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THE SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF CONTRA COSTA

DATE: June 4, 2009  
JUDGE: Barbara Zúñiga  
BAILIFF: F. Quichocho

DEPARTMENT: Two

CLERK: Carolyn Kromschroder

UNREPORTED

CLERK OF THE COURT  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA

C. Kromschroder

COMMUNITIES FOR A BETTER  
ENVIRONMENT, et al  
Plaintiff

Vs.

Case No. N08-1429

CITY OF RICHMOND,  
et al

Defendants

UNREPORTED MINUTE ORDER

1. COURT HAS REVIEWED, AGAIN, CITATIONS REFERENCED AT ORAL ARGUMENT.
2. NOTHING HAS CHANGED. TENTATIVE RULING THAT FOLLOWS STANDS:

WRIT GRANTED

1. AN ACCURATE, STABLE AND FINITE PROJECT DESCRIPTION IS SINE QUA NON OF AN INFORMATIVE AND LEGALLY SUFFICIENT EIR. SEE COUNTY OF INYO V. CITY OF LOS ANGELES (1977) 71 CAL. APP. 3d 185, 199.
2. AN ACCURATE VIEW OF PROJECT ENABLES THE PUBLIC, INTERESTED PARTIES AND PUBLIC AGENCIES TO BALANCE PROPOSED PROJECT'S BENEFITS AGAINST ITS ENVIRONMENTAL COST, CONSIDER APPROPRIATE MITIGATION MEASURES, ASSESS ADVANTAGES OF TERMINATING PROPOSAL AND PROPERLY WEIGH

OTHER ALTERNATIVES. SEE CITY OF SANTEE V. COUNTY OF SAN DIEGO (1989) 214 CAL . APP. 3d 1438, 1454.

3. IN INSTANT CASE, FEIR PROJECT DESCRIPTION IS UNCLEAR AND INCONSISTENT AS TO WHETHER PROJECT WILL OR WILL NOT ENABLE CHEVRON TO PROCESS A HEAVIER CRUDE SLATE THAN IT IS CURRENTLY PROCESSING.

a. FEIR'S REFERENCES TO "HISTORICALLY PROCESSED" SLATES IN 90'S AND CONTINUING MIX THAT REFINERY WAS "DESIGNED TO PROCESS" ARE VAGUE AND OBSCURE ISSUE OF WHETHER CHEVRON WILL BE ABLE TO PROCESS HEAVIER CRUDES THAN IT IS CURRENTLY PROCESSING. SEE AR 1570-1571; SAN JOAQUIN RAPTOR RESCUE CENTER V. COUNTY OF MERCED (2007) 149 CAL. APP. 4<sup>TH</sup> 645, 655-656.

- 1) FEIR'S REFERENCE AT AR 1570 TO MIX OF CRUDES THAT REFINERY IS "DESIGNED" TO PROCESS IS VAGUE AS IT DOES NOT STATE EXACTLY WHAT RANGE OF API GRAVITY THAT MIX OF INTERMEDIATE AND LIGHT CRUDES WOULD HAVE, OR WHETHER THE MIX THE REFINERY IS "DESIGNED" TO PROCESS IS HEAVIER THAN MIX REFINERY IS CURRENTLY PROCESSING.
- 2) FURTHERMORE, ENVIRONMENTAL SETTING AT TIME NOTICE OF PREPARATION WAS PUBLISHED WILL NORMALLY CONSTITUTE BASELINE PHYSICAL CONDITIONS

BY WHICH A LEAD AGENCY DETERMINES WHETHER AN  
IMPACT IS SIGNIFICANT. SEE 14 CCR § 15125(a).

- 3) IN THIS CASE, NOTICE OF PREPARATION WAS  
PUBLISHED IN JULY 2005. SEE AR 780-787. THERE  
IS NO EXPLANATION AS TO WHY PRE-PROJECT BASELINE  
LEVEL FOR CRUDE OIL WOULD ENCOMPASS REFINERY  
OPERATIONS IN 90'S.
- 4) FINALLY, EIR STATES THAT "IT IS REASONABLY  
FORESEEABLE THAT CHEVRON WOULD RUN A CRUDE SLATE  
SIMILAR TO THAT WHICH IS CURRENTLY PROCESSED AT  
THE REFINERY - BUT IN A MIXTURE THAT HAS HIGHER  
SULFUR LEVELS." SEE AR 1575.
- 5) ABOVE STATEMENT WOULD INDICATE THAT ANTICIPATED  
CHANGE IN CRUDE SLATE WOULD BE ONLY ITS SULFUR  
CONTENT, WITH NO CHANGE TO ITS DENSITY  
(HEAVINESS), BUT QUALIFIERS "REASONABLY  
FORESEEABLE" AND "SIMILAR" DETRACT FROM ANY  
CERTAINTY THIS STATEMENT WOULD HAVE GENERATED.
- 6) COURT AGREES WITH CHEVRON THAT THERE IS NO NEED  
TO STATE A BASELINE IF OVERALL RANGE OF CRUDE  
SLATE WILL NOT CHANGE. HOWEVER, THAT  
DETERMINATION IS NOT POSSIBLE WITHOUT ANY DATA  
AS TO CURRENT CONDITIONS. A BASELINE  
DETERMINATION IS THE FIRST STEP IN ENVIRONMENTAL

REVIEW PROCESS. SEE SAVE OUR PENINSULA  
COMMITTEE V. MONTEREY COUNTY BD. OF SUPERVISORS

(2001) 87 CAL. APP. 4<sup>TH</sup> 99, 125.

b. ACCORDINGLY, FEIR, FAILS AS AN INFORMATIONAL  
DOCUMENT.

4. CITY HAS IMPROPERLY DEFERRED FORMULATION OF GREENHOUSE  
GAS MITIGATION MEASURES, BY SIMPLY REQUIRING CHEVRON  
TO PREPARE A MITIGATION PLAN AND SUBMIT IT TO CITY  
STAFF UP TO A YEAR AFTER APPROVAL OF CONDITIONAL USE  
PERMIT. SEE AR 1300-1302.

a. CITY DID IDENTIFY A STANDARD OF NO NET INCREASE  
IN GREENHOUSE GAS EMISSIONS, BUT IT DID NOT  
IDENTIFY ANY MEANS OF ACHIEVING THAT STANDARD.  
SEE AR 1300.

b. FORMULATION OF MITIGATION MEASURE SHOULD NOT BE  
DEFERRED UNTIL SOME FUTURE TIME. SEE CEQA  
GUIDELINES, 14 CCR § 15126.4, SUBD. (a)(10)(B);  
GENTRY V. CITY OF MURRIETA (1995) 36 CAL. APP. 4<sup>TH</sup>  
1359, 1394-1395.

5. CITY ALSO ENGAGED IN "PIECE-MEALING" PROJECT

a. CITY FAILED TO CONSIDER PRAXAIR HYDROGEN  
PIPELINES WHICH ARE PLANNED TO TRANSPORT EXCESS  
HYDROGEN GAS PRAXAIR WILL BE GENERATING AT ITS


HYDROGEN PLANT, ONE OF 4 KEY COMPONENTS OF  
CHEVRON'S PROJECT. SEE AR 1183, 1190.

b. LAW IS CLEAR AN EIR MUST INCLUDE AN ANALYSIS OF  
ENVIRONMENTAL EFFECTS OF FUTURE EXPANSION OR  
OTHER ACTION IF (1) IT IS A REASONABLY  
FORSEEABLE CONSEQUENCE OF THE INITIAL PROJECT;  
AND (2) THE FUTURE EXPANSION OR ACTION WILL BE  
SIGNIFICANT IN THAT IT WILL LIKELY CHANGE THE  
SCOPE OR NATURE OF THE INITIAL PROJECT OR ITS  
ENVIRONMENTAL EFFECTS. SEE LAUREL HEIGHTS  
IMPROVEMENT ASSN V. REGENTS OF UNIVERSITY OF  
CALIFORNIA (1988) 47 CAL. 3d 376, 396.

c. WHEN ONE ACTIVITY IS AN INTEGRAL PART OF ANOTHER  
ACTIVITY, COMBINED ACTIVITIES ARE WITHIN SCOPE OF  
SAME CEQA PROJECT. SEE TUOLUMNE COUNTY CITIZENS  
FOR RESPONSIBLE GROWTH, INC. V. CITY OF SONORA  
(2007) 155 CAL. APP. 4<sup>TH</sup> 1214, 1224.

6. WITH RESPECT TO OTHER ISSUES RAISED BY PETITIONERS,  
GIVEN THAT EIR IS ALREADY IN NEED OF REVISION,  
ADDRESSING ADDITIONAL ISSUE SEEMS TO BE RATHER MOOT.

DATED: June 4, 2009

  
Hon. Barbara Zufiga  
Judge of the Superior Court

SUPERIOR COURT - MARTINEZ  
COUNTY OF CONTRA COSTA  
MARTINEZ, CA 94553  
(925) 646-2950

## CLERK'S CERTIFICATE OF MAILING

CASE TITLE: COMMUNITIES VS CITY OF RICHMOND  
CASE NUMBER: MSN08-1429 - CIVIL

THIS NOTICE/DOCUMENT HAS BEEN SENT TO THE FOLLOWING ATTORNEYS/PARTIES:

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I am a Clerk of the Court indicated below and am not a party to this cause. On the date below indicated, I served a copy of the attached document(s) by depositing a true copy in the mail in a sealed envelope with postage prepaid, at Martinez, California addressed as above indicated.

TITLE OF DOCUMENT SERVED: UNREPORTED MINUTE ORDER DATED 6/4/09

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CLERK OF THE COURT

BY *C. Kromschroder*  
C. KROMSCHRODER, Deputy Clerk

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Page:8/8

Notice 'CCM1' has been printed for the following Attorneys/Firms  
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