



**Contra
Costa
County**

To: Board of Supervisors
From: Sharon L. Anderson, County Counsel
Date: July 24, 2018

Subject: Rescission of the Environmental Impact Report and Land Use Permit for the Phillips 66 Propane Recovery Project.

RECOMMENDATION(S):

RESCIND and SET ASIDE the Board of Supervisors' February 3, 2015, certification of the Environmental Impact Report for the Phillips 66 Propane Recovery Project (State Clearinghouse No. 2012072046).

RESCIND and SET ASIDE the Board of Supervisors' February 3, 2015, approval of the Land Use Permit for the Phillips 66 Propane Recovery Project (County File No. LP12-2073).

AUTHORIZE County Counsel, or designee, to file an initial return to the peremptory writ of mandate issued in *Communities for a Better Environment, et al. v. Contra Costa County, et al. and Phillips 66 Company*, Contra Costa County Superior Court Case Nos. N15-0301, N15-0345, N15-0381.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **07/24/2018** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, 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: July 24, 2018

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

By: Stacey M. Boyd, Deputy

Contact: Thomas Geiger, (925)
335-1800

cc:

FISCAL IMPACT:

None to rescind and set aside the environmental impact report certification and land use permit approval.

BACKGROUND:

On February 3, 2015, the Board of Supervisors certified an environmental impact report for the Phillips 66 Propane Recovery Project (State Clearinghouse No. 2012072046) and approved the land use permit for the project (County File No. LP12-2073). The project would allow Phillips 66 to recover propane and butane that are byproducts of its existing refining process and then sell the propane and butane, rather than burn those byproducts as heat and steam for the refinery. The refinery is located in Rodeo.

Following the Board's approval of the EIR and land use permit, three separate lawsuits challenging the approval were filed by Communities for a Better Environment, Rodeo Citizens Association, and Safe Fuel and Energy Resources California. (Contra Costa County Superior Court Case Nos. N15-0301, N15-0345, and N15-0381.) The cases were consolidated for litigation purposes.

On March 1, 2017, the Superior Court entered a judgment voiding the EIR certification and permit approval. The Superior Court also issued a peremptory writ ordering the Board to rescind and set aside its EIR certification and permit approval. One of the plaintiffs, Rodeo Citizens Association, appealed the Superior Court judgment. The Court of Appeal upheld the judgment and transferred the case back to the Superior Court on June 25, 2018.

The recommended action will result in the County's compliance with the writ. The County Counsel or her designee will file an initial return in Case Nos. N15-0301, N15-0345, and N15-0381 stating that the County has complied with the writ.

CONSEQUENCE OF NEGATIVE ACTION:

The County would not be in compliance with a Superior Court writ.

CHILDREN'S IMPACT STATEMENT: