as, but not limited to, the adequacy of the FEIR, types and quality of crude oil, propane safety concerns, pollution, public health, greenhouse gas emissions, Refinery safety, Refinery/community relations. There were also several speakers who testified in support of the project.

During the November 19, 2013 hearing, after evaluating the project in its entirety, including all public testimony and evidence in the record, the Commission voted unanimously to certify the FEIR and approved the land use permit with the conditions of approval as recommended by staff.

## 3. Appeal Discussion

Following the decision of the Planning Commission, two separate appeals were filed by Communities for a Better Environment, and Shute, Mihaly & Weinberger (on behalf of the Rodeo Citizens Association).

Both appellants submitted similar points of appeal. Chiefly, they claim that the EIR fails to include an adequate project description that links the proposed project to a future “larger project” by the Refinery to begin importing and processing heavier lower-quality crude oil feedstocks, such as Canadian tar sands, and that the proposed project is in preparation to implement this objective. Since this is a common point of appeal for both Shute, Mihaly & Weinberger (SMW) and Communities for a Better Environment (CBE), it is being addressed first.

### Appeal Points and Staff Responses:

#### A. Future Plans to Change Crude Oil Feedstocks to Lead Into a Larger Project:

The main point both appellants have raised is that Phillips 66 plans to change the crude oil feedstock and begin processing lower-quality heavy crudes, and with the lower-quality crudes Refinery operations could be changed to increase the production of propane and butane far beyond current levels. Phillips 66 states that the project objective is to recover existing volumes of propane and butane already being produced at the Refinery and already contained in the Refinery Fuel Gas (RFG) streams and not to increase the amount of propane and butane being produced at the Refinery beyond current levels. On the contrary, instead of burning the propane and butane in Refinery process heaters, the project will allow the applicant to capture and sell more of the propane and butane that is already being produced at the Refinery, irrespective of the types of oil feedstock.

The applicant proposes to recover for sale approximately 4,200 barrels per day of propane

and 9,300 barrels per day of butane already existent in the RFG. This is a practice already performed by other Bay Area refineries, and Phillips 66 is planning to catch up with similar practice. Refinery flow data provided in the Phillips 66 Response to Appeals (Exhibit #7) shows that from January to November of 2013, the Refinery feedstock that was processed during that time produced an average of 14,250 barrels per day of propane and butane combined. Additionally, Master Response 2.2, on page 2-2, of the FEIR addresses all comments which asserted that a relationship between the Propane Recovery Project and purported plans to change the type of crude oil to be processed at the Refinery.

The appellants further claim that the EIR fails to adequately define the project because importing and processing heavier lower-quality crude oil feedstock, such as Canadian tar sands, was not mentioned in the project description. A change in crude feedstock was not mentioned in the project description or analyzed in the DEIR and FEIR since no changes in feedstock or a switch in crude quality are proposed as a part of the project, nor is the project dependent on any such changes. Specifically, SMW asserts on page 7 of their 11/18/13 Letter (Exhibit #3b) that the project description is inadequate since it did not include mention of Phillips 66's Santa Maria Refinery, claiming that the Rodeo Refinery will *"...increase butane and propane production, once the proper amounts of the right feedstocks arrive..."* from the Santa Maria Refinery. As discussed above, implementation of the proposed project is not dependent upon new feedstock from Santa Maria or anywhere else, nor does the project plan to "increase" production of butane and propane, but rather it will recover butane and propane already existent in the Refinery gas streams under current operations. With this project objective in mind, a discussion of the Santa Maria Refinery was not considered germane; nevertheless, on page 2-4 of the FEIR in Master Response 2.2, a discussion of the Santa Maria Refinery and its association with the Rodeo Refinery was provided.

The additional appeal issues raised by the appellants are responded to in Sections B, C, and D below. It should be noted that most of the issues raised by SMW and CBE have already been addressed in the DEIR and FEIR. Staff has summarized the appeal points below, and in addition, a more comprehensive response has been provided which is identified as (Exhibit #6). In further attempting to respond to the appeals, Phillips 66 submitted a response letter to the Board of Supervisors dated January 6, 2014 (See Exhibit #7).

#### B. Appeal by Shute, Mihaly & Weinberger (SMW) on behalf of the Rodeo Citizens Association

The appeal by SMW comprises the following points based on their November 22, 2013 appeal letter (Exhibit #3a). Their appeal is also supported by referencing their November 18, 2013 letter to the Planning Commission and a technical report by Phyllis Fox, Ph.D. (Fox Report), dated November 15, 2013 (see Exhibit #3b for both documents). The issues raised by both the Fox Report and SMW have already been addressed in the DEIR and FEIR. The SMW appeal letter's primary points are summarized and briefly

addressed below.

#### Summary of Appeal Points Raised by Shute, Mihaly & Weinberger and Staff Responses:

- *The EIR fails to adequately evaluate the significant impacts of the project, including but not limited to its air quality, biological, safety, health, and climate impacts.*
- *The EIR fails to evaluate cumulative impacts.*
- *The EIR fails to evaluate mitigation measures and alternatives and the County failed to adopt adequate mitigation or feasible alternatives.*
- *The County failed to adequately respond to comments on the EIR.*
- *The County failed to recirculate the EIR.*
- *The County's findings, including its statement of overriding considerations, are not supported by substantial evidence.*
- *The County cannot make the findings for approval required by its code sections; in particular, the County cannot find that the Project will not be a detriment to public health, safety, or welfare or that it will not cause a nuisance in the surrounding community.*
- *The EIR fails to adequately define the project (see previous Staff response in Section A above).*

#### Staff Response

EIR Fails to Provide Adequate Analysis of Environmental Impacts: SMW suggests that project impacts to air quality, biological resources, safety, health, and climate should have been considered as potentially significant and mitigated as well. Air quality was analyzed as a potentially significant impact and mitigation measures were established for the project to address air-quality impacts during the short-term construction phase of the project and also to mitigate long-term emissions of criteria air pollutants after project implementation (See Mitigation Monitoring and Reporting Program [MMRP]—Exhibit #5). Project impacts were not determined to be significant for biological resources, safety, health, or greenhouse gases; on the contrary, the analysis of the EIR determined how the proposal to capture the propane and butane from the RFG would be beneficial by promoting the reduction in sulfur dioxide, reduction in flaring events, and reduction in on-site greenhouse gas emissions.

EIR Fails to Include Analysis of Cumulative Impacts: Chapter 5 of the DEIR (page 5-2) provided comprehensive analysis of the potential cumulative impacts in terms of past, present, and future projects both at the Refinery and in the near region. Other projects at the Refinery and at other existing refineries in the County are likely to cause impacts that are similar to those anticipated to result from the project. Other non-Refinery projects could also cause similar potentially overlapping impacts with those of the project. Thirteen projects within an approximately 16-mile radius were evaluated as potential projects that could have cumulative effects in conjunction with the proposed project. The Draft EIR provided sufficient and adequate cumulative analysis of cumulative impacts and determined them to be less than significant.

EIR Fails to Evaluate Mitigation Measures and Project Alternatives: SMW claimed in their appeal that the County failed to adopt adequate mitigation or feasible alternatives. The EIR determined that the proposed project would result in potentially significant environmental impacts to air quality, cultural resources, noise, and transportation and traffic. These impacts were evaluated in the DEIR and mitigation measures were proposed as needed that would reduce each of these impacts to a less-than-significant level (See MMRP—Exhibit #5).

Chapter 6 of the DEIR considered alternatives to all components of the project. The alternatives to the project were duly evaluated, but were found to be infeasible in that they would be inferior in terms of meeting the project objectives and require more energy consumption for their implementation, and therefore were not considered feasible to the project as proposed.

A no-project alternative was discussed on page 6-6 of the Draft EIR which, when compared to the project, would not result in a decrease in GHG and sulfur emissions from the Refinery, as well as missing the opportunity to decrease the number of flaring events at the Refinery. Although, implementation of a reduced project alternative was determined to be the marginally environmentally superior alternative in the Draft EIR, it would not meet all of the project objectives.

County Failed to Adequately Respond to Comments on the DEIR: The County received 48 comment letters on the DEIR for the proposed project. In addition, oral comments were made by individuals who attended the publicly noticed public hearing before the Zoning Administrator on July 15, 2013. There were also several speakers who spoke in support of the project. The County has made its best good-faith effort to respond each comment in a professional and scientific manner.

County Failed to Recirculate EIR: CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the DEIR but before certification of the FEIR. New information or data that “merely clarifies” an EIR is not significant unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. Various minor changes and edits were made to the mitigation measures, text, tables and figures of the DEIR, as described in the FEIR. The flow data (see Exhibit #7) that was subsequently provided by the applicant clarifies and confirms the conclusions of the DEIR. This information simply confirms and provides additional support for the conclusions of the DEIR and further confirms that impacts will remain less than significant. Therefore, recirculation is not required.

Inadequacy of Project Findings:

a. CEQA Findings: In response to the SMW point that the County's findings, including its statement of overriding considerations, are not supported by substantial evidence, staff would point out that the EIR identifies potentially significant environmental impacts that would occur if the project were implemented, and requires feasible mitigation measures that would reduce all of the potentially significant impacts to less-than-significant levels (See MMRP—Exhibit #5). The DEIR provides a comprehensive analysis of the project's impacts, and cumulative impacts of the project. Furthermore, the County Planning Commission adopted the findings, analysis, and conclusions of the EIR and based its decision to adopt the document upon the evidence referenced in the EIR and its appendices.

b. Land Use Permit Findings: SMW further states that the County cannot make the findings for approval required by its own code sections for Land Use Permits; in particular, they claim that the County cannot find that the project will not be a detriment to public health, safety or welfare, or that it will not cause a nuisance in the surrounding community. Master Response 2.3 and 2.5 of the FEIR addresses onsite hazards in response to concerns about the risk of accidents associated with the storage of propane and butane, and Master Response 2.6 addresses railroad transportation of propane and butane. The EIR thoroughly analyzed and considered all potential hazards that present risks to the community; therefore, as proposed and conditioned, the project will not create a nuisance and/or enforcement problem within the neighborhood or be detrimental to the health, safety and welfare of the community.

### C. Appeal by Communities for a Better Environment (CBE):

The appeal by CBE cites a variety of issues (see Exhibit #4a). The CBE appeal is primarily based on an "expert" report by Greg Karras (see Exhibit #4c), an employee of CBE. Comprehensive responses to the Karras report have already been provided in the FEIR beginning on page 3.2-117. CBE also submitted two letters opposing the project to the Planning Commission on the day of the November 19, 2013 hearing (see Exhibits #4b & #4c).

#### Summary of Appeal Points Raised by CBE and Staff Responses:

- *The FEIR fails to adequately analyze significant environmental impacts.*
- *The FEIR fails to adequately discuss mitigation measures.*
- *The FEIR provides an inadequate discussion of Project alternatives.*
- *The County failed to adequately notify the community of this project.*
- *The project description fails to disclose that this Project is part of a larger project to enable the Refinery to process lower-quality oil feedstock (see previous Staff response in Section A).*

#### Staff Response:

EIR Fails to Provide Adequate Analysis of Environmental Impacts: CBE asserted that the



FEIR failed to properly address potential environmental impacts, such as explosion/fire risks, air pollution, and greenhouse-gas emissions (GHG) resulting from the refining of a heavier lower-quality oil feedstock. CBE further states that, the FEIR avoids any discussion of any impact associated with a switch in crude quality. Indeed, the DEIR and FEIR did not analyze any impacts associated with a switch in crude quality, since a switch in crude quality, or the refining of heavier lower-quality oil feedstock, is not an aspect of the proposed project, nor is the project dependent on any such switch. CBE also claimed that the proposed project will have significant impacts on biological resources as a result of continued use of the OTC or “once-through” cooling system. As proposed, the project includes a 25% increase of OTC volume; however, the proposed 25% increase will not require any modifications or expansions to the existing OTC system, and does not go beyond the Regional Water Quality Control Board’s (RWQCB) current permit requirements for the Refinery. CBE also states that the RWQCB ordered the applicant to study replacing the OTC system and FEIR denies the existence of the study. The FEIR does acknowledge the study (see FEIR page 3.2-122, last paragraph). The RWQCB has reviewed the DEIR and no comments or objections to the project have been received regarding the OTC system. Finally, the FEIR responds on page 3.2-122 that no fundamental change to the Refinery cooling system is proposed as part of the project; therefore, it is outside of the scope of this project to include discussion on OTC systems alternatives.

EIR Fails to Provide Adequate Mitigation Measures: CBE’s appeal letter states that the FEIR fails to adequately discuss mitigation measures relating to local and state regulations, the County Industrial Safety Ordinance, the General Plan, and comments again in regards to the RWQCB requirements for the OTC system. The EIR determined that the proposed project would result in potentially significant environmental impacts to air quality, cultural resources, noise, and transportation and traffic. These impacts were identified and evaluated in the DEIR and mitigation measures were proposed as needed that would reduce each of these impacts to a less-than-significant level (See MMRP Exhibit #5). A more detailed response related to the Refinery's OTC system and how it will be affected by the proposed project (including the response to the CBE's supplemental letter, received on 1/7/2014) is found in the County response (See Exhibit #6).

County Failed to Provide Adequate Project Alternatives: As previously discussed in Section B, Chapter 6 of the DEIR considered adequate alternatives to all components of the project as required under CEQA.

County Failed to Provide Adequate Notification: CBE also claims that the County failed to adequately notify the community of this project. The project was noticed in compliance with the noticing requirements of CEQA and, in addition, to the County’s noticing requirements in Section 26-2.2002 of the County Code. The notice of completion and availability of the DEIR and the Planning Commission hearing were noticed to all property owners and occupants within a 300-foot radius of the project parcels APN357-010-001 and APN357-300-005. Copies of the DEIR and FEIR were

available for public review at the Pleasant Hill and Rodeo public libraries and at the District 5 supervisor's office. Notices were also sent to all speakers and those who submitted comments at the scoping session and the July 15, 2013 Zoning Administrator's hearing on the DEIR. Notice was also given to those individuals, agencies, and organizations that requested notice or expressed interest in the project. Notice of the Commission hearing was published in the West County Times on November 8, 2013.

D. CBE December 12, 2013 Letter to Clerk of the Board: On December 12, 2013, CBE submitted a letter to the Clerk of the Board (see Exhibit #4d) regarding the supposed change in crude oil feedstock. The letter references a project being reviewed by the City of Pittsburg called the "WesPac Pittsburg Energy Infrastructure Project, Tar Sands". The letter describes WesPac as a crude oil transfer facility, and states that it may be a potential new source of oil feedstock to the Rodeo Refinery. Staff has reviewed the letter and as stated above in Section A, the Propane Recovery Project is not dependent on new feedstock from the WesPac facility or anywhere else because it already produces enough propane and butane at the Refinery to achieve project objectives. Currently the WesPac project is under CEQA review and a decision on this project has not been made. Since CBE's assumption that the proposed Propane Recovery Project and the WesPac are related was made out of speculation, and since the County has determined that this matter is not germane to the proposed project, the County will refrain from further commenting on this matter.

#### CONSEQUENCE OF NEGATIVE ACTION:

The Propane Recovery Project would not be constructed and the Refinery would not be able to recover and sell the existing propane and butane, and there would be a lost benefit to the community by missing an opportunity to decrease the amount of GHG and sulfur emissions from the Refinery, as well as losing an opportunity to decrease the number of flaring events at the Refinery.

#### CHILDREN'S IMPACT STATEMENT:

No Impact.

#### CLERK'S ADDENDUM

*Speakers: Roger Lin, CBE (Appellant); Greg Karras, CBE (Appellant); Mark Hughes, Phillips 66 (Applicant); Keith Howard, Phillips 66; Janet Pyegeorg, Rodeo Citizens Association (Appellant)(handout attached) ; Ethan Buchner, Forest Ethics; Ed Tannenbaum, resident of Crockett (handout attached); Charlie Davidsen, resident of Hercules; Dave King, resident of Concord; Dr. Henry Clark, West County Toxin Coalition; Joe Portoi, resident of Vallejo; Richard Black, resident of Vacaville; John Spinola, resident of Crockett; Andres Soto, CBE Richmond; George Smith, East Bay Leadership Council; Mira Sendan, resident of El Sobrante; Ernesto Velasquez, resident of Oakland; Teagan Clive, resident of Rodeo (handouts attached); Nancy Rieser, resident of Crockett (handout attached); Madelyn Morton, resident of Rodeo (handout attached); Carmen Gray, resident of Rodeo (handout attached); Bill concannon, resident of Crockett; Bill Pinkham, resident of Richmond; Nick Despota,*

*resident of Richmond; J.C. Garrett, resident of Rodeo; Don Stock, resident of Richmond; Jim Neu, resident of Martinez, Robert Bustos, resident of Pittsburg; Danielle Figere, resident of Crockett; Chuck Cotton, resident of El Sobrante; Diane Bailey, Natural Resources Defense Council; Jess Dervin-Ackerman, Sierra Club; Ann Rikkelman, resident of Concord; Richard Roserts, resident of Pleasant Hill; Marilyn Bardet, resident of Benicia; LaTasha Chillous, Phillips 66; David Sit, resident of Rodeo; Victor Sanders, resident of Rodeo; Tim Carves, resident of Vacaville; Julian Harker, resident of Martinez; Mike Miller, president of United Steel Workers Local 326. The Board CONTINUED the hearing to April 1, 2014 at 1:30 p.m.; and DIRECTED staff to report back with further information on issues and concerns raised today.*

## ATTACHMENTS

Exhibit #1 - CPC Resolution No. 19-2013

Exhibit #2 - Conditions of Approval Approved by CPC

Exhibit #3a - Appeal Letter 11/22/13 Shute Mihaley & Weinberger (SMW)

Exhibit #3b - SMW 11/18/13 Letter and Related Fox Report

Exhibit #4a - Appeal Letter 12/02/13 Communities for a Better Environment (CBE)

Exhibit #4b - CBE 11/19/13 Letter by Roger Lin

Exhibit #4c - CBE 11/19/13 Letter and Related Report by Greg Karras

Exhibit #4d - CBE 12/12/13 Letter Regarding WesPac Project

Exhibit #4e - CBE 01/07/14 Letter

Exhibit #5 - Mitigation Monitoring and Reporting Program

Exhibit #6 - County Response

Exhibit #7 - Phillips 66 Response to Appeals

Exhibit #8 - CPC 11/19/13 Staff Report

Exhibit #9 - Notification List

Exhibit #10 - Maps

Exhibit #11 - CBE 01/14/14 Letter