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COMMUNITIES FOR A BETTER ENVIRONMENT

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF CONTRA COSTA

14 COMMUNITIES FOR A BETTER
ENVIRONMENT, ASIAN PACIFIC
15 ENVIRONMENTAL NETWORK, WEST
COUNTY TOXICS COALITION, all California
16 Nonprofit Corporations,

17 Petitioners and Plaintiffs,

18 v.

19 CITY OF RICHMOND; and DOES 1 through
20 10, inclusive,

21 Respondents and Defendants.

22 CHEVRON PRODUCTS COMPANY, a
California Corporation, CHEVRON
23 CORPORATION, a Delaware Corporation; and
DOES 11 through 20, inclusive,

24 Real Parties in Interest and Defendants.
25

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

**[California Code of Civil Procedure §§ 1094.5
and 1085; California Public Resources Code
§§ 21167, 21168, and 21168.5]**

1 particulate matter and sulfur dioxide emissions, oil spill impacts, and the risk of refinery spills, fires
2 and explosions.

3 5. The Project includes the construction of a hydrogen pipeline infrastructure that will
4 connect Bay Area oil refineries, allowing Chevron to export and import hydrogen to and from these
5 refineries. The EIR fails to analyze the environmental impacts of either the infrastructure or the
6 movement of hydrogen between Bay Area sites.

7 6. Even if Chevron does not use the lower quality crude enabled by the Project, the
8 Project will increase greenhouse gas emissions by at least 898,000 metric tons per year, according to
9 the EIR, which failed to identify and account for all such emissions. CEQA mandates that
10 environmental and public health impacts be mitigated and that such mitigation be developed during
11 the CEQA process. Yet the City certified the EIR without a specific plan for mitigating greenhouse
12 gas emissions. Instead, it not only illegally deferred determinations of measures to be required,
13 while construction of the Project continues, but also provided that Chevron itself could devise the
14 plan over the next year and without the public scrutiny required by the CEQA process.

15 7. The City also failed to identify the proper environmental “baseline” from which to
16 measure impact, failed to perform a proper cumulative impacts analysis, failed to identify
17 irreversible environmental impacts, and failed to consider a reasonable range of project alternatives.
18 It also failed to address a number of specific and proposals directly related to the Project, deferring
19 CEQA compliance for those proposals instead of including them in this EIR so the public can
20 understand the magnitude of Chevron’s proposals as a whole.

21 8. After the Final EIR was published, the City hired an outside consultant to perform
22 additional analysis that was not included in the EIR. In making its ultimate determinations, the City
23 apparently relied on this consultant, who in turn relied upon information shown only to him by
24 Chevron. This secret information was never disclosed to the City staff, decision makers or the
25 public because the consultant and Chevron entered into a contract that specifically prevented this
26 information from being disclosed. The consultant presented conclusory opinions to the Planning
27 Commission and the City Council based on this undisclosed evidence. Reliance on information not
28 made public during the CEQA process undermines the goals, policies, and requirements of that Act.

1 and health effects of the Refinery for more than twenty years.

2 14. CBE has approximately 20,000 members in California. Many CBE members live,
3 work, recreate, and breathe the air in Contra Costa County and specifically in Richmond. CBE's
4 members have an interest in their health and well-being, as well as conservation, environmental,
5 aesthetic, and economic interests in the Bay Area environment. CBE's members who live and work
6 in the Bay Area have a right to, and a beneficial interest in, the City of Richmond's performance of
7 its duties under CEQA. These interests have been, and continue to be, threatened by the City's
8 decision to certify an EIR and issue a Conditional Use Permit to Chevron in violation of CEQA.

9 15. By this action, CBE seeks to protect the health, welfare, and economic interests of its
10 members and the general public and to enforce a public duty owed to them by the City of Richmond.

11 16. Petitioner and Plaintiff ASIAN PACIFIC ENVIRONMENTAL NETWORK (APEN)
12 is a non-profit organization incorporated in California that works to create a world where all people
13 have a right to a clean and healthy environment. With offices in Richmond and Oakland, APEN
14 organizes and develops the leadership of low-income Asian immigrants and refugees to achieve
15 environmental and social justice. It a membership base of over 600 families in the Bay Area. One
16 of the central focuses of APEN has been the Laotian Organizing Project ("LOP"). The Laotian
17 community, resettled to Contra Costa County in the aftermath of the Vietnam War, has grown to a
18 population of close to 10,000. LOP is an intergenerational, interethnic, community-led vehicle
19 whereby Laotian families come together to transform their community into a place that is safe and
20 healthy to live, work, and play. LOP has a membership base of over 200 families in West Contra
21 Costa County, most of whom live in Richmond. For many years, the environmental health effects
22 posed by the Chevron refinery have been an area of concern and focus for LOP and APEN.

23 17. APEN's members have an interest in their health, well-being and enjoyment, as well
24 as conservation, environmental, aesthetic and economic interests in the City, Contra Costa County
25 and the greater Bay Area. APEN's members who live and work in or near the refinery have a right
26 to, and a beneficial interest in the City of Richmond's performance of its duties to comply with
27 CEQA. These interests have been, and continue to be, threatened by the City's decision to certify an
28 EIR and issue a Conditional Use Permit to Chevron in violation of CEQA.

1 18. By this action, APEN seeks to protect the health, welfare, and economic interests of
2 its members and the general public and to enforce a public duty owed to them by the City of
3 Richmond.

4 19. Petitioner and Plaintiff WEST COUNTY TOXICS COALITION (“WCTC”) is a
5 nonprofit, multi-racial membership organization incorporated in California and based in Richmond.
6 Since 1986, WCTC has sought to empower low- and moderate-income residents to exercise greater
7 control over environmental problems that impact their quality of life in County Costa County, with a
8 focus on West Contra Costa County (“West County”). Through its programs, WCTC empowers
9 residents, particularly those living in West County and the City of Richmond, to become actively
10 involved in the development and implementation of environmental justice policies and programs that
11 affect their communities. WCTC has been an active watchdog of the Refinery and has long
12 advocated for reducing the harmful effects of the Refinery on the community.

13 20. WCTC’s members have an interest in their health, well-being and enjoyment, as well
14 as conservation, environmental, aesthetic, and economic interests in Richmond, West County, and
15 the Bay Area. WCTC’s members who live and work in the near the refinery have a right to, and a
16 beneficial interest in, Richmond’s performance of its duties under CEQA. These interests have been,
17 and continue to be, threatened by the City’s decision to certify an EIR and issue a Conditional Use
18 Permit to Chevron in violation of CEQA.

19 21. By this action, WCTC seeks to protect the health, welfare, and economic interests of
20 its members and the general public and to enforce a public duty owed to them by the City of
21 Richmond.

22 22. Defendant CITY OF RICHMOND is the local land use authority that conducted the
23 environmental review of the Project, certified the Environmental Impact Report, and issued the
24 Conditional Use Permit that are the subject of this litigation.

25 23. Real Party in Interest and Defendant CHEVRON PRODUCTS COMPANY is an oil
26 refiner based in California. Chevron is the applicant and developer of the property upon which the
27 Project is planned to be constructed and operated and is the recipient of the approvals that are the
28 subject of this litigation. The Chevron facility at issue here is located at 841 Chevron Way,

1 activities. The Refinery shares a fence line with low-income neighborhoods of color in central and
2 north Richmond. In the fourteen neighborhoods surrounding the industrial corridors generally in
3 Richmond, populations range from 72 to 94 percent people of color. The Refinery is located within
4 1.1 miles of two elementary schools, a park, and a municipal pool.

5 33. Asthma and other respiratory illness rates are already at dangerously high levels in
6 these neighborhoods. People living downwind from the Refinery frequently experience severe
7 asthma attacks, dizziness, headaches, and rashes during or immediately following a flaring event,
8 resulting in the sudden release of dangerous gases in an open flame. Flaring is the combustion of
9 excess gases and entrained liquids in an open flame using oxygen from the ambient air; the
10 equipment used for this method of disposal is a safety device intended for use in unforeseen
11 emergencies that require dumping gases to relieve over-pressured process vessels. Evidence
12 indicates that Chevron also uses flaring in non-emergency situations. In addition to flaring, residents
13 frequently report odors and smoke emitted from the Refinery. From 2000 to 2007 alone, the Bay
14 Area Air Quality Management District received at least 256 such complaints related to the Chevron
15 refinery and issued hundreds of notices to Chevron that it had violated the terms of its air quality
16 permit.

17 34. Even now, without construction of the Project, the Refinery emits, among other
18 things, high levels of particulate matter, nitrogen oxides, sulfur compounds, carbon monoxide, and
19 reactive organic gases that combine with nitrogen oxides to create smog. Indeed, experts have
20 confirmed high levels of indoor pollutants, including metals closely associated with oil refineries,
21 such as vanadium, inside the households near the Chevron refinery. This “toxic soup” has forced
22 Richmond residents to live with high levels of air pollution and the resulting health risks. The
23 noxious odors reported by residents are released by the production of hydrogen sulfide and other
24 sulfur compounds during the sulfur removing and other oil refining processes. This facility has a
25 history of frequent flaring.

26 **The Project and Associated Approval Processes**

27 35. On April 6, 2005, Chevron filed an application with the City of Richmond for a
28 Conditional Use Permit for its self-named “Hydrogen Renewal and Energy Project.”

1 36. This proposed Project consists of several major components, including among others
2 Hydrogen Plant Replacement, Power Plant Replacement, Reformer Replacement, and Hydrogen
3 Purity Improvements. In addition to constructing these new facilities, the Project would allow
4 Chevron to replace or modify existing equipment and facilities. These changes include piping, heat
5 exchangers, instrumentation, catalytic reactors, fractionation equipment, pumps, compressors,
6 furnaces, tanks, hydrogen sulfide absorption capacity, and hydrogen generation capacity, along with
7 associated facilities, including steam and electrical generation.

8 37. The Project would replace and expand equipment that has been operating for many
9 decades. For instance, the Project would replace the existing naphtha catalytic reformers that have
10 operated for at least 30-40 years, the existing methane/steam reformer hydrogen plant that has
11 operated for 42 years, and the Refinery's No. 1 Power Plant boilers have operated for at least 58
12 years.

13 38. The EIR recites several Project objectives: “(1) to replace existing facilities with
14 modern facilities providing improved reliability, energy efficiency, and additional environmental
15 controls; (2) to ensure the Refinery's ability to process future crude and gas oil supplies; (3) to
16 decrease the amount of energy imported by the Refinery; (4) to increase the portion/percentage of
17 the Refinery's total gasoline production that can meet California specifications and be distributed to
18 local markets by 300,000 gallons/day or 6 percent over current Refinery production levels; and, (5)
19 to invest in Refinery upgrades that produce a competitive return on capital.”

20 39. On May 11, 2007, the City released the Draft EIR for public review and comment.
21 Less than a year earlier, on July 15, 2006, Contra Costa County published a Notice of Preparation of
22 an EIR for a “Contra Costa Pipeline Project” to construct a 21.5-mile pipeline to export allow
23 Chevron to export excess hydrogen from its Refinery to the ConocoPhillips Refinery in Rodeo and
24 the Shell Refinery in Martinez, California, and import hydrogen from those refineries. This pipeline
25 project was not included as part of the Project proposed by Chevron even though hydrogen produced
26 by the Project would be shipped to other refineries through this pipeline.

27 40. Petitioner CBE timely submitted written comments on the Draft EIR on July 9, 2007.
28 In addition to CBE's legal comments, Greg Karras, a refinery expert on CBE's staff, submitted

1 technical comments explaining that the EIR must consider and disclose the duration of the proposed
2 Project's operation in order to accurately assess the Project's impacts and that the EIR omitted
3 analysis of Project components essential to achieving the project's objectives. Mr. Karras described
4 the EIR's failure, among others, to disclose the full nature of the heavier and more contaminated
5 crude processing that would be allowed by the Project and the extent by which the Project would
6 expand the capacity of the existing crude processing configuration.

7 41. The California Attorney General's office, along with dozens of other organizations,
8 experts, and members of the public filed comments expressing frustration over the inadequacy of the
9 EIR as a public information document and concern over the Project's significant environmental
10 impacts. The comments raised, among other issues, that the Draft EIR failed to identify all of the
11 potential impacts of the Project, analyze and disclose the Project's potential significant effects,
12 mitigate those significant impacts, apply the proper baseline, analyze cumulative impacts, and
13 consider a range of alternatives, and asserted that the City illegally piecemealed the project by not
14 including related components such as the hydrogen pipeline.

15 42. Comments also focused on the Draft EIR's conclusion that the impact of the Project's
16 emissions of greenhouse gases on global warming was "speculative" and therefore not a significant
17 impact under CEQA.

18 43. As part of the Project, Chevron plans to build a new Power Plant to replace its power
19 plant boilers that date from the 1930's and 1940's. The permitting of the Power Plant is governed by
20 the California Energy Commission. Chevron applied for an exemption from Energy Commission
21 approval for the Richmond Power Plant Replacement Project component of the overall Project.
22 CBE on September 26, 2007 moved to intervene in the Energy Commission proceeding concerning
23 this component of the Project. The Energy Commission granted that request on October 11, 2007.
24 As permitted by parties in such proceedings, CBE submitted data requests about the power plant
25 project component on October 16, 2007. On October 25, 2007, Chevron USA, the applicant, filed a
26 motion to stay its application for an exemption from Energy Commission approval. That application
27 was stayed for the duration of the conditional use permitting process for the Hydrogen and Energy
28 Renewal Project.

1 44. The City’s Planning Commission heard public comment on the Draft EIR one month
2 after its release, on June 7, 2007. At that hearing, the Planning Commission requested that its staff
3 further explore energy alternatives to the new power plant included in the Project, such as the use of
4 power from wind or solar sources.

5 45. The City published the Final EIR on January 25, 2008. For the first time, the Final
6 EIR acknowledged that greenhouse gas emissions from the Project should be mitigated. The
7 “mitigation plan” relied on Chevron developing a mitigation plan after the EIR process was
8 completed. Like the Draft EIR, the Final EIR maintained that the impact of the greenhouse gas
9 emissions on global warming was “speculative” and therefore not significant or in fact requiring
10 mitigation.

11 46. On February 20, 2008, CBE’s expert, Greg Karras, submitted the first set in a series
12 of written comments (“Karras Report”) on the quality of oil the Project would enable Chevron to
13 use. CBE provided substantial evidence that the Project would likely significantly worsen the
14 Refinery feedstock (*i.e.*, refinery oil input) quality, that the City’s determination to the contrary was
15 unsupported by evidence, that the Final EIR’s failure to disclose key information about the design
16 feedstock made it impossible to evaluate the full scope of Project’s impacts, and that the Final EIR
17 failed to respond to potentially significant Project impacts.

18 47. On February 28, 2008, Chevron Corporation, Chevron’s parent company, filed its
19 Annual Report Form 10-K with the Federal Security and Exchange Commission, stating therein that
20 “[d]esign and engineering for a project to increase the flexibility to process lower API-gravity crude
21 oils at the company’s Richmond, California, refinery continued in 2007.” Heavier, lower API-
22 gravity crude oils are the type of low-quality, high polluting oil about which CBE had commented.

23 48. Yet Chevron continued to maintain, as it has to this day, that the Project will not
24 allow for the use of such low-quality crude. As an argument in support of this, Chevron points out
25 the Project does not include plans for a “coker,” typically necessary to support the use of dirty
26 crudes.

27 49. On March 6, 2008, the Attorney General for the State of California submitted
28 comments objecting that the Final EIR failed to make a finding of significance for greenhouse gas

1 emissions and failed to mitigate those impacts through real, measurable, and enforceable measures.

2 50. On March 19, 2008, the California Attorney General’s expert, Dr. G.E. Dolbear,
3 submitted a report to the City concluding that, despite Chevron’s claims to the contrary, the Project’s
4 increased Solvent Deasphalter (“SDA”) capacity and related configuration would allow Chevron to
5 process heavier crudes. This report was accompanied by a second letter from the Attorney General
6 demanding that the City address the Project’s significant greenhouse gas impacts.

7 51. The Dolbear Report substantiated the Karras Report’s finding that the Project as
8 proposed could expand Refinery capacity for heavier oil feedstock and specifically that Project’s
9 changes in the process train – the SDA and its interaction with downstream cracking processes fed
10 by the SDA – would de-bottleneck and thereby expand the capacity of the SDA to process more
11 residuum, the heaviest cut from whole crude. Dr. Dolbear concluded that “increasing the capacity of
12 the SDA at Chevron’s Richmond refinery would allow heavier crude oils to be processed even
13 without a coker.”

14 52. On March 20, 2008, CBE submitted comments on the Final EIR. Through the
15 technical analysis of Greg Karras, CBE explained how the Project would increase the Refinery’s
16 capacity to process low quality feedstock. It described how this lower quality oil refining would
17 increase releases of selenium, mercury, greenhouse gases, VOC, particulate matter, and sulfur
18 dioxide, as well as flaring and risk of both catastrophic accidents and oil spills. It explained how the
19 project could thereby increase releases of selenium, mercury, flared sulfur compounds, and/or
20 greenhouse gases by as much as an order of magnitude—up to five to fifty times—depending on the
21 specific pollutant and specific blends of low quality oils refined over the life of project equipment.
22 In addition, the City only analyzed the impacts of refining wider ranges of crude oils with respect to
23 crudes with higher sulfur content, and even there, failed to use the proper baseline for the amount of
24 sulfur content in the crude, and did not analyze the full impact of crude sulfur content on flaring.
25 CBE pointed out that it is necessary to identify impacts, particularly in this case, in order to
26 effectively mitigate them.

27 53. Also on March 20, 2008, the Planning Commission held a hearing to decide whether
28 to certify the EIR and issue a conditional use permit (“CUP”). After five hours of public testimony

1 on this and other issues, the hearing was continued until April 10, 2008 to address the potential for
2 greenhouse gas emission increases from the Project's operational emissions of carbon and to
3 determine whether it would be necessary to include in the CUP a "crude cap" to ensure that low-
4 quality oil is not used. The Planning Commission also voted 2-3 not to recirculate the EIR.

5 54. On April 4, 2008, CBE submitted a new set of technical comments which proposed a
6 specific oil quality cap – *i.e.*, a set of limits on the quality of crude oil and gas oil inputs processed
7 by the Refinery and on the volume of oil run through key process units with monitoring to ensure
8 that the limits are not exceeded – in order to lessen the Project's significant impacts on air quality
9 and public health. CBE explained why a crude cap is necessary to prevent significant and
10 unmitigated impacts from the Project and demonstrated that there exists an ample supply of oils and
11 oil blends such that holding the Refinery to its currently demonstrated performance through such a
12 cap is feasible. CBE also described why concurrent work on the Refinery's FCC Gasoline
13 Hydrotreater, which the EIR does not analyze as part of the Project, could achieve the project's
14 gasoline upgrading objective in conjunction with the oil quality cap proposed by CBE.

15 55. On April 9, 2008, CBE submitted additional comments requesting that the City
16 recirculate the EIR, because the staff report for the upcoming Planning Commission hearing for the
17 first time recommended that the Planning Commission "amend the discussion of [greenhouse gas]
18 emissions in the EIR to indicate the impact from the Proposed Project would be significant prior to
19 mitigation." Doing so would require the Commission to conclude that the Project's estimated new
20 emissions of 898,000 metric tons per year would be a significant effect on the environment and
21 would therefore require mitigation. CBE argued that it was essential for the City to specifically
22 identify and provide the public with an opportunity to comment on the mitigation measures. CBE
23 also requested recirculation based on the EIR's failure to address the Project's capacity to process
24 low quality feedstock.

25 56. At the April 10, 2008 hearing, staff presented the Planning Commission with a
26 proposed finding of significance for the operational carbon dioxide emissions from the Project.
27 Rather than proposing a mitigation plan with specified measures, the efficacy of which and
28 alternatives to which could be singly and cumulatively discussed and analyzed, the staff proposed a

1 “plan to plan” – deferring identification of the mitigation measures until after approval of the Project
2 and conclusion of the CEQA process. The Commission did direct its staff to prepare a proposed
3 condition concerning the quality of crude oil input (*i.e.*, a oil quality cap).

4 57. On April 28, 2008, the City executed a contract with private consultant Dr. Ranajit
5 Sahu to “obtain the information necessary to determine the adequacy of the mitigation measures set
6 forth in the F[inal] EIR and the current proposed Conditions of Approval for the Chevron Hydrogen
7 [and Energy] Renewal Project”

8 58. On May 5, 2008, Chevron, in a presentation at the JPMorgan Annual Energy
9 Symposium, described itself as a focused leader in the use of heavy crude.

10 59. On May 6, 2008, the City Council voted to authorize Dr. Sahu to sign a
11 confidentiality agreement demanded by Chevron, under which he would not share information
12 provided by Chevron, even with the City and its staff. Dr. Sahu would then make its
13 recommendation based on this “secret” information. Dozens of people objected to the City
14 proceeding under this arrangement, referring to it as a “secret deal.” The City additionally amended
15 the contract to increase the consultation fee from \$10,000 to \$60,000.

16 60. On May 15, 2008, CBE submitted supplemental data to the City in an effort to work
17 with City staff to develop a oil quality cap.

18 61. On May 23, 2008, the City published a new volume of the Final EIR – Vol. 6, the
19 “Consolidated Volume.” This volume incorporated, among other things, language reflecting the
20 changed finding, post Final EIR, that unmitigated, the Project’s new greenhouse gas emissions
21 would be significant. The Consolidated Volume finally acknowledged that the “potential increased
22 emissions of 898,000 metric tons per year of greenhouse gases from the Proposed Project would
23 constitute a significant effect on the environment without mitigation.” However, in the same
24 document, the City continued to assert that “the City believes making a significance determination
25 with respect to GHG at this time would be speculative.”

26 62. Prior to the next Planning Commission hearing, the staff proposed a new condition,
27 Condition C12, related to the Refinery feedstocks, which it described as follows: “Condition C12
28 limits the throughput of the Solvent Deasphalter (SDA), which would ensure that all future crude

1 slates would be similar consistent with the description of the Proposed Project. The throughput
2 limits in levels for the SDA are based on historical operations (hence, achievable and feasible)
3 throughput limits for the SDA, and will not allow the SDA to process more, heavier crude with new
4 permitting and environmental review.” Condition C12 required Chevron to amend its Refinery’s
5 Title V permit “to reduce the maximum permitted throughput limits for the Solvent Deasphalter
6 (SDA) to 43,150 barrels per day (annual 12-month rolling average) and 48,700 barrels per day
7 (calendar monthly average).”

8 63. At its June 5, 2008 hearing, the Planning Commission certified the EIR, with the
9 inclusion of the Consolidated Volume. The Planning Commission also voted to adopt a
10 comprehensive oil quality cap, the specific conditions of which would be determined at a subsequent
11 meeting. In response to CBE’s testimony the proposal in Condition C12 was insufficient, the
12 Commission directed its staff to propose additional limits on the quality of Refinery crude oil inputs,
13 the quality of separately imported gas oil inputs, and the volume of heavier and dirtier oil
14 components processed in additional Refinery units besides the SDA.

15 64. Petitioners herein appealed the Planning Commission’s EIR certification to the City
16 Counsel on June 16, 2008, as did Chevron.

17 65. On June 18, 2008, CBE submitted a request to the City under the Public Records Act
18 for information regarding the basis for Dr. Sahu’s conclusions regarding the adequacy of the crude
19 cap proposal ultimately adopted in Condition C12. The City responded by providing website links
20 and noting that the past decade of information on API gravity, sulfur, acid number, viscosity, nickel,
21 vanadium, selenium, and mercury – the information necessary to determine the validity of Dr.
22 Sahu’s conclusions – were provided by Chevron to Dr. Sahu, but not to the City.

23 66. Petitioners submitted additional comments on June 19, 2008 urging the Planning
24 Commission to rely upon the existing expert and public information concerning the Refinery’s oil
25 input quality rather than the data specially prepared in a spreadsheet by Chevron and relied upon by
26 Dr. Sahu but not publicly disclosed.

27 67. At the June 19, 2008 Planning Commission meeting, the Commission adopted a
28 conditional use permit for the Project but remained silent on the issue of whether to adopt the other

1 oil quality cap conditions it was considering.

2 68. Chevron appealed the conditional use permit on June 20, 2008, and on June 30, 2008,
3 Petitioners amended their appeal of the EIR certification also to challenge the permit.

4 69. On July 14, 2008, the Attorney General's office advised the City stating that Sahu's
5 report is (1) "essentially without any support by any data," (2) that the data Sahu relies upon for
6 mercury had a level that is higher than that reported to regulatory authorities by Chevron, (3) that
7 Sahu relies on metals levels in the crude oil that are different from what Chevron reported to
8 regulatory authorities, and, (4) quoting from their expert, G.E. Dolbear, that "at least in the refineries
9 under question, increasing contaminant levels do result in stressing the system to lead to upsets."
10 This quoted conclusion supported Mr. Karras' finding that the Project could cause increased flaring.

11 70. The City's staff did not publicly disclose the Attorney General office's advisement
12 email until CBE alerted the City Council to its existence.

13 71. The City Council heard the appeals in a hearing on July 15, 2008 and continuing to
14 the early morning of July 17, 2008. It heard from hundreds of community members and other
15 affected individuals. On the first night of the hearing, Chevron presented the City with a self-named
16 "community benefits agreement," a purported \$61 million dollar package. This offer was
17 conditioned on the City approving the Project and on certain other promises by the City. The CBA
18 imposed several future obligations upon the City including requiring the City to create a fast track
19 for permitting for the Project and the Refinery as a whole. Beginning after midnight on the second
20 night of the two day hearing, the City Council denied the community's and Petitioners' appeal.

21 72. First, the City Council Certified the EIR. At around two in the morning, the City
22 Council revised the CUP approved by the Planning Commission. At that time, the City Council
23 eliminated some of the conditions in the CUP, subsequently shifting them to the CBA. This CBA
24 was not publicly noticed on the City Council's agenda, as required by law, and was first presented to
25 the City Council during the hearing and was voted on at the same hearing.

26 73. The City Council also revised the CUP with respect to greenhouse gas mitigations.
27 The revision stated, that if Chevron did not submit a greenhouse mitigation plan that was acceptable
28 to the City Council within one year, the City Planning Director would be directed to develop a future

1 mitigation plan.

2 74. In addition, the revised CUP changed Condition C12 and adopted an increase in the
3 throughput limit for the SDA. This revision occurred after Dr. Sahu stated that he had not analyzed
4 the potential environmental effects of this increase.

5 75. The new Condition C12 states: “The Solvent Deasphalter (SDA) shall not be
6 operated above a maximum throughput rate of 56,000 barrels per day.”

7 76. This conflicts with the very basis for Dr. Sahu’s recommendation of limit of 43,100
8 barrels per day and the Supplemental Finding for Condition C12. That finding states that “[t]he
9 throughput limits in Condition C12 are based on historical operations (hence, achievable and
10 feasible) throughput levels for the SDA, and will not allow the SDA to process more, heavier crude
11 without new permitting and environmental review.”

12 **Exhaustion of Administrative Remedies**

13 77. Petitioners were active public participants in the CEQA review process, as detailed
14 above.

15 78. As also as detailed above, Petitioners appealed the Planning Commission’s decision
16 to certify the EIR and issue the CUP to the City Council. In this appeal, Petitioners submitted
17 comments to the City Council and testified before the City Council. Dozens of Petitioners’ members
18 spoke during the City Council’s hearing of their appeal. All of the issues raised herein were raised
19 by Petitioners or by other members of the public or interested public entities who submitted written
20 or oral comments during the review process.

21 79. Petitioners have exhausted their administrative remedies.

22 **FIRST CAUSE OF ACTION** 23 **(Violation of CEQA – Inaccurate Project Description;** **CCP §1094.5, or in the alternative, CCP §1085)**

24 80. Petitioners incorporate herein by reference the allegations contained in the foregoing
25 paragraphs.

26 81. The primary goal of CEQA is to “[e]nsure that the long-term protection of the
27 environment shall be the guiding criterion in public decisions.” Pub. Res. Code § 21001(d).

28 82. To this end, CEQA requires that the EIR include an accurate project description, and

1 that the nature and objective of a project be fully disclosed and fairly evaluated in the EIR.

2 83. Evidence in the record demonstrates that the Project will increase Chevron’s ability to
3 refine lower quality oil. Chevron will have the capacity to process oils derived from extra-heavy
4 crude and tar sands, among other lower quality oils, as a larger portion of the blends of oils currently
5 processed at Richmond. In addition, the Refinery’s ability to process higher quality oils will be
6 newly limited.

7 84. As a result, mercury, selenium, flare sulfur compound, and greenhouse gas (“GHG”)
8 releases could increase significantly. The Project also could cause significant undisclosed
9 particulate matter and sulfur dioxide emissions, catastrophic risk impacts would increase in
10 frequency and magnitude, and oil spill impacts could increase in magnitude.

11 85. Additionally, the EIR fails to include the pipelines that would run from Chevron to
12 other Bay Area refineries for the purpose of exporting hydrogen from Chevron and at other times
13 importing hydrogen to Chevron. The new pipeline infrastructure provides a market for the excess
14 hydrogen created by the Project. The refining of lower quality oil requires more hydroprocessing of
15 oil which requires more hydrogen production. The Project expands both ensuring Bay Area
16 refineries maximum flexibility to process heavier and/or more contaminated future oil supplies. It
17 also allows refineries to shift between excess hydrogen production and demand when varying oil
18 input quality and during planned and unplanned shutdowns.

19 86. The EIR failed to include an accurate project description that considered the Project’s
20 long-term environmental consequences, including those of the increased hydrogen distribution
21 between Chevron and other refineries, and the foreseeable effects of refining lower quality crude oils
22 in the Bay Area refineries.

23 87. The City’s action certifying the Project’s EIR without an accurate project description
24 constitutes a prejudicial abuse of discretion, fails to proceed in the manner required by law, and does
25 not have the support of substantial evidence.

26 **SECOND CAUSE OF ACTION**
27 **(Violation of CEQA – Improper Piecemealing;**
28 **CCP §1094.5, or in the alternative, CCP §1085)**

88. Petitioners incorporate herein by reference the allegations contained in the foregoing

1 paragraphs.

2 89. CEQA defines “project” as “the whole of an action, which has a potential for
3 resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect
4 physical change in the environment.” Guidelines § 15378(a); Pub. Res. Code § 21065.

5 90. CEQA forbids segmenting a project into separate actions in order to avoid
6 environmental review of the “whole of the action.”

7 91. Furthermore, CEQA requires the lead agency to consider the entire project at the
8 earliest possible stage, including all reasonably foreseeable phases of the project.

9 92. There is substantial evidence in the record that the City failed to analyze other
10 projects related to the Project and therefore, improperly piecemealed its analysis.

11 93. The EIR recites several Project objectives: (1) to replace existing facilities with
12 modern facilities providing improved reliability, energy efficiency, and additional environmental
13 controls; (2) to ensure the Refinery’s ability to process future crude and gas oil supplies; (3) to
14 decrease the amount of energy imported by the Refinery; (4) to increase the portion/percentage of
15 the Refinery’s total gasoline production that can meet California specifications and be distributed to
16 local markets by 300,000 gallons/day or 6 percent over current Refinery production levels; and, (5)
17 to invest in Refinery upgrades that produce a competitive return on capital.

18 94. The evidence in the record shows that Chevron is engaged in many activities that
19 closely relate to the Project’s stated overall objectives. Analysis of these projects was not included in
20 the EIR. The City fails to evaluate these reasonably foreseeable segments of the Project including,
21 but not limited, to the following:

- 22 i. Project to process larger amounts of oils derived from extra-heavy crude and
23 tar sands among other lower quality oils in the blends processed. The EIR fails
24 to disclose or mitigate the potential environmental effects and fail to analyze
25 the longer-term impacts of the Project, which would retool the Refinery to
26 transition away from processing light and medium-gravity oils to processing
27 heavier, low-quality, harder-to-process and more polluting oils. This would
28

1 significantly affects future feedstock and refining equipment options, causing
2 significant environmental impacts.

3 ii. The FCC Gasoline Hydrotreater Project (“FGHT”). Existing Refinery
4 facilities were being retooled to create the FGHT concurrently with the EIR’s
5 review, but the EIR excludes this from its project scope. The EIR fails to
6 disclose that the FGHT was done to upgrade the portion of Refinery gasoline
7 production that currently does not meet California gasoline standards in order
8 to meet these standards, and that the FGHT does this by removing sulfur along
9 the same process stream from which other equipment to be modified by the
10 Project remove sulfur. In addition, the FGHT must use the same hydrogen
11 production and sulfur recovery facilities that would be expanded as
12 components of the Project. Since the FGHT was built during project review
13 for a purpose identical to a project objective and is interconnected and
14 interdependent with other project components such that this gasoline
15 upgrading objective could not be achieved in the same way without the
16 FGHT, it is a part of the Project. The EIR does not account for the FGHT’s
17 contributions to the whole project’s impacts or to the availability of means to
18 lessen or avoid those impacts.

19 iii. The Turbogenerator Replacement Project. The EIR acknowledges that the
20 steam needed to operate the recently completed Replacement Turbogenerator
21 will be produced “by the new Cogeneration Unit [to] replace steam that is
22 now produced by the No. 1 Power Plant.” Since implementation of the
23 Project assumes the capacity to accommodate the new Cogeneration Unit’s
24 increased steam production via an expanded and updated steam-powered
25 turbogenerator, the replacement is therefore a “reasonably foreseeable
26 consequence” of the Project.

27 iv. Demolition activities. The EIR acknowledges that demolition of Tanks T-231,
28 T-298, T-398, T-954, T-979, T-984, T-1451, T- 1504, T-1689, and T-3075, as

1 well as removal of other equipment including piping, pumps and exchangers
2 constitute components of the Project. Therefore, this demolition is a
3 foreseeable consequence of the Project. However, the EIR does not fully
4 address the environmental impacts of this demolition, as required by CEQA
5 where demolition constitutes a “phase of the overall larger project.” These
6 demolition activities parallel the Project in time and location and are closely
7 related to the Project’s overall objectives: They allow for the Project to go
8 forward, facilitating replacement and upgrade of Refinery equipment in order
9 to ensure the Refinery’s ability to process future crude and gas oil supplies.
10 The demolition activities change the “nature or scope” of the Project and its
11 environmental effects.

12 95. The City failed to evaluate the Hydrogen pipeline projects that are reasonably
13 foreseeable segments of the Project, such as:

- 14 i. Praxair Contra Costa Pipeline Project, including the hydrogen pipeline and
15 natural gas pipeline replacement. The EIR and other documents in the record
16 explicitly state that Praxair’s proposed Hydrogen Pipeline terminating at the
17 Chevron Refinery will serve to export excess hydrogen produced as a result of
18 the Chevron Energy and Hydrogen Renewal Project. Substantial evidence in
19 the record also supports the conclusion that Chevron will also use the pipeline
20 to import hydrogen. The Hydrogen and Natural Gas Pipelines constitute
21 reasonably foreseeable consequences of the Renewal Project and change the
22 nature or scope of the project’s environmental impacts. Each Pipeline shares
23 a nexus of time and location with the Project, increases “the potential for
24 related physical changes to the environment in that location,” and closely
25 relates to the Project’s stated overall objectives, facilitating replacement and
26 upgrade of Refinery equipment in order to ensure the Refinery’s ability to
27 process future crude and gas oil supplies.
28

1 ii. Air Liquide Contra Costa County Pipeline Project including the hydrogen
2 pipeline to link hydrogen producers and users at the Tesoro Golden Eagle
3 Refinery in Avon with the Shell Martinez Refinery and Valero in Benicia. In
4 addition to the Praxair Contra Costa Pipeline Project that runs directly to and
5 from Chevron’s Richmond refinery, at least one additional application is
6 currently under review. Taken together, these pipelines connect all five Bay
7 Area oil refineries, compounding environmental impacts and considerations.
8 These projects will complete a network of hydrogen pipelines among Bay
9 Area oil refineries, benefiting all refineries by directly linking all major local
10 hydrogen producers and users. These pipelines closely relate to the Project’s
11 stated overall objectives of facilitating investment in a Refinery upgrade, *i.e.*
12 the Replacement Hydrogen Plant, which will produce a competitive return on
13 capital, and the permitting has a nexus in time and location with Chevron’s
14 project as proposed. The City failed to consider the impacts of this portion of
15 the Project before certifying the EIR.

16 96. In addition, as the EIR acknowledged, Chevron’s Project will significantly increase
17 water demand at the Refinery. Therefore, a water treatment facility to provide additional water
18 resources to the Refinery is a “reasonably foreseeable consequence” of this Project. The EIR
19 acknowledges that the Richmond Advanced Recycled Expansion (RARE) Water Project is integral
20 to the Project but defers environmental review. The RARE “project’s” development nearly parallels
21 that of the Project in time and location. It is also closely related to the Project’s overall objectives: it
22 allows for the Project to go forward, facilitating replacement and upgrade of Refinery equipment in
23 order to ensure the Refinery’s ability to process future crude and gas oil supplies. Finally, by serving
24 as a de facto mitigation measure for the Project’s increased demand for water, the RARE
25 undertaking clearly changes the “nature or scope” of the Project and its environmental effects.

26 97. Although Chevron’s Project would greatly impact the City’s broad planning scheme,
27 the City postponed adoption of previously developed amendments to its General Plan for the
28 duration of the Project’s review and approval procedures. Since the Project will significantly shape

1 the City’s land use policy, amendments to the General Plan are a “reasonably foreseeable
2 consequence” of this Project. The City’s amendment process parallels the Project in both time and
3 location. Furthermore, as demonstrated by the postponement of their adoption, the General Plan
4 amendments are closely related to the Project’s overall objectives: the Project must comply with any
5 adopted General Plan policies. Finally, by determining the regulatory context within which the
6 Project may proceed, General Plan amendments clearly change the “nature or scope” of the Project
7 and its environmental effects.

8 98. When considered as a whole, the Project will further result in significant adverse
9 environmental impacts that were not considered in the EIR. The EIR fails to evaluate and submit for
10 public review any of the impacts from these project segments that should have been addressed by the
11 Project’s EIR. The cumulative impacts of these project segments were also not considered.

12 99. By failing to consider all of the segments of the expansion project as a whole, the
13 City commits a prejudicial abuse of discretion, fails to proceed in the manner required by law, and
14 does not have the support of substantial evidence.

15 **THIRD CAUSE OF ACTION**
16 **(Violation of CEQA – Failure to Define the Proper Baseline;**
17 **CCP §1094.5, or in the alternative, CCP §1085)**

18 100. Petitioners incorporate herein by reference the allegations contained in the foregoing
19 paragraphs.

20 101. The baseline is the starting point from which to measure whether an impact may be
21 environmentally significant. CEQA defines baseline as the “physical environmental conditions in the
22 vicinity of the project, *as they exist at the time...environmental analysis is commenced.*” CEQA
23 Guidelines § 15125(a) (emphasis added). The EIR erroneously inflated the baseline for sulfur. A
24 stated Project goal was to enable the Refinery to process higher sulfur crude. To determine the
25 significance of this increase, the EIR had to determine the baseline for sulfur emissions. The EIR
26 states that the current refinery crude slate is approximately 2% sulfur content, but this estimate is not
27 based on evidence in the record for reported data from measurements of the Refinery oil input or for
28 the actual sulfur production from this current oil input. Actual sulfur production by the Refinery,
actual data on the annual average sulfur content of crude blends currently processed by the Refinery,

1 and the Refinery's target crude slate during and after its last major retooling indicates that the sulfur
2 content of the current Refinery crude slate is lower than 2%. As a result of this error, the proposed
3 Project minimizes the new impacts of this project and fails to mitigate significant impacts.

4 102. The EIR inflates the baseline for assessing mercury, selenium, oil spill, FCC and flare
5 emissions, sulfur dioxide, particulate matter, VOCs, and GHGs by failing to analyze actual process
6 rates, which define both current oil input quality and pollutant releases that change with process
7 rates. The EIR improperly asserts that it uses current maximum permits limits as the baseline.

8 103. The EIR underestimated the proper baseline with regard to this Project's impact on
9 global warming. The FEIR does not evaluate the state of the climate as the baseline environment. It
10 simply makes conclusions about the amount of greenhouse gases emitted.

11 104. The EIR fails to provide any supporting data for its estimate, only stating that
12 Chevron reported the same baseline to the City and to the Climate Change Registry. Mitigation
13 measure 4.3-5a indicates that the City does not possess any basis for the Refinery's greenhouse gas
14 baseline. This mitigation measure requires the City to hire an independent expert to eventually
15 inventory the greenhouse gases emitted from the refinery. This task should have been completed as
16 part of the EIR.

17 105. The EIR fails to define the proper baseline with regard to socioeconomic impacts.
18 Where a project's socioeconomic impacts may affect the physical environment, an agency should
19 consider those impacts. CEQA Guidelines, § 15131.

20 106. The neighborhoods, North Richmond and the Iron Triangle, in closest proximity to
21 the Chevron Refinery have comparatively low land values. The Refinery sits nearby to two
22 elementary schools, a park, and a municipal pool (Washington and Peres elementary schools,
23 Washington Park, and Richmond Elementary Municipal Natatorium.) Graduation rates from the
24 closest high schools are low, as is performance of local public schools.

25 107. The Refinery's violations of environmental and nuisance laws contribute to ongoing
26 depression in local land values and therefore public school and other public facility funding. The
27 Chevron refinery has an escalating history of violations. For instance, on January 15, 2007,
28

1 hundred-foot flames rose from the refinery. This fire knocked out compressors and resulted in 35
2 subsequent days of flaring that released 22 tons of hydrocarbons and other toxic gases.

3 108. Flaring creates significant environmental impacts at the Chevron refinery and
4 contributes to the urban decay of surrounding neighborhoods.

5 109. Studies show that Chevron has used flaring for non-emergencies. Severe asthma
6 attacks, headaches, rashes, and burning eyes are common symptoms among people living downwind
7 of the Chevron refinery during a flaring event. Flaring releases chemicals with known health
8 impacts.

9 110. Flaring also has dramatic visual and odor impacts on a neighborhood. Even flaring
10 episodes that may not trigger health impacts still have an impact on the aesthetics of the community,
11 the perception of the community, and accordingly, the property values and desirability of the
12 neighborhoods.

13 111. The health, air quality, and aesthetic impacts of flaring on the community have a
14 direct causal impact on social and economic conditions. Health and environmental impacts depress
15 land values and discourage local housing and commercial development. Yet, the EIR's baseline
16 does not include the current extent of flaring.

17 112. The City's action certifying the Project's EIR, without an accurate baseline
18 description in the respects identified constitutes a prejudicial abuse of discretion, fails to proceed in
19 the manner required by law, and does not have the support of substantial evidence.

20 **FOURTH CAUSE OF ACTION**
21 **(Violation of CEQA – Failure to Provide Information Upon Which**
22 **EIR Conclusions Are Based;**
23 **CCP §1094.5, or in the alternative, CCP §1085)**

24 113. Petitioners incorporate herein by reference the allegations contained in the foregoing
25 paragraphs.

26 114. CEQA is an environmental full disclosure statute. To achieve its broad informational
27 purpose, all documents and data relied upon in reaching the conclusions stated in the EIR must be
28 available for public review. Public Res. Code § 21092(b)(1) Without access to the data and
methodologies relied upon to reach the conclusions stated in an EIR regarding the presence or

1 absence of significant environmental impacts from the project in question, and the magnitude of
2 those impacts, the public cannot reasonably assess or informedly comment upon the validity of those
3 conclusions and, thus, the advisability of approving the project.

4 115. The City fails to provide information in the EIR about the processing of lower quality
5 oils that would be enabled by the Project and its resulting environmental effects, including
6 information on the Project's design capacity for lower quality oils.

7 116. City Consultant Dr. Sahu opined on issues related to lower quality oils, after the Final
8 EIR was published. The City improperly allowed Dr. Sahu in reaching those opinions to rely on
9 documents and data that were kept secret from the City and the public.

10 117. The City fails to provide information and analysis supporting its finding relating to
11 greenhouse gas emissions and global warming. The EIR inexplicably finds that some level of
12 greenhouse gas emissions are inconsequential and need not be mitigated. It provides no explanation
13 of this conclusion. Simultaneously, the EIR states that it plan to do a mitigation plan will reduce
14 greenhouse gas emissions to zero even though it excluded certain greenhouse gas emissions from
15 this reduction, and omits any data and analysis of the efficacy of specific measures by which this
16 reduction will be purportedly be achieved.

17 118. The City of Richmond's failure to provide information upon which the EIR's
18 conclusions are based constitutes a prejudicial abuse of discretion, fails to proceed in the manner
19 required by law, and does not have the support of substantial evidence.

20 **FIFTH CAUSE OF ACTION**
21 **(Violation of CEQA –Failure to evaluate the Project's significant environmental effects;**
22 **CCP §1094.5, or in the alternative, CCP §1085)**

23 119. Petitioners incorporate herein by reference the allegations contained in the foregoing
24 paragraphs.

25 120. CEQA requires that an EIR describe the proposed project's significant environmental
26 effects; each such effect must be revealed and fully analyzed in the EIR, giving due consideration to
27 both short- and long-term effects. Pub. Res. Code §21100(b), 21002.1; CEQA Guidelines
28 §15126.2(a). Significant effect on the environment refers to substantial, or potentially substantial,

1 adverse changes in physical conditions. Pub. Res. Code § 21060.5; *see also* Pub. Res. Code
2 §21100(d);

3 121. CEQA Guidelines further requires that in discussing the environmental effects of a
4 project, an EIR should contain “a sufficient degree of analysis to provide decision-makers with
5 information which enables them to make a decision which intelligently takes account of
6 environmental consequences.” CEQA Guidelines § 15151.

7 122. The EIR fails to adequately evaluate a variety of significant environmental effects of
8 the Project, including, but not limited to, the following,

- 9 a. Increased flaring from processing lower-quality oil;
- 10 b. Increased mercury and selenium releases from processing low-quality oil;
- 11 c. Air quality impacts from air emissions from the proposed activities;
- 12 d. Increase particulate matter and sulfur dioxide from processing low-quality oil;
- 13 e. Increased frequency and magnitude of refinery spills, fires, and explosions due to
14 processing low-quality oil;
- 15 f. Urban decay caused by the Project’s increased flaring and increased catastrophic
16 risk from refinery spills, fires, and explosions;
- 17 g. The simultaneous operation of the existing hydrogen plant, steam boilers, and
18 other older equipment with the new hydrogen plant and other new equipment (as
19 the impact analysis is based on the unfounded assumption that the old units will
20 be shut down before the new units begin operation);
- 21 h. Direct greenhouse gases including, but not limited to, Refinery fugitive emissions,
22 construction emissions, and greenhouse gases other than carbon dioxide that will
23 be emitted from the project;
- 24 i. Indirect greenhouse gas emissions from the additional 300,000 gallons per day of
25 gasoline that will be supplied to the California market, and growth- inducing
26 effects of that increased supply; and
- 27 j. Indirect greenhouse gas emissions from producing and refining low-quality,
28 harder-to-process oils.

1 process heat, electricity and steam for the Refinery – the new hydrogen plant, the alkylation plant, as
2 well as for heaters and furnaces. The continuous catalytic reformer (CCR) is also a source of LPG
3 that could increase production. The EIR does not discuss the increased capacity of the LPG spheres
4 that this Project will use.

5 131. The cumulative impacts analysis for the LPG spheres was deficient. No data was
6 provided in the EIR to support a finding of no significance. Moreover, hazard impacts, which are the
7 primary concern related to LPG spheres, were not analyzed alongside other proposed projects that
8 are expected to have hazard impacts, such as the pipeline projects.

9 132. The EIR also fails to consider the cumulative impacts of urban decay from the
10 Project.

11 133. The EIR fails to consider that the increasing temperatures resulting from global
12 warming will exacerbate the effects of emissions of ozone precursors from the Project. *See* Cal.
13 Health & Safety Code § 38501(a).

14 134. The EIR also fails to assess the cumulative impacts of the Project on climate change,
15 which is imperative given the scientific analysis that shows that the climate could be approaching a
16 tipping point, which if crossed would cause catastrophic effects.

17 135. The EIR failed to analyze cumulative impacts in connection with recent past, present,
18 and foreseeable future local projects. For instance, the City was required to consider these impacts in
19 light of the nearby ConocoPhillips Rodeo refinery project.

20 136. The EIR failed to consider the cumulative impacts of the production, processing, and
21 use of the oil that results from the Project and contributes to GHG emissions from the transportation
22 sector, the single largest source of California’s emissions.

23 137. The City’s action certifying the EIR, without analyzing cumulative impacts of the
24 Project constitutes a prejudicial abuse of discretion, fails to proceed in the manner required by law,
25 and does not have the support of substantial evidence.

1 **SEVENTH CAUSE OF ACTION**
2 **(Violation of CEQA – Failure to Include Proper Mitigation;**
3 **CCP §1094.5, or in the alternative, CCP §1085)**

4 138. Petitioners incorporate herein by reference the allegations contained in the foregoing
5 paragraphs.

6 139. Identification and discussion of proposed and alternative mitigation measures is a
7 core requirement of CEQA. A basic purpose of CEQA is to “[p]revent significant, avoidable
8 damage to the environment by requiring changes in projects through the use of alternatives or
9 mitigation measures.” CEQA Guidelines, § 15002(a)(3). *See also*, CEQA Guidelines, § 15021(a)(1).
10 Government agencies “shall mitigate or avoid the significant effects on the environment.” Pub. Res.
11 Code § 21002.1(b). Formulation of mitigation measures cannot properly be deferred to a future time
12 after the EIR is complete.

13 140. Rather than analyzing the greenhouse gas emission mitigations in the EIR, the City
14 improperly authorizes Chevron to create a mitigation plan outside of the public view up to year after
15 completion of the EIR.

16 141. Recognizing that Chevron may not produce a mitigation plan that satisfies the City
17 Council, the City Council provides itself with a review of the proposed plan and provides that if the
18 City Council is not satisfied with Chevron’s plan, it can direct the City’s Planning Director to create
19 a new plan to mitigate the greenhouse gases. CEQA does not authorize the City to allow the
20 applicant to create a plan for mitigation after project approval, nor does it authorize the City to
21 approve a project in reliance on its own unformulated future plan.

22 142. The City must analyze and discuss the mitigations of greenhouse gases in the EIR.
23 CEQA requires an EIR to “describe feasible measures which could minimize significant adverse
24 impacts, including where relevant, inefficient and unnecessary consumption of energy.” CEQA
25 Guidelines § 15126.4(a)(1).

26 143. The EIR listed a range of vague possible mitigation measures, but did not commit to
27 any particular mitigation measures. The EIR provides no analysis of each potential measure. The
28 measures should have been publicly available for review and comment in the EIR process. The City

1 should have documented the baseline of greenhouse gases emanating from the Refinery and
2 identified the feasible mitigation measures from the Refinery.

3 144. The EIR also did not analyze the potential adverse impacts of the listed potential
4 mitigation measures and did not analyze their feasibility.

5 145. Even if adequate, the prospective greenhouse gas mitigation plan will not mitigate the
6 greenhouse gas emissions to zero as claimed, because the EIR does not account for all of the
7 greenhouse gas emissions from the Project and because the ultimate monitoring and enforcement
8 provisions envisioned are too vague, and the mitigation plan has inconsistent requirements.

9 146. The EIR fails to mitigate impacts from the Project's increased flaring despite the facts
10 that acknowledges that the Project will cause some increased flaring and despite the substantial
11 evidence that such increases would be significant.

12 147. Finally, the CBA lessens the City's ability to enforce and monitor the mitigation
13 measures that were removed from the CUP. In addition, the CBA conditions the City's performance
14 of permit obligation related to the Project on the exchange of money. This undermines the City's
15 ability to enforce its mitigation measures, because the City has an economic incentive to streamline
16 approvals even for activities relied upon for mitigation.

17 148. The City's action certifying the EIR, without proper mitigation constitutes a
18 prejudicial abuse of discretion, fails to proceed in the manner required by law, and does not have the
19 support of substantial evidence.

20 **EIGHTH CAUSE OF ACTION**
21 **(Violation of CEQA – Failure to Consider a Reasonable Range of Alternatives;**
22 **CCP §1094.5, or in the alternative, CCP §1085)**

23 149. Petitioners incorporate herein by reference the allegations contained in the foregoing
24 paragraphs.

25 150. CEQA provides that public agencies should not approve projects as proposed if there
26 are feasible alternatives or mitigation measures available to substantially lessen the significant
27 environmental impacts of the Project. Pub. Res. Code § 21002.

28 151. CEQA requires that an EIR describe a range of reasonable alternatives to the project
that would feasibly attain most of the basic objectives of the project but would avoid or substantially

1 lessen any of the significant effects of the project, and evaluate the comparative merits of the
2 alternatives. Pub. Res. Code § 21100(b)(4), 21002; CEQA Guidelines § 15126.6(c).

3 152. The lead agency should discuss alternatives “even if these alternatives would impede
4 to some degree the attainment of the project objectives, or would be more costly.” CEQA Guideline
5 § 15126.6(b).

6 153. CEQA specifically requires the lead agency to describe feasible mitigation measures
7 proposed to reduce the wasteful, inefficient, and unnecessary consumption of energy. Pub. Res.
8 Code § 21100(b)(3); CEQA Guidelines § 15126.4(a)(1).

9 154. When alternatives or mitigation measures are rejected as infeasible, the findings must
10 reveal the agency’s reasons for reaching that conclusion. CEQA Guidelines § 15126.6(c).

11 155. The EIR failed to consider a reasonable range of alternatives and adequately support
12 its conclusion that proposed alternatives be rejected.

13 156. The City failed to describe alternatives to reduce or eliminate the Projects’
14 greenhouse gas emissions impacts.

15 157. The City additionally failed to adequately describe why it rejected a feasible
16 alternative to reduce the Project’s greenhouse gas impacts and other impacts from refining low-
17 quality oil by imposing a comprehensive crude cap.

18 158. The City failed to adequately describe alternatives to reduce or eliminate the Project’s
19 energy impacts.

20 159. The EIR failed to evaluate clean energy alternatives utilizing a combination of
21 different available methods, such as solar, wind, and tidal options, which were feasible and effective
22 and instead relied on each method individually for the entire burden, which was inherently
23 unrealistic.

24 160. The City failed to adequately describe why it rejected feasible combined alternatives
25 that were proposed and that would substantially lessen the Project’s significant energy impacts.

26 161. The inadequate project description foreclosed a reasonable alternatives analysis.
27 Specifically, the EIR failed to consider alternatives that would reduce or avoid the impacts of
28 processing low-quality oil.

1 169. An EIR must contain detailed statements describing any irreversible environmental
2 effects projects would have, if implemented. Pub. Res. Code § 21100(b)(2)(B).

3 170. The Project violated this mandate by completely omitting any discussion of the
4 irreversible environmental effects of the Project.

5 171. Substantial evidence was presented that the Project could cause irreversible impacts
6 from mercury and selenium water discharges. These heavy metals are persistent and biocumulative.

7 172. In the event of an oil spill involving low quality crude, non-floating hydrocarbons
8 could accumulate and persist for years in bottom sediments and expose organisms and habitat living
9 at the bottom of the Bay or Ocean to toxic levels of pollutants.

10 173. Increased greenhouse gas emissions could also cause irreversible impacts, as could
11 the more general impact of combusting oil based fuels, a non-renewable source.

12 174. Catastrophes from spills, fires, and explosions also can cause irreversible harm.

13 175. The City of Richmond's action certifying the Project's EIR, without discussing the
14 Project's irreversible effects constitutes a prejudicial abuse of discretion, fails to proceed in the
15 manner required by law, and does not have the support of substantial evidence.

16 **ELEVENTH CAUSE OF ACTION**
17 **(Violation of CEQA – Failure to Recirculate the EIR;**
CCP §1094.5, or in the alternative, CCP §1085)

18 176. Petitioners incorporate herein by reference the allegations contained in the foregoing
19 paragraphs.

20 177. CEQA requires the lead agency to recirculate an EIR when significant new
21 information is added after the Draft EIR has been noticed and public comment has commenced but
22 before certification. *See* Pub. Res. Code § 21092.1. “As used in this section, the term ‘information’
23 can include changes in the project or environmental setting as well as additional data or other
24 information.” CEQA Guidelines § 15088.5(a).

25 178. The City failed to recirculate the EIR regarding greenhouse gas impacts, even after
26 receiving significant new information about the impacts from the project as a whole. Moreover, the
27 greenhouse mitigation measures were first proposed in the Final EIR and have not been to subject to
28 public comment and review.

1 179. The EIR should be recirculated because there was new evidence in the record that
2 there will be a substantial increase in the severity of the environmental impact of greenhouse gases
3 on global warming.

4 180. The public should have had the opportunity to comment on the mitigation measures
5 for this effect, before the City concluded that the its plan to mitigate the greenhouse gas emissions
6 was sufficient to reduce or eliminate the emissions.

7 181. The EIR should also be recirculated to provide the public and decision-makers the
8 basis for adequate comparison of current environmental conditions relating to global warming.

9 182. The City failed to recirculate the EIR after receiving substantial information that the
10 Project would allow Chevron to process lower-quality oil, which has the strong potential to increase
11 pollution in the processing phase and at other times.

12 183. The City of Richmond’s decision to certify the EIR without recirculation, constitutes
13 a prejudicial abuse of discretion, fails to proceed in the manner required by law, and does not have
14 the support of substantial evidence.

15 **TWELVETH CAUSE OF ACTION**
16 **(Violation of CEQA – Failure to Meet the Requirements of a Master EIR;**
17 **CCP §1094.5, or in the alternative, CCP §1085)**

18 184. Petitioners incorporate herein by reference the allegations contained in the foregoing
19 paragraphs.

20 185. The city incorrectly designated the EIR as a Master EIR (“MEIR”). MEIR’s are a
21 tool for programmatic environmental review.

22 186. Using the MEIR format for a specific refinery project is inappropriate.

23 187. Moreover, the project description in the EIR does not meet the specific requirements
24 for a MEIR. For example, it fails to provide a “description of potential impacts of anticipated
25 subsequent projects for which there is not sufficient information reasonably available to support a
26 full assessment of potential impacts in meir.” Pub. Res. Code § 21157(b)(3).

27 188. The EIR fails to distinguish between its programmatic elements and its project-
28 specific analysis. The use of a Master EIR makes it appear that there is more to the Project than
meets the eye, but EIR fails to disclose or discuss anticipated subsequent projects. This undermines

1 the fundamental disclosure purpose of CEQA and creates a confusing approach to what should have
2 been a straightforward project specific analysis of large project at the Refinery.

3 189. The City of Richmond's decision to certify the EIR as a Master EIR constitutes a
4 prejudicial abuse of discretion, fails to proceed in the manner required by law, and does not have the
5 support of substantial evidence.

6 PRAYER FOR RELIEF

7 WHEREFORE, CBE prays for judgment as set forth below:

8 A. For a writ of mandate or peremptory writ issued under the seal of this Court and directing the
9 City of Richmond to:

- 10 1. void the EIR for Chevron's Hydrogen Renewal and Energy Project;
- 11 2. set aside and withdraw its approvals of the conditional use permit for Chevron's
12 Hydrogen Renewal Project;
- 13 3. refrain from granting any approvals for the Project unless and until the City complies
14 fully with the requirements of CEQA; and
- 15 4. recirculate a revised EIR for public review and comment.

16 B. For entry of preliminary and/or permanent injunctive relief prohibiting the City of Richmond
17 and Chevron from carrying out, implementing, or otherwise acting in furtherance of any of
18 the changes and expansions to operations at Chevron's Richmond Refinery authorized by the
19 Permit or relied upon in other permits until a lawful approval has been obtained from the City
20 after the requirements of CEQA have been fulfilled.

21 C. For a declaratory judgment stating that the City of Richmond violated CEQA by approving
22 the EIR with an inaccurate and misleading project description and for issuing the CUP before
23 fully complying with CEQA;

24 D. For a declaratory judgment stating that the City of Richmond's approval of the proposed
25 expansion, including the EIR and the NOD filed on August 5, 2008, under CEQA, are void
26 *ab initio* or otherwise invalid and of no legal effect;

27 E. For a declaratory judgment that the EIR is inadequate and that the City of Richmond violated
28 CEQA by approving and certifying the EIR.

- 1 F. For a declaratory judgment that the City of Richmond’s failure to prepare, consider, and
2 approve or certify an adequate environmental analysis under CEQA is arbitrary and
3 capricious.
- 4 G. For a declaratory judgment stating that the City of Richmond’s failure to recirculate the EIR
5 after modifying the greenhouse gas section in a way that might cause significant
6 environmental impacts and deleting portions of the CUP was arbitrary and capricious, an
7 abuse of discretion, and a violation of the law;
- 8 H. For Petitioners’ fees and costs, including reasonable attorneys’ fees and expert witness costs,
9 as authorized by CCP § 1021.5, and any other applicable provisions of law on its claims
10 regarding the unlawful issuance of Chevron’s CUP and certification of the EIR.
- 11 I. For such other legal and equitable relief as this Court deems appropriate and just.

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13 DATED: September 4, 2008

Respectfully submitted,

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William B. Rostov
Deborah Reames
EARTHJUSTICE
17 Attorneys for Petitioners and Plaintiffs
COMMUNITIES FOR A BETTER ENVIRONMENT,
18 ASIAN PACIFIC ENVIRONMENTAL NETWORK,
and WEST COUNTY TOXICS COALITION

19
20 Adrienne L. Bloch
Shana Lazerow
Attorneys for Petitioner and Plaintiff
21 COMMUNITIES FOR A BETTER ENVIRONMENT
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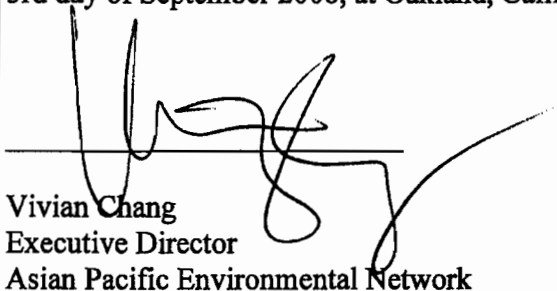
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VERIFICATION

I, Vivian Chang declare:

I am the Executive Director of Petitioner and Plaintiff Asian Pacific Environmental Network. I have read the above petition and complaint against the City of Richmond and Chevron and know its contents. All of the facts alleged in the petition not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of September 2008, at Oakland, California.



Vivian Chang
Executive Director
Asian Pacific Environmental Network

VERIFICATION

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I, Henry Clark declare:

I am the Executive Director of Petitioner and Plaintiff West County Toxics Coalition.

I have read the above petition and complaint against the City of Richmond and Chevron and know its contents. All of the facts alleged in the petition not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of September 2008, at Richmond, California.

Henry Clark

Henry Clark
Executive Director
West County Toxics Coalition

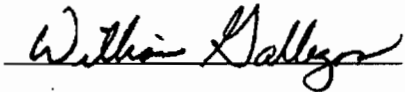
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VERIFICATION

I, WILLIAM GALLEGOS declare:

I am the Executive Director of petitioner Communities for a Better Environment. I have read the above petition and complaint against the City of Richmond and Chevron and know its contents. All of the facts alleged in the petition and complaint not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of September 2008, at Huntington Park, California.



William Gallegos
Executive Director
Communities for a Better Environment