



PLANNING COMMISSION

# AGENDA REPORT

**PLANNING AND BUILDING  
SERVICES DEPARTMENT**

April 10, 2008

**PREPARED BY:** Lamont Thompson, Senior Planner, Planning Department

**SUBJECT:** CONDITIONAL USE PERMIT, DESIGN REVIEW PERMIT AND ENVIRONMENTAL IMPACT REPORT (EIR) FOR THE CHEVRON ENERGY AND HYDROGEN RENEWAL PROJECT (PROJECT NUMBER: CUP/EIR 1101974 and DR 1104423).

**LOCATION:** 841 Chevron Way, Richmond, CA (Assessor Parcel Numbers: 561-040-016; 561-100-003, -001, -003, -008, -009, -010, -011, -012, -013, -017, -020, -025, -026, -029, -034, -035, -036, -036, -037, -038, -040; 561-400-008; 561-410-002; 561-410-003)

**APPLICANT:** CHEVRON PRODUCTS COMPANY, PO Box 1272, Richmond, CA 94802

**AREA:** 2900 +/- Acres

**ZONING:** M-2 Light Industry; M-3 Heavy Industry; M-4 Marine Terminal; and CRR Community and Regional Recreation

**GENERAL PLAN:** 919 Light Industry; 901 Heavy Industry; 908 Recreation Lands

**SPECIFIC PLAN:** None applicable

**CEQA:** Master Environmental Impact Report (State Clearinghouse #2005072117), consisting of a Draft Environmental Impact Report (Volumes 1 and 2) and Final Environmental Impact Report (Volumes 3, 4, and 5) (collectively, "EIR"), per CEQA Guidelines Section 15175 (further details and discussion is contained in Part IV of this report).

**PROPOSAL:**

Chevron Products Company, which owns and operates the Chevron Refinery facility located at 841 Chevron Way in Richmond, California, is requesting Certification of the Environmental Impact Report (EIR), approval of a Conditional Use Permit (CUP) and approval of a Design Review Permit to allow replacement of the existing Hydrogen Plant, Power Plant, and Reformer, and installation of other new associated equipment to increase the Refinery's ability to produce gasoline meeting State of California specifications. The equipment will allow the Refinery facility to use a wider range of crude oil sources than those currently processed at the facility. The new equipment would

improve Refinery reliability, energy efficiency, and add environmental controls. This proposal is known as the Chevron Energy and Hydrogen Renewal Project (Proposed Project).

Through implementation of the Proposed Project, Chevron proposes to replace and upgrade some of its existing manufacturing operations at the Refinery to improve the ability to provide gasoline for local and export markets. The Proposed Project would not increase the Refinery's consumption of crude oil, although upgrades would expand the Refinery's ability to process crude oil with up to three percent sulfur content, which is an increase from the current average sulfur content of 1.7% in crude oil currently processed at the Refinery. The components of the Proposed Project include upgrades that would increase energy efficiency, reduce air emissions, and increase equipment reliability. Specifically, Chevron's objectives for the proposed Project are:

- Replace existing facilities with modern facilities providing improved reliability, energy efficiency, and additional environmental controls;
- To decrease the amount of energy imported by the Refinery;
- Ensure the Refinery's ability to process future crude and gas oil supplies;
- Increase the portion/percentage of the Refinery's total gasoline production that can meet State of California specifications and be distributed to local markets by 300,000 gallons per day, or approximately 6 percent more than current Refinery production levels; and
- Invest in Refinery technological upgrades that produce a competitive return on capital.

Approval of the Proposed Project requires Certification of the Final Environmental Impact Report (Volumes 1-5), and approval of a Conditional Use Permit (CUP) and Design Review Permit by the City's Planning Commission.

### **RECOMMENDED ACTION:**

Staff recommends that the Planning Commission:

1. Conclude and close the public hearing to receive comments on the Project and on the Final Environmental Impact Report (consisting of the Draft EIR dated May 2007 and Final EIR dated January 2008 and accompanying appendices, Volumes 1-5) in Attachment 1 to the March 20, 2008 staff report;
2. Direct staff to amend the discussion of greenhouse gas (GHG) emissions in the EIR to indicate that the impact would be significant prior to mitigation and less-than-significant with implementation of the identified mitigation measures;
3. Direct staff to make such corrections and insignificant modifications as necessary to finalize the EIR.

### **BACKGROUND:**

On March 20, 2008, the Planning Commission held a public hearing to discuss Certification of the Final Environmental Impact Report (Volumes 1-5), and approval of a Conditional Use Permit (CUP) and Design Review Permit by the City's Planning Commission. The Planning Commission completed the March 20<sup>th</sup> Agenda portions 1 through 5 of the public hearing on the morning of

March 21, 2008. The Planning Commission meeting of April 10, 2008 has been agenzized to begin the public hearing with rebuttals from the applicant and portion 6 of the public hearing.

## **DISCUSSION:**

### **Issues Raised and Information Submitted Since Publication of Final EIR:**

Comment letters and e-mails were submitted to the City following publication of the Final EIR on January 25, 2008. (The comments in the letters submitted by the Attorney General's Office on March 6 and March 19, 2008 regarding the analysis of GHG emissions in the EIR are discussed separately in the next part of this Staff Report, below.) Some of the issues raised in these letters involve the operation of the solvent deasphalter (SDA), which is Refinery equipment that is not part of the Proposed Project, and the relationship of the SDA to the crude slate processed at the Refinery. Other comments involve verifying the baseline sulfur content of the crude slate that historically has been processed at the Refinery for purposes of quantifying the proposed increase in sulfur as part of the Proposed Project. Staff asked Chevron, the BAAQMD, and the EIR consultant's expert Dave Powell to provide information in order to respond to these comments.

**Solvent Deasphalter (SDA), Crude Slate and Sulfur Content of Crude Oil.** The Attorney General's March 19, 2008 letter (Attachment 1) forwarded an analysis prepared by G.E. Dolbear, PhD, Dolbear & Associates, Inc., which states that the existing SDA at the Refinery could be run at a higher capacity, thereby allowing the Refinery to process a heavier crude slate. "Part 2. Refinery Feedstock Switch Impacts," submitted by Communities for a Better Environment (CBE) on March 20, 2008 (Attachment 2), makes similar comments. At the City's request, Dave Powell of ESA reviewed Dr. Dolbear's report (Attachment 3), and concluded that if the SDA were upgraded the Refinery could process heavier crude oil, but that this would require additional environmental review and environmental regulatory permitting. The BAAQMD also provided comments in response to questions posed by staff (Attachment 4), and stated that the SDA would not exceed its currently permitted level. On April 3, 2008, Chevron responded to CBE's "Part 2" document (see Attachment 5), and stated that the SDA is not capable of operating at its currently permitted level and that the Refinery is not likely to increase SDA feed rates. Chevron identifies reasons that the Proposed Project does not enable the Refinery to process a heavier crude slate and the factors that prevent the Refinery from processing heavier crude. Chevron is not proposing to increase the capacity of the residuum system or the SDA, and Chevron claims that processing heavier crude with higher residuum content would diminish the profitability of its crude unit and its lubricant base oil production facility.

On April 3, 2008, Chevron provided information to the City via e-mail about the crude oil feedstock and the average sulfur content of the crude slate actually used at the Refinery during April through December 2007 (Attachment 6). As shown in the table attached to the e-mail, the average sulfur content of the crude oil used during that period was 1.54%, and the average API specific gravity was 33.9.

At the March 20, 2008 Planning Commission meeting, Greg Karras, on behalf of CBE, provided a statement and calculations regarding the sulfur content of the crude oil slate at the Refinery. CBE submitted a "mass balance" analysis to the City on March 24, 2008 to try to

establish the sulfur content of the crude oil (Attachment 6). A mass balance means that the amount of sulfur that comes into the Refinery (in crude oil or other inputs) must leave the Refinery (as elemental sulfur product, or in hydrocarbon products or as air or water emissions). CBE's mass balance states that, based on the quantities of sulfur recovered (product) and sulfur emissions from the Refinery, the total sulfur was lower than expected and that the Refinery was processing lower-sulfur crude than Chevron has claimed. Staff requested the BAAQMD to comment on CBE's statement and calculations. Barry Young, of BAAQMD, reported to the City in an e-mail dated April 2, 2008 (see Attachment 4) that CBE's mass balance did not consider the sulfur contained in any of the other Refinery products, however, especially the high-sulfur fuel oils that can contain substantial amounts of sulfur and are sold in quantity from the Refinery. BAAQMD also noted that the mass balance did not include SO<sub>2</sub> emissions and sulfur fugitive emissions. According to BAAQMD, however, these emissions should be relatively insignificant. The City's EIR consultant agrees with the BAAQMD's conclusions.

**Flaring.** On March 4, 2008, Chevron submitted additional information regarding the incidence of flaring during the period 2005-2007 (Attachment 7), which shows a decrease in the emissions of SO<sub>2</sub> from flaring during that period.

#### **Significance Determination Regarding GHG Emissions.**

After issuance of the Final EIR, the City received three letters from the Attorney General's Office: <sup>1</sup> (1) a March 6, 2008 letter from Deputy Attorney General Rose B. Fua (Attachment 8), (2) another March 6, 2008 letter from Attorney General Jerry Brown (Attachment 9), and (3) a March 19, 2008 letter from Deputy Attorney General Jamie B. Jefferson (Attachment 1, discussed above). All of these letters request the City to come to a significance conclusion in the EIR regarding the impacts of Proposed Project's greenhouse gas (GHG) emissions. In support of the Attorney General's position, Ms. Fua's letter (p. 2, fn. 4) cites a January 2008 "white paper," *CEQA and Climate Change: Evaluating and Addressing Greenhouse Gas Emission from Projects Subject to the California Environmental Quality Act*, by the California Air Pollution Control Officers Association (CAPCOA) (Attachment 10). The purpose of the white paper is "to provide a common platform of information and tools to support local government" in "evaluating and addressing GHG emissions under the California Environmental Quality Act (CEQA)." (CAPCOA 2008, unnumbered first page [Disclaimer].) The CAPCOA white paper was published around the time that the Final EIR for the Proposed Project was issued.

Among other topics, the CAPCOA white paper reviews alternative approaches that may be taken by local CEQA lead agencies with regard to analysis of GHG impacts in the absence of adopted significance thresholds, which is the posture in which the Proposed Project comes before the Commission. (See CAPCOA 2008, Ch. 5, pp. 23-26.) CAPCOA recognizes that a "lead agency may elect not to establish significance thresholds," because "[t]he agency may believe that the global nature of the climate change problem necessitates a statewide or national framework for consideration of environmental impacts." (*Id.*, p. 23.) Nevertheless, CAPCOA believes that "[t]he absence of a threshold does not in any way relieve agencies of their obligations to address GHG emissions from projects under CEQA." (*Id.*) CAPCOA cites the Attorney General's position "that lack of a threshold does not mean lack of significance." (*Id.*, p. 24.)

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<sup>1</sup> The City also received other letters and comments from the public during this period.

CAPCOA offers three, alternative approaches for the lead agency to follow in determining significance in lieu of a significance threshold. (*Id.*, pp. 25-26.) It is important to note that none of these approaches results in no determination of significance. In other words, under all three of the approaches recommended by CAPCOA, the lead agency ultimately would determine whether a project's GHG emissions would be significant or less-than-significant. This new view contrasts with the recommendation of the BAAQMD to the City in 2006 about how to proceed with the GHG analysis in the Draft EIR,<sup>2</sup> and reflects the progress in thinking on this subject since AB 32 was signed by the Governor on September 27, 2006 and took effect on January 1, 2007.

Based on the foregoing, staff now recommends that the Commission direct staff to amend the discussion of GHG emissions in the EIR to indicate that the impact from the Proposed Project would be significant prior to mitigation and less-than-significant with implementation of the identified mitigation measures. Making that determination would require the Commission to conclude that the Proposed Project's estimated new emissions of 898,000 metric tons per year prior to mitigation would be a significant effect on the environment. As discussed above, according to CAPCOA, that conclusion can be made either based on a significance threshold adopted by the City (which has not been done to date) or in the absence of a significance threshold.

The Attorney General's letters state that 898,000 metric tons per year of GHG emissions can be considered significant, because that amount is larger than the California Air Resources Board's (CARB) "early action measures" adopted pursuant to AB 32 (see Health & Safety Code § 38560.5) and, therefore, could be seen as counteracting those measures. (See, e.g., R. Fua letter, *supra*, p. 3.) The emissions reductions anticipated from individual early action measures range in size from 100,000 metric tons per year to 20 million metric tons per year of carbon dioxide equivalent gases. (See CARB Proposed Early Actions to Mitigate Climate Change in California [April 20, 2007], available at [http://www.climatechange.ca.gov/climate\\_action\\_team/reports/2007-04-20\\_ARB\\_early\\_action\\_report.pdf](http://www.climatechange.ca.gov/climate_action_team/reports/2007-04-20_ARB_early_action_report.pdf); CARB, Expanded List of Early Action Measures to Reduce Greenhouse Gas Emissions in California Recommended for Board Consideration (October 17, 2007), available at [http://www.arb.ca.gov/cc/ccea/meetings/ea\\_final\\_report.pdf](http://www.arb.ca.gov/cc/ccea/meetings/ea_final_report.pdf).) The Attorney General's letters also recommend, as a point of reference for determining significance, CARB's proposal to apply AB 32 mandatory reporting requirements to any industrial source that emits over 25,000 metric tons of carbon dioxide per year from general stationary combustion sources. (See, e.g., R. Fua letter, *supra*, p. 3; see also CARB, *Regulation for the Mandatory Reporting of Greenhouse Gas Emissions* (October 19, 2007) [proposed to be added to Title 17, California Code of Regulations, proposed section 95101, subd. (b)] available at: [http://www.arb.ca.gov/regact/2007/ghg2007/attachbres07\\_54.pdf](http://www.arb.ca.gov/regact/2007/ghg2007/attachbres07_54.pdf).)

### **Recirculation of EIR.**

If the Commission were to determine that the GHG emissions from the Proposed Project constitute a significant impact, this determination would raise a legal issue about whether recirculation of the

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<sup>2</sup> The BAAQMD advised the City in an e-mail commenting on the administrative draft EIR that the EIR "may not conclude with a significance determination nor require mitigation measures since the District has not yet established thresholds for greenhouse gas emissions." (BAAQMD, 2006d [quoted in the Draft EIR, Volume 1, page 4.3-30, and listed in Section 4.3 References – Air Quality].)

EIR's GHG analysis is required. Recirculation is required when "significant new information" is added to the EIR after the draft EIR is issued but before the final EIR is certified. (CEQA Guidelines § 15088.5.) The term "significant new information" is defined to include "a disclosure showing that: (1) A new significant impact would result from the project or from a new mitigation measure proposed to be implemented." (CEQA Guidelines § 15088.5(a).) Chevron's attorney, Ron Van Buskirk, submitted a letter to the City stating Chevron's opinion on this issue. (Attachment 11.) Staff will be prepared to discuss this issue with the Commission at the meeting on April 10, 2008.

### **Neighborhood Councils:**

Property owners within 300 feet of the Refinery, persons listed on the Master CEQA mailing list, interested persons, businesses, agencies and organization who requested notification and all neighborhood councils were sent Public Notices of the Proposed Project's public hearing date, time, and location.

### **Other Comment Letters Received:**

Staff received the following letters (see Attachments 12 through 17):

1. Stephan C. Volker to Virginia Finlay, Chairwoman dated March 20, 2008
2. Kate Burroughs to Planning Commission dated March 27, 2008
3. Greg Karras, CBE, Part 3 to City Council, Planning Commissioners and planning staff dated April 4, 2008
4. David W. Blaisdell, Director West County Business & Professional Association to Planning Commission Chairperson dated March 31, 2008
5. Mayor Robert Lieber, City of Albany, to Planning Commission dated April 3, 2008
6. Marleen M. Quint to Planning Commission dated April 3, 2008.

### **DOCUMENTS ATTACHED:**

- Attachment 1: Letter from J. Jefferson, Deputy Attorney General, to L. Thompson, Senior Planner (March 19, 2008), with attached "Expert Report of G.E. Dolbear & Associates, Inc., Statement of G.E. Dolbear, PhD"
- Attachment 2: Communities for a Better Environment, Part 2. Refinery Feedstock Switch Impacts" (submitted at Planning Commission meeting on March 20, 2008) [OR: attachment to letter from A. Bloch, CBE, to L. Thompson (March 20, 2008)]
- Attachment 3: E-mail from D. Powell, ESA, to L. Thompson (March 31, 2008), with attached "Comments on Report of G.E. Dolbear"
- Attachment 4: E-mail from B. Young, BAAQMD, to L. Thompson (April 2, 2008)
- Attachment 5: E-mail from R. Chamberlin, Chevron, to L. Thompson (April 3, 2008), with attached "Physical, Operational and Economic Factors That Prevent Processing Heavy Crude at the Chevron Richmond Refinery"
- Attachment 6: E-mail from R. Chamberlin, Chevron, to L. Thompson and M. Piersante (April 3, 2008), with attached "Chevron Richmond Refinery Average Crude Sulfur Content April through December 2007"
- Attachment 7: E-mail from M. Piersante, on behalf of Chevron, to L. Thompson (March 4, 2008), with attached "Refinery Flaring Event Data"

- Attachment 8: Letter from R. Fua, Deputy Attorney General, to L. Thompson, Senior Planner (March 6, 2008)
- Attachment 9: Letter from J. Brown, Attorney General, to Planning Commissioner V. Finlay, Chair (March 6, 2008)
- Attachment 10: Excerpts from CAPCOA, *CEQA and Climate Change: Evaluating and Addressing Greenhouse Gas Emission from Projects Subject to the California Environmental Quality Act* (January 2008) (entire document is in the file and available for review)
- Attachment 11: Letter from R. Van Buskirk, on behalf of Chevron, to L. Renne, City Attorney (April 3 2008), with attachments
- Attachment 12: Letter from Stephan C. Volker to Virginia Finlay, Chairwoman dated March 20, 2008
- Attachment 13: Letter from Kate Burroughs to Planning Commission dated March 27, 2008
- Attachment 14: Letter Part 3 from Greg Karras, CBE, to City Council, Planning Commissioners and planning staff dated April 4, 2008
- Attachment 15: Letter from David W. Blaisdell, Director west County Business & Professional Association to Planning Commission Chairperson dated March 31, 2008
- Attachment 16: Letter from Mayor Robert Lieber, City of Albany, to Planning Commission dated April 3, 2008
- Attachment 17: Letter from Marleen M. Quint to Planning Commission dated April 3, 2008

LT/JH  
DR/

Cc: Robert Chamberlin, Chevron Products Company  
Point Richmond Neighborhood Council