



December 8, 2023

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Department of Conservation and Development
Contra Costa County
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**Re: Comment on Draft Revised Environmental Impact Report
for the Phillips 66 Rodeo Renewed Project (County File No. CDLP20-02040)**

Submitted via electronic mail to joseph.lawlor@dcd.cccounty.us

To responsible officials:

Biofuelwatch¹ is an international organization that works to increase public understanding and civic engagement on the land-use implications of climate policy. We have a particular focus on the environmental harms and social inequities of large-scale industrial bioenergy projects, and we work extensively on addressing the negative ecological and social outcomes of policy and actions that are justified as being beneficial to the global climate, yet carry with them risks and threats to public health and natural resources. We have been intimately engaged with the California Environmental Quality Act (CEQA) process around the conversion of refineries in Contra Costa County to producing liquid biofuels, and we have extensive experience in California on climate policy matters such as the Low Carbon Fuel Standard (LCFS).

This letter is our public comment on the Draft Revised Environmental Impact Report (Draft REIR)² for the Phillips 66 Rodeo Renewed Project (Project)³ as prepared by the Contra Costa County Department of Conservation and Development (County). After review of the Draft REIR documentation and inconsideration of other relevant information it is the conclusion of our organization that the County is failing to appropriately respond to the court order requiring the Decertification of the Final Environmental Impact Report (FEIR) of the Project and thus it is necessary that the Draft REIR be further revised and recirculated. There are numerous incongruencies in the governance of this project and the County is, on a variety of levels, failing to fulfill legally mandated responsibilities to protect the public interest on this matter.

¹ <http://www.biofuelwatch.org.uk/>

² <https://www.contracosta.ca.gov/DocumentCenter/View/80824/Phillips-66-Rodeo-Renewed-Project-Draft-Revised-EIR-October-24-2023>

³ <https://www.contracosta.ca.gov/RodeoRenewed>

The County Has Failed to Respond Appropriately to the Court Order

There are many incongruencies between how the County is regulating the Project and implementing the order of the court to comply with CEQA. One disconcerting dynamic is that County staff have publicly misrepresented the Contra Costa County Superior Court (the Court) order by suggesting that the order was for ‘minor revisions.’ The Court ordered that the County ‘comply with CEQA’ first and foremost, specifying that extremely serious failings such as **piecemealing** and **cumulative impacts** be adequately addressed. However, despite the existence of the Court order, the Draft REIR does not adequately address the piecemealing and cumulative impact questions. The County thus continues the pattern of inadequate description of the project, making substantive analysis of the project under CEQA impossible. Therefore, the Draft REIR needs to be revised to include an accurate project description, to rectify the piecemealing, and to do an adequate cumulative impacts analysis. Then the Draft REIR must be recirculated in order to comply with the Court order.

Also, specific to Unit 250, the court ordered that Unit 250 was not adequately considered in the cumulative impact assessment of the FEIR. Unit 250 was defined by the Court decision as part of the Project. At the same time the Court ordered that Construction on the Project could continue, yet Operation of the Project would be prohibited until the flaws in the CEQA review were corrected. Yet the evidence from a recent LCFS Fuel Pathway Credit Application⁴ from Phillips 66 for the Rodeo Refinery indicate that Operations of the Project are indeed occurring. How else could Phillips 66 manufacture Renewable Diesel to earn LCFS credits without operating the Project? Unit 250 is clearly part of the project; even a court of law has confirmed that point, a point that that community members have been emphasizing in previous engagement on the CEQA process and that the County has ignored, even after the Court order. By allowing Operations to continue at the Project the County is failing to adhere to the order of the Court. Such incongruencies are reflective of deeper issues of the governance failures of the County to adequately supervise the Project and the CEQA process. The County is allowing illegal operation of the Project, and has done so since April 2021 when Unit 250 began producing Renewable Diesel. This runs contrary to the responsibilities of the County to uphold bedrock environmental law and to protect the public interest. Completing environmental review before the operation of a project is fundamental premise of the most basic tenants of environmental governance, yet the County has totally failed in this regard.

The County Has Failed to Respect Public Requests for a Public Meeting and for Adequate Time to Engage on the Draft REIR

Many community members made informed requests to the County to extend the public comment period on the Draft REIR, yet the County has denied those requests. Our organization also made repeated requests to the County for an extension of the deadline, and for a public meeting. Our requests were also denied.

The Draft REIR and the Phillips 66 Project more broadly has raised a host of complex technical issues that the affected communities are still scrambling to assess. The public deserves a

⁴ https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0520_cover.pdf

detailed explanation from the County regarding what the court has decided, but the County is choosing at this juncture to forego a public meeting and to pursue an abbreviated public comment timeline while relying on an incorrect interpretation of the Court order. There is an ambiguous promise from the County of a public meeting at a later date, but that undermines the efficacy of holding a meeting now to help the public be informed to offer comment on the Draft REIR. Having a public meeting after the public comment period defeats the purpose of a public meeting. The County is engaged in backwards management of the public participation process. We would like to be able to inform your process not merely with general observations about broad topics to address, but with informed input concerning both the types of potentially unaddressed environmental harm that may result from a project of this nature, and the types of questions that need to be vetted with respect to the recent court decision exposing the flaws of the original Final Environmental Impact Report. Putting together that type of input, which we believe will be useful to the quality of the CEQA review, takes more time than the County has afforded us.

We would also like to remind the County of the spirit of the law and that “(I)nformed public participation is essential to environmental review” under the California Environmental Quality Act.⁵ Given the circumstances of this project, we sought an extension to allow the public to fully understand and comment on the draft revised environmental review documents that the County has recently published. But the County denied those requests, failing in the jurisdictions responsibility to protect the public interest. Because of the failure to recognize the degree of public controversy around the Project and to afford stakeholders sufficient time to review the new documentation, as well as denying the meeting that was requested to inform public comment, the County is failing to comply with CEQA. By failing to comply with CEQA the County is failing to adequately implement the Court order that commanded that the County “conduct further environmental review of the Project in compliance with CEQA.” The Draft REIR must be revised and recirculated, and the public must be afforded adequate time and information to be able to engage effectively in the public comment process.

The County Has Failed to Adequately Consider and Acquire New Information Relevant to Compliance with CEQA and the Draft REIR

Inexplicably the County is apparently unwilling to prioritize public safety and public health when it comes to the CEQA review of the Project. In particular, on November 19, 2023 there was a dramatic fire incident at the Marathon Martinez Renewable Fuels Project, a refinery project that is similar and even identical in some ways to the Phillips 66 project. This fire incident is now being investigated by the US Chemical Safety Board. There is much that can be learned from this incident that could inform a CEQA review of the Project that is designed to protect the public interest. Yet the County is not willing to extend the deadline for public comment on the Draft REIR to secure information from other County agencies reviewing the incident.

For instance, stakeholders have been informed that a California Public Records Act request to the Contra Costa County Hazardous Materials Program submitted days after the November 19,

⁵ *Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 285

2023 fire at the Marathon Martinez biofuels refinery, asking for information regarding the incident, is not going to be fulfilled until December 21, nearly two weeks after the public comment period for the Project Draft REIR will be closed. The County has made no effort to make that information available to the public in a timely manner, nor has the County extended the public comment period in order that the County provide the public with the requested public records. Clearly those records and information about the fire incident will be critical for the provision of informed public comment on the Draft REIR, but the County is not facilitating the acquisition of this information in order that it be submitted to the public record, despite clear public safety considerations. The County is recklessly ushing forward with the Phillips 66 project against all logic. Normally a major fire would lead responsible parties to want to gather more information, but the County seems to be comfortable with avoiding that responsibility.

There are other matters related to the Project on which new information has emerged, but the County has failed to bring into the environmental review process, while also curtailing the opportunity for the public to provide this new information.

There are variety of elements of the project for which new information has emerged but the County has failed to address this new information. Examples include:

- The apparently evolving plans for the carbon plant that have not been accurately described in the Project documentation; whether it be for electrode manufacturing or for hydrogen production the variety of uses of the carbon plant have not been accurately described in any of the versions of the EIR for the Project;
- There is substantial new science⁶ exposing the climate and land use impacts from feedstocks that will be utilized for the Project;
- The wastewater treatment plant in Rodeo is being subject to new requests related to the Project, yet the Draft REIR makes no mention of these changes, nor has any previous version of the EIR made mention of changes to plans for wastewater management at the Project;
- Concerning the fire and flaring incidents at the Marathon Martinez refinery, the County is failing to adequately to make appropriate plans to effectively take into account the new information from regulatory agencies that sheds important light on the recent incidents that have implications for the environmental review of the Phillips 66 refinery conversion project.

Because of these and other failures to take into consideration and enter into the public record new information with high levels of relevance to the Project, the County must revise the Draft REIR to include relevant new information and recirculate the draft REIR for public comment.

⁶ <https://environment-review.yale.edu/us-policy-promoting-biofuels-may-have-worsened-climate-change-study-finds>

Conclusion

It is apparent that the County is failing to protect the public interest in this matter. The rush to move the Project forward reflects a disturbing pattern of disregard for community stakeholders who have engaged on the environmental review of the Project. The County has misrepresented the order of the court regarding the Project and the County has failed to produce a Draft REIR that responds appropriately to the order of the court. The County also seems to fail to recognize the significance of the simple fact that their management of the CEQA review of the Project was ruled illegal and that the FEIR had to be Decertified. The County is showing neither remorse nor humility before the concerned public in the management of the environmental review of the Project. The County has repeatedly marginalized the community stakeholders and independent experts who have provided informed comment to the County regarding the risks and threats of the Project and the failures of the County to fulfill the obligations of bedrock California environmental law. This is in sum a grave failure to protect the public interest.

Our organization is disturbed by the manner in which the County has decided that rushing forward with the project is more important than respecting the knowledge and expertise of the community members who have engaged with this process. We contend that the CEQA process surrounding the Phillips 66 refinery conversion project will be studied in the future as a case study in a crisis in climate and energy governance. Right when we need public agencies and government officials to act in the public interest, they do the opposite. We register our opposition to and dismay with the manner with which Contra Costa County has handled this entire affair.

Our expectation is that County will respect the law and will revise the Draft REIR of the Project to include relevant new information and to comply with the Court order, and to then recirculate the revised documents for further public comment.

Attentively,



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